



U.S. Citizenship
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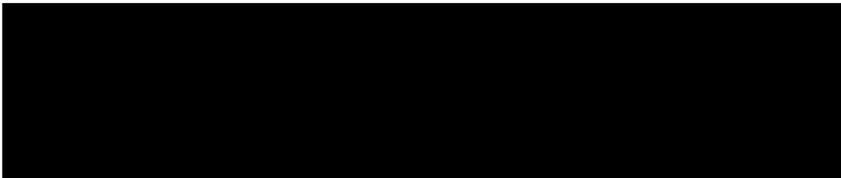
Date: JUN 14 2007

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 waiver application was denied by the Regional Immigration Attaché, Rome, Italy. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The record reflects that the applicant is a native and citizen of Italy 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 record indicates that the applicant is married to a United States citizen and she is the beneficiary of an approved Petition for Alien Relative (Form I-130). The applicant 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 United States citizen husband.

The Regional Immigration Attaché found that the applicant failed to establish that extreme hardship would be imposed on the applicant's spouse and denied the Application for Waiver of Grounds of Excludability (Form I-601) accordingly. *Decision of the Regional Immigration Attaché*, dated April 28, 2005.

On appeal, the applicant, through counsel, asserts that the "denial of [the applicant's] application for a waiver of inadmissibility under INA 212(a)(9)(B)(v) will result in extreme hardship for her U.S. citizen husband...[and] DHS [Department of Homeland Security] abused its discretion in denying Appellant's application." *Form I-290B*, filed July 6, 2005. In addition, counsel contends that the "DHS erred in discussing Appellant's Possible Inadmissibility under INA 212(a)(6)(C)(i)." *Id.* There is insufficient information in the current record to make a clear determination of inadmissibility under section 212(a)(6)(C)(i), therefore the AAO will not address that assertion in the denial. The AAO notes that whether the applicant is inadmissible under section 212(a)(6)(C)(i) of the Act is not relevant to the current proceedings because the applicant is clearly inadmissible under section 212(a)(9)(B)(i)(II) of the Act.

The record includes, but is not limited to, counsel's brief, an affidavit from the applicant's husband, an order of deportation, and several letters from the applicant's friends. The entire record was reviewed and considered in arriving at 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 application, the record indicates that the applicant entered the United States under the visa waiver program on July 2, 2002, with authorization to remain in the United States until September 30, 2002. On December 1, 2003, the applicant and [REDACTED] married in Utah. On January 21, 2004, the applicant was removed from the United States. The applicant accrued unlawful presence from the expiration of her authorized stay until her removal, a period of more than one year. Counsel contends that the applicant “remained in the U.S. longer than a year” because of “the DHS’s own actions.” *Appellant’s Brief in Removal Proceedings*, dated May 18, 2005. Counsel states that DHS took the applicant’s passport from her, making it impossible for her to leave until she was actually deported in January 2004. *Id.* The AAO notes that no evidence or statement has been provided to establish that the applicant attempted to contact DHS to have her passport returned to her or made any attempt to leave the United States prior to DHS’s confiscation of her passport.

On February 12, 2004, the applicant’s spouse filed a Form I-130 Petition for Alien Relative (Form I-130) on the applicant’s behalf. On November 9, 2004, the applicant’s Form I-130 was approved. On or about April 19, 2004, the applicant filed an Application for Permission to Reapply for Admission into the United States after Deportation or Removal (Form I-212). On October 4, 2005, the District Director, in Rome, Italy, denied the Form I-212. On or about December 28, 2004, the applicant filed a Form I-601. On April 28, 2005, the Regional Immigration Attaché denied the applicant’s Form I-601. The applicant is seeking admission into the United States within 10 years of her January 21, 2004 removal from the United States. The applicant is, therefore, inadmissible to the United States under section 212(a)(9)(B)(II) of the Act for being unlawfully present in the United States for a period of more than one year.

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 citizen or lawfully resident spouse or parent of the applicant. Hardship the applicant herself experiences upon removal is irrelevant to a section 212(a)(9)(B)(v) waiver proceeding. 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).

In *Matter of Cervantes-Gonzalez*, 22 I&N Dec. 560, 565-66 (BIA 1999), the Board of Immigration Appeals (BIA) provided a list of factors it deemed relevant in determining whether an alien has established extreme hardship to a qualifying relative. The 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.

Counsel asserts that the applicant's spouse would face extreme hardship if he relocated to Italy in order to remain with the applicant. Counsel claims that the applicant's husband "was born and raised in Idaho. While he did live in Italy for two years, he never became accustomed to the different culture and style of living there. He did not like it there...In addition, if Appellant's husband left the United States, he would leave all of his family behind." *Appellant's Brief in Removal Proceedings*, page 4, dated May 18, 2005. The applicant's husband states he is "currently attending Idaho State University and can't interrupt [his] studies to move anywhere else. It's not practical for [him] to move to Italy. [He works] here in America and [has] several animals that [he] must care for." *Affidavit from [REDACTED]* dated October 28, 2004. Counsel claims that the applicant's husband would "suffer psychologically and emotionally if separated from [his family] permanently." *Appellant's Brief in Removal Proceedings, supra* at 5. Additionally, counsel claims that the applicant's husband is suffering "mentally and emotionally," from his separation from the applicant. *Id.* The AAO notes that there are no professional evaluations for the AAO to review to determine how a separation from his family and/or the applicant would affect the applicant's husband mentally, emotionally, and/or psychologically. The AAO finds that the applicant has failed to establish extreme hardship to her United States citizen spouse if he joins her in Italy.

In addition, counsel does not establish extreme hardship to the applicant's spouse if he remains in the United States, continuing his studies at Idaho State University and being in close proximity to his family. As a United States citizen, the applicant's spouse is not required to reside outside of the United States as a result of denial of the applicant's waiver request. No documentation was submitted to indicate that the applicant's spouse has experienced financial hardship as a result of the separation from the applicant, and there is no evidence that the applicant has ever contributed financially to her husband. The applicant's husband faces the decision of whether to remain in the United States or relocate to avoid separation. However, this is a factor that every case will present, and the BIA has held, "election by the spouse to remain in the United States, absent [a determination of exceptional hardship] is not a governing factor since any inconvenience or hardship which might thereby occur would be self-imposed." *Matter of Mansour*, 11 I&N Dec. 306, 307 (BIA 1965). Moreover, the United States 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 AAO, therefore, finds the applicant has failed to establish extreme hardship to her spouse if he remains in the United States.

United States court decisions have repeatedly held that the common results of deportation or exclusion are insufficient to prove extreme hardship. *See Hassan v. INS*, 927 F.2d 465, 468 (9th Cir. 1991). For example, in *Matter of Pilch*, 21 I&N Dec. 627 (BIA 1996), the BIA 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. In *Hassan, supra*, the Ninth Circuit Court of Appeals 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 United States citizen husband will endure hardship as a result of his wife not being able to enter the United States. However, his situation is typical to individuals separated as a result of removal and does not rise to the level of extreme hardship.

A review of the documentation in the record fails to establish the existence of extreme hardship to the applicant's spouse caused by the applicant's inadmissibility to the United States. 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.