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U.S. Citizenship
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Services

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FILE:



Office: LONDON

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, London. 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 Ireland 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 his last departure from the United States. The applicant seeks a waiver of inadmissibility in order to reside in the United States with his U.S. citizen fiancée.

The officer in charge found that, based on the evidence in the record, the applicant had failed to establish extreme hardship to a qualifying relative. The application was denied accordingly. *Decision of the Officer in Charge*, dated January 31, 2005.

On appeal, the applicant asserts that his U.S. citizen fiancée will suffer hardship should the applicant be prohibited from entering the United States. *Statement from Applicant on Form I-290B*, received on February 23, 2005.

The record contains a statement from the applicant on Form I-290B; statements from the applicant and his fiancée in support of the Form I-601, Application for Waiver of Ground of Excludability; a letter confirming the applicant's fiancée's employment, and; documentation of the applicant's immigration history including evidence that his fiancée filed a Form I-129F, Petition for Alien Fiancé, on his behalf. 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 as a visitor for pleasure on April 12, 1998, with authorization to remain until July 11, 1998. He did not depart until December 1999, approximately one year and five months after his status expired. The applicant again was admitted to the United States as a visitor for pleasure on January 19, 2000, with authorization to remain until April 16, 2000. He did not depart until February 2003, approximately two years and one month after his status expired. In sum, the applicant accrued approximately three years and six months of unlawful presence in the United States. On March 28, 2003 the applicant attempted to again enter the United States, yet he 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 his last departure from the United States. The applicant does not contest his inadmissibility on appeal.

The applicant is eligible to file a waiver under section 212(h)(1)(B) of the Act based on having established that he has a U.S. citizen fiancée. Although, section 212(h)(1)(B) of the Act does not specify fiancées of U.S. citizens as qualifying relatives for purposes of an extreme hardship waiver, if an alien seeking a K nonimmigrant visa is inadmissible, the alien can seek a waiver based on 8 C.F.R. § 212.7(a), which provides, in pertinent part:

- (a) *General—(1) Filing procedure—(i) Immigrant visa or K nonimmigrant visa applicant.* An applicant for an immigrant visa or “K” nonimmigrant visa who is inadmissible and seeks a waiver of inadmissibility shall file an application on Form I-601 at the consular office considering the visa application. Upon determining that the alien is admissible except for the grounds for which a waiver is sought, the consular officer shall transmit the Form I-601 to the Service for decision.

In determining that a fiancée is equivalent to a spouse for purposes of the extreme hardship statute, the AAO relies on 22 C.F.R. § 41.81 which provides:

§ 41.81 Fiancé(e) or spouse of a U.S. citizen and derivative children.

...

- (a) Fiance (e). An alien is classifiable as a nonimmigrant fiancé(e) under INA 101(a)(15)(K)(i) when all of the following requirements are met:

...

- (3) The alien otherwise has met all applicable requirements in order to receive a nonimmigrant visa, *including the requirements of paragraph (d)* of this section.

(d) *Eligibility as an immigrant required.* The consular officer, insofar as is practicable, must determine the eligibility of an alien to receive a nonimmigrant visa under paragraphs (a), (b) or (c) of this section *as if the alien were an applicant for an immigrant visa*, except that the alien must be exempt from the vaccination requirement of INA 212(a)(1) and the labor certification requirement of INA 212(a)(5).

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, and in the present case a fiancée as discussed above. Hardship the alien himself 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 his fiancée will experience significant hardship if he is prohibited from entering the United States. *Statement from Applicant on Form I-290B*. The applicant's fiancée provided that all of her family members are in the United States, and that she would be deprived of their support and companionship if she were to relocate to Ireland with the applicant. *Statement from Applicant's Fiancée in Support of Form I-601*. The applicant's fiancée stated that she has been diagnosed with Type I diabetes which requires her to receive insulin injections daily. *Id.* She indicated that the specific insulin she is currently taking is not available in Ireland, and that changing to a new insulin could pose health complications. *Id.* The applicant's fiancée further explained that she and the applicant would be deprived of educational and employment opportunities if they reside in Ireland. *Id.*

It is noted that the applicant indicated on Form I-290B that he would submit additional documentation to the AAO within 30 days of filing the appeal. The appeal was filed on February 23, 2005. However, as of the date of this decision, the AAO has received no further documentation or correspondence from the applicant and the record will be considered complete.

Upon review, the applicant has not established that his fiancée will suffer extreme hardship if he is prohibited from entering the United States. The applicant's fiancée explains that she will experience emotional hardship due to separation from her family if she relocates to Ireland. While the AAO acknowledges that such separation is emotionally difficult, the applicant has not shown that his fiancée will suffer 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 fiancée will endure hardship if she relocates to Ireland. However, her situation, if she departs the United States, is typical to individuals experiencing family separation as a result of deportation or exclusion and does not rise to the level of extreme hardship. It further noted that, as a U.S. citizen, the applicant's fiancée may remain in the United States if she wishes.

The applicant's fiancée stated that she would be deprived of educational and employment opportunities if she were to relocate to Ireland. However, the applicant has not established that his fiancée would be unable to obtain quality education or employment abroad. The lack of regular access to the U.S. job market and educational institutions is not deemed extreme hardship. 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). Again, the applicant's fiancée, as a U.S. citizen, may remain in the United States and avail herself of educational and employment opportunities.

The applicant's fiancée indicated that she has been diagnosed with Type I diabetes for which she requires insulin injections. The applicant's fiancée noted that the specific insulin she utilizes is not available in Ireland, and thus she would be at risk of health complications should she relocate there. However, the applicant has provided no documentation or medical records to show that his fiancée is a diabetic, or to support that she requires a specific type of insulin. 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 his fiancée will experience additional hardship in Ireland due to her health status. It is again noted that the applicant's fiancée is free to remain in the United States as a U.S. citizen.

Based on the foregoing, the instances of hardship that will be experienced by the applicant's fiancée 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 he 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.