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**U.S. Citizenship  
and Immigration  
Services**



H14

FILE:



Office: FRANKFURT

Date: **NOV 09 2005**

IN RE:



APPLICATION:

Application for Waiver of Grounds of Inadmissibility under section 212(a)(9)(B) of the Immigration and Nationality Act, 8 U.S.C. § 1182(a)(9)(B)

ON BEHALF OF APPLICANT:

SELF-REPRESENTED

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

Robert P. Wiemann, Director  
Administrative Appeals Office

**DISCUSSION:** The waiver application was denied by the Officer in Charge, Frankfurt. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native and citizen of Germany who was found to be inadmissible to the United States pursuant to section 212(a)(9)(B)(i)(II) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(9)(B)(i)(II), for having been unlawfully present in the United States for more than one year and seeking readmission within 10 years of her last departure from the United States. The applicant seeks a waiver of inadmissibility in order to reside in the United States with her U.S. citizen husband.

The officer in charge found that, based on the evidence in the record, the applicant had failed to establish extreme hardship to her U.S. citizen husband. The application was denied accordingly. *Decision of the Acting Officer in Charge*, dated April 20, 2004.

On appeal, the applicant asserts that her husband will suffer emotional and economic hardship should the applicant be prohibited from entering the United States. *Statement from Applicant on Appeal*, received on May 24, 2004.

The record contains a statement from the applicant in support of the appeal; statements from the applicant's daughter and husband in support of the Form I-601, Application for Waiver of Ground of Excludability; a copy of the applicant's husband's birth certificate; a copy of the applicant's marriage certificate, and; documentation on the applicant's entries to and stays in the United States. The entire record was reviewed and considered in rendering a decision on the appeal.

Section 212(a)(9)(B) of the Act provides, in pertinent part:

(B) Aliens Unlawfully Present.-

(i) In general. - Any alien (other than an alien lawfully admitted for permanent residence) who-

....

(II) has been unlawfully present in the United States for one year or more, and who again seeks admission within 10 years of the date of such alien's departure or removal from the United States, is inadmissible.

....

(v) Waiver. - The Attorney General [now the Secretary of Homeland Security (Secretary)] has sole discretion to waive clause (i) in the case of an immigrant who is the spouse or son or daughter of a United States citizen or of an alien lawfully admitted for permanent residence, if it is established to the satisfaction of the Attorney General [Secretary] that the refusal of admission to such immigrant alien

would result in extreme hardship to the citizen or lawfully resident spouse or parent of such alien.

In the present matter, the record indicates that the applicant was admitted to the United States pursuant to the Visa Waiver Program on February 19, 2001, with an authorized stay of 90 days, expiring on May 19, 2001. The applicant did not depart the United States until March 19, 2003, thus she was unlawfully present for a total of one year and 10 months. The record further reflects that the applicant accrued significant unlawful presence during a prior period due to remaining beyond the expiration of her authorized stay under the Visa Waiver Program, from February 14, 1998 to approximately July 2000. On April 1, 2003 the applicant attempted to again enter the United States pursuant to the Visa Waiver Program, yet she was denied entry. The applicant was deemed inadmissible to the United States under section 212(a)(9)(B)(II) of the Act for having been unlawfully present in the United States for more than one year and seeking readmission within 10 years of her last departure from the United States. The applicant does not contest her inadmissibility on appeal.

A section 212(a)(9)(B)(v) waiver of the bar to admission resulting from section 212(a)(9)(B)(i)(II) of the Act is dependent first upon a showing that the bar imposes an extreme hardship to the U.S. citizen or lawfully resident spouse or parent of the applicant. Hardship the alien herself experiences upon being found inadmissible is irrelevant to section 212(a)(9)(B)(v) waiver proceedings. Once extreme hardship is established, it is but one favorable factor to be considered in the determination of whether the Secretary should exercise discretion. See *Matter of Mendez*, 21 I&N Dec. 296 (BIA 1996).

*Matter of Cervantes-Gonzalez*, 22 I&N Dec. 560 (BIA 1999) provides a list of factors the Bureau of Immigration Appeals deems relevant in determining whether an alien has established extreme hardship pursuant to section 212(i) of the Act. These factors include the presence of a lawful permanent resident or United States citizen spouse or parent in this country; the qualifying relative's family ties outside the United States; the conditions in the country or countries to which the qualifying relative would relocate and the extent of the qualifying relative's ties in such countries; the financial impact of departure from this country; and significant conditions of health, particularly when tied to an unavailability of suitable medical care in the country to which the qualifying relative would relocate.

On appeal, the applicant asserts that her husband will suffer hardship if she is prohibited from entering the United States. *Statement from Applicant on Appeal*. She explains that her husband is ill and he requires her assistance. *Id.* at 2. The applicant indicates that her husband has limited economic resources, and she will be able to assist him financially by working in the United States. *Id.* The applicant's husband stated that his health is failing, and he and the applicant met their expenses in the United States utilizing his disability income. *Statement from Husband in Support of Form I-601*. The applicant's husband expressed that he will experience significant emotional hardship due to separation from the applicant. *Id.* The applicant further discussed the hardships to her U.S. citizen daughter should her waiver application be denied. *Statement from Applicant on Appeal*.

Upon review, the applicant has not established that her husband will suffer extreme hardship if she is prohibited from entering the United States. The applicant's husband explains that he is experiencing emotional hardship due to separation from the applicant. While the AAO acknowledges that such separation

is emotionally difficult, the applicant has not shown that her husband is suffering unusual consequences that go beyond those commonly experienced by family members of those deemed excludable or inadmissible. In *Matter of Pilch*, 21 I&N Dec. 627 (BIA 1996), the Board of Immigration Appeals held that emotional hardship caused by severing family and community ties is a common result of deportation and does not constitute extreme hardship. In addition, *Perez v. INS*, 96 F.3d 390 (9th Cir. 1996), held that the common results of deportation are insufficient to prove extreme hardship and defined extreme hardship as hardship that was unusual or beyond that which would normally be expected upon deportation. *Hassan v. INS, supra*, held further that the uprooting of family and separation from friends does not necessarily amount to extreme hardship but rather represents the type of inconvenience and hardship experienced by the families of most aliens being deported. The AAO recognizes that the applicant's spouse will endure hardship as a result of separation from the applicant. However, his situation, if he remains in the United States, is typical of individuals separated as a result of deportation or exclusion and does not rise to the level of extreme hardship. It further noted that the applicant's husband may relocate out of the United States with the applicant.

The applicant indicates that her husband has limited financial means, and that she would be able to assist him by working in the United States. However, the applicant further indicated that she and her husband have subsisted in the United States on his disability income alone, thus it is evident that her husband can meet his economic needs without contribution from the applicant. The record does not support that the applicant's spouse will be unable to maintain his financial position while the applicant is abroad. Moreover, the U.S. Supreme Court has held that the mere showing of economic detriment to qualifying family members is insufficient to warrant a finding of extreme hardship. *INS v. Jong Ha Wang*, 450 U.S. 139 (1981).

The applicant and her husband reference her husband's poor health. However, the applicant has not provided any documentation to show that her husband is disabled, that he has been diagnosed with illness, or that he receives ongoing medical care. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998)(citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)). Thus, the applicant has not shown that her husband will experience additional hardship due to his health status.

The applicant stated that she and her U.S. citizen daughter are experiencing hardship as a result of her absence from the United States. The AAO acknowledges that the applicant's inadmissibility has significant consequences for her and her daughter. However, hardship experienced by the applicant or the applicant's child is not probative of the applicant's eligibility for a waiver under section 212(i) of the Act. Section 212(i)(1) of the Act.

Based on the foregoing, the instances of hardship that will be experienced by the applicant's spouse should the applicant be prohibited from entering the United States, considered in aggregate, do not rise to the level of extreme hardship. Having found the applicant statutorily ineligible for relief, no purpose would be served in discussing whether she merits a waiver as a matter of discretion.

In proceedings for application for waiver of grounds of inadmissibility under section 212(a)(9)(B) of the Act, the burden of proving eligibility remains entirely with the applicant. See section 291 of the Act, 8 U.S.C. § 1361. Here, the applicant has not met that burden. Accordingly, the appeal will be dismissed.

**ORDER:** The appeal is dismissed.