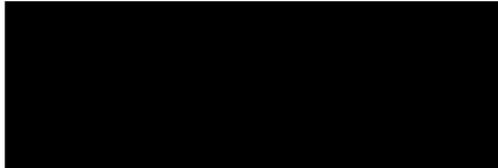


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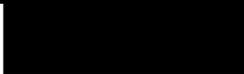
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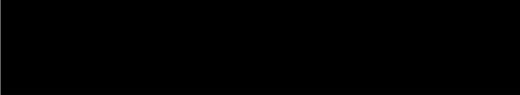


Office: BANGKOK

Date:

NOV 20 2006

IN RE:



APPLICATION:

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

ON BEHALF OF APPLICANT:



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, Chief  
Administrative Appeals Office

**DISCUSSION:** The Acting District Director, Bangkok, Thailand, denied the waiver application, and it is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained.

The applicant is a native and citizen of Samoa 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 is the spouse and mother of U.S. citizens. She seeks a waiver of inadmissibility pursuant to section 212(a)(9)(B)(v) of the Act, 8 U.S.C. § 1182(a)(9)(B)(v), in order to reside in the United States with her spouse and children.

The acting district director concluded that the applicant had failed to establish that extreme hardship would be imposed on a qualifying relative and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) accordingly. *Decision of the Acting District Director*, dated April 22, 2005.

The record reflects that, in 1994, the applicant was admitted to the United States as a visitor. The applicant remained in the United States after her authorized stay expired. The applicant took up unauthorized residence and employment in the United States. On August 3, 1998, the applicant married her spouse, [REDACTED] a native and citizen of American Samoa. On November 2, 1999, the applicant's U.S. citizen daughter was born. In May 2000, the applicant returned to Samoa, where she has since resided. On August 10, 2001, the applicant's spouse filed a Petition for Alien Relative (Form I-130) on behalf of the applicant, which was approved on February 4, 2002. In January 2004, [REDACTED] became a naturalized U.S. citizen.

On April 20, 2005, the applicant filed the Form I-601 with documentation supporting her claim that the denial of the waiver would result in extreme hardship to her family members.

On appeal, counsel contends that the applicant's spouse would suffer extreme hardship due to the physical and emotional hardship he has experienced in relation to his separation from his family and the inability of his daughter to obtain appropriate psychological care for the sexual abuse she has experienced since she has resided in American Samoa. *See Applicant's Brief*, dated October 20, 2006. In support of his contentions, counsel submitted the above-referenced brief and copies of documentation previously provided. The entire record was reviewed and considered in rendering a decision in this case.

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.

The acting district director based the finding of inadmissibility under section 212(a)(9)(B)(i)(II) of the Act on the applicant's admitted unlawful presence in the United States from April 1, 1997, the date of enactment of unlawful presence provisions, until May 2000. Counsel does not contest the acting district director's determination of inadmissibility.

Hardship to the alien herself is not a permissible consideration under the statute. A section 212(a)(9)(B)(v) waiver is therefore dependent upon a showing that the bar to admission imposes an extreme hardship on the U.S. citizen or lawfully resident spouse or parent of the applicant. It is noted that Congress specifically did not include hardship to an alien's children as a factor to be considered in assessing section 212(a)(9)(B)(v) extreme hardship. Therefore, hardship to the applicant's children will not be considered in this decision, except as it may affect the applicant's spouse, the only qualifying relative.

The concept of extreme hardship to a qualifying relative "is not . . . fixed and inflexible," and whether extreme hardship has been established is determined based on an examination of the facts of each individual case. *Matter of Cervantes-Gonzalez*, 22 I&N Dec. 560 at 565 (BIA 1999). In *Matter of Cervantes-Gonzalez*, the Board of Immigration Appeals set forth a list of non-exclusive factors relevant to determining whether an alien has established extreme hardship to a qualifying relative. These factors include, with respect to the qualifying relative, the presence of family ties to U.S. citizens or lawful permanent residents in the United States, family ties outside the United States, country conditions where the qualifying relative would relocate and family ties in that country, the financial impact of departure, and significant health conditions, particularly where there is diminished availability of medical care in the country to which the qualifying relative would relocate. *Id.* at 566. The BIA has held:

Relevant factors, though not extreme in themselves, must be considered in the aggregate in determining whether extreme hardship exists. In each case, the trier of fact must consider the entire range of factors concerning hardship in their totality and determine whether the combination of hardships takes the case beyond those hardships ordinarily associated with deportation. *Matter of O-J-O-*, 21 I&N Dec. 381, 383 (BIA 1996). (Citations omitted).

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).

The record reflects that [REDACTED] has a 16-year old son from a previous relationship who is a U.S. citizen by birth. The applicant and [REDACTED] have a seven-year old daughter who is a U.S. citizen by birth. The record reflects further that the applicant is in her 30's, [REDACTED] is in his 50's and that [REDACTED] has some health concerns.

The applicant contends that [REDACTED] will suffer extreme emotional hardship whether he remains in the United States without the applicant or travels to American Samoa in order to reside with the applicant. [REDACTED] has some university-level education and has been employed as a warehouseman for the past 17 years. The applicant is currently unemployed. [REDACTED] has a history of early life abuse and trauma, depression anxiety and post traumatic stress. [REDACTED] grew up with an alcoholic and abusive father and lost his eldest son in a drive-by shooting in 1990. As a result of the loss of his son, combined with his experiences growing up, [REDACTED] spent two to three years recovering from depression. In August 2004, the applicant discovered that their daughter, who resides with the applicant in American Samoa, had been sexually abused by a male relative living in the household. As a result of the separation from his daughter, combined with his daughter's sexual abuse and inability to obtain appropriate mental health care, [REDACTED] depression, anxiety and post traumatic stress has returned. Counsel submitted medical and psychological letters for the applicant's spouse and daughter indicating that, despite the need for care [REDACTED] has not been treated since 2003 due to his inability to pay for treatment as he currently financially support himself, the applicant and their daughter in American Samoa, as well as providing child support payments to his son's mother. The psychological report indicates that [REDACTED] suffers from a dysthymic disorder, which would cause him to be more susceptible to major depressive disorders and would exacerbate his ability to cope with the normal anxiety and depression that accompanies separation from a family member. *See Dysthymic Disorder, Psychology Information Online*, [www.psychologyinfo.com/depression/dysthymic.htm](http://www.psychologyinfo.com/depression/dysthymic.htm); *Dysthymic Disorder, All About Depression* [www.allaboutdepression.com/dia\\_04.html](http://www.allaboutdepression.com/dia_04.html). The psychological report indicates that the discovery of his daughter's sexual abuse and her inability to obtain appropriate care in American Samoa have exacerbated [REDACTED] psychological symptoms. The psychological report indicates that [REDACTED] is primarily concerned with obtaining appropriate care for his daughter. The report notes that if [REDACTED] returned to American Samoa to reside with his daughter and the applicant, he and his daughter would be unable to obtain appropriate care and he would be separated from his son who currently resides with him on a part-time basis. The report goes on to state that if the applicant's daughter were to return to the United States without the applicant she would still be unable to obtain appropriate care as the involvement of both her parents is essential to her recovery as the victim of sexual abuse. *Psychological Report*, dated March 11, 2005.

Courts in the Ninth Circuit Court of Appeals have recognized that, in certain cases, economic impact combined with related personal and emotional hardships may cause the hardship to rise to the level of extreme. "Included among these are the personal hardships which flow naturally from an economic loss decreased health care, educational opportunities, and general material welfare." *Mejia-Carrillo v. INS*, 656 F.2d 520, 522 (9th cir. 1981) (citations omitted); *see also Santana-Figueroa v. INS*, 644 F.2d 1354, 1358 (9th cir. 1981) ("Economic loss often accompanies deportation. Even a significant reduction in standard of living is not, by itself, a basis for relief . . . . But deportation may also result in the loss of all that makes life

possible. When an alien would be deprived of the means to survive, or condemned to exist in life-threatening squalor, the "economic" character of the hardship makes it no less severe.")

The economic hardships [REDACTED] might face if he returns to American Samoa are not uncommon to aliens and families upon deportation. However, the hardship [REDACTED] faces is substantially greater than that which aliens and families upon deportation would normally face when combined with his psychological history and the impact of his daughter's own psychological problems and required treatment. A finding of extreme psychological hardship is the inevitable conclusion of the combined force of the submitted medical and psychological letters. A discounting of the extreme hardship [REDACTED] would face in either the United States or American Samoa if his spouse were refused admission is, therefore, not appropriate. The AAO therefore finds that the evidence of hardship, considered in the aggregate and in light of the *Cervantes-Gonzalez* factors, cited above, supports a finding that [REDACTED] faces extreme hardship if the applicant is refused admission.

The AAO also finds that the applicant merits a waiver of inadmissibility as a matter of discretion.

In discretionary matters, the alien bears the burden of proving that positive factors are not outweighed by adverse factors. *See Matter of T-S-Y*, 7 I&N Dec. 582 (BIA 1957). The adverse factor in the present case is the unlawful presence for which the applicant seeks a waiver. The favorable and mitigating factors in the present case are the extreme hardship to the applicant's spouse and daughter if she were refused admission, her otherwise clean background, and the applicant's spouse's significant ties to the United States.

The AAO finds that, although the immigration violation committed by the applicant was serious and cannot be condoned, when taken together, the favorable factors in the present case outweigh the adverse factors, such that a favorable exercise of discretion is warranted. Accordingly, the appeal will be sustained.

**ORDER:** The appeal is sustained.