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FILE:

Office: FRANKFURT, GERMANY

Date: JUN 28 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 Officer in Charge, Frankfurt, Germany, denied the waiver application, and it is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native and citizen of the Czech Republic 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 of a U.S. citizen. 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.

The officer in charge 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 Officer in Charge*, dated April 13, 2006.

The record reflects that, on December 2, 2003, the applicant was admitted to the United States as a visitor for pleasure. The applicant remained in the United States past June 1, 2004, the date on which her nonimmigrant status expired. On September 9, 2005, the applicant left the United States and returned to the Czech Republic, where she has since resided. On October 1, 2005, the applicant married [REDACTED], a U.S. citizen by birth. On October 4, 2005, [REDACTED] filed a Petition for Alien Relative (Form I-130) on behalf of the applicant, which was approved. The applicant filed an Application for Immigrant Visa and Alien Registration (Form DS-230) based on the approved Form I-130. On November 23, 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 spouse.

On appeal, counsel contends that the officer in charge abused his discretion in denying the applicant's waiver and did not sufficiently articulate his reasoning for the denial. *See Counsel's Brief*, dated July 10, 2006. In support of his contentions, counsel submits the referenced brief and affidavits from [REDACTED] and the members of his family. The entire record was reviewed 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 officer in charge based the finding of inadmissibility under section 212(a)(9)(B)(i)(II) of the Act on the record reflecting the applicant's unlawful presence in the United States from June 1, 2004, the date on which her authorized nonimmigrant stay expired, until September 9, 2005, the date on which she traveled to the Czech Republic. Counsel does not contest the officer in charge's determination of inadmissibility.

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 on the U.S. citizen or lawfully resident spouse or parent of the applicant. Hardship the alien herself experiences upon removal is not considered in section 212(a)(9)(B)(v) waiver proceedings.

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, 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 pursuant to section 212(i) of the Act. 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).

Since [REDACTED] is a U.S. citizen and is not required to reside outside the United States as a result of the denial of the applicant's waiver, extreme hardship must be established whether he resides in the United States or the Czech Republic.

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).

[REDACTED] is a U.S. citizen by birth. The applicant and [REDACTED] do not have any children. The applicant and [REDACTED] are in their 30's.

On appeal, counsel asserts that the officer in charge abused his discretion by summarily denying the applicant's waiver without articulating his reasoning. Counsel asserts that the legal precedents mentioned in the decision were templates generated and seemingly belonging to a standard format without customization to the applicant's case. Counsel asserts that none of the personal circumstances or evidence of the applicant were mentioned in the decision. However, the AAO finds that, while the decision includes a section entitled "Legal Precedent," which appears to be a template of legal precedents in regard to extreme hardship, a separate section of the decision, entitled "Evaluation of Hardship," discusses the recency of [REDACTED]'s marriage, his financial circumstances and his family ties.

On appeal, counsel asserts that [REDACTED] has suffered a severe breakdown as a result of his extended separation from the applicant, which has caused him to lose his job and career opportunities. Counsel asserts that [REDACTED] has suffered tremendously since his separation from the applicant and experienced a severe depression that has affected his social, emotional, professional and educational development. Counsel asserts that denial of the applicant's waiver and separation from [REDACTED] will have future serious negative effects on [REDACTED]'s health, as well as the financial, emotional and sociological aspects of his life.

[REDACTED], in his affidavits, states that, after the denial of the applicant's waiver, he suffered a serious breakdown, severe depression and was sick most of the time. He states that his productivity at work decreased and that he was so severely affected that he lost his job at the Fire Department, which caused him the financial loss of his salary and further emotional distress since he was faced with the burden of maintaining two households. He states that he was also suspended from his internship as a paramedic due to his lack of motivation and concentration. He states that he could not focus on anything because of his depression and became withdrawn from society and even his family. He states that, even today, his physical and psychological health are not good and that he feels hopeless and without aim. He states that his bond to the applicant as his wife is so strong that he could never live physically healthy without her. [REDACTED] states that "never in my life before now have I considered the idea of suicide."

Financial records indicate that, in 2005, [REDACTED] salary was \$30,599. Although the AAO notes the affidavits from [REDACTED] and his family members, there is no documentary evidence that [REDACTED] lost his job or had been suspended from his paramedic internship as a result of his separation from the applicant. Neither does the record offer proof that [REDACTED] suffers from a physical or mental illness that would prevent him from full time employment sufficient to support himself. [REDACTED], in his affidavit, states that he has to maintain a household in the United States and the Czech Republic. The record, however, reflects that the applicant is employed as a server in the Czech Republic and [REDACTED] in his statement on appeal asserts that she earns just enough income in the Czech Republic for the two of them to survive there. As a result, the record does not support [REDACTED] claim that he must support a household in the Czech Republic. Moreover, the applicant has family members in the Czech Republic, such as her parents, who may be able to assist her financially. The record does not support a finding of extreme financial hardship to [REDACTED]. [REDACTED] remains separated from the applicant, even when combined with the emotional hardship described below.

While [REDACTED] affidavit and affidavits from his family members indicate that he has suffered a breakdown and severe depression since the denial of the applicant's waiver, there is no documentation in the record to establish that [REDACTED] has a physical or mental illness that would cause him to suffer hardship beyond that commonly faced by aliens and families upon removal. While the AAO acknowledges [REDACTED] may experience distress and some level of depression as a result of his separation from the applicant, these

emotions are commonly felt by aliens and families upon removal. Moreover, the record reflects that [REDACTED] has family members in the United States, such as his parents, who may be able to support him financially, physically and emotionally in the absence of the applicant.

On appeal, counsel asserts that [REDACTED] relocation to the Czech Republic would have negative repercussions on his whole life. [REDACTED] in his affidavit, states that his relocation to the Czech Republic is a non-executable plan for many reasons. He states that he would be unable to find employment there because he does not speak Czech and learning to speak Czech to a functional level would take years. He states that the job market skills he has acquired over the years would not be valuable in a foreign country, which has different procedures and requirements. He states that without employment in the Czech Republic he would be unable to support his family and that, while the applicant's salary is sufficient for them to survive in the Czech Republic, it would be in intolerable conditions and would not be sufficient for them to raise a family at a standard to which he is accustomed. He states that his whole family is in the United States and he would be unable to find the money to purchase tickets to visit his family and might have to ask them to cover his travel expenses. This, he states, would be degrading to him. He states that his education and career in the Czech Republic would not enjoy the same standards that he has in the United States and, if he has children, they would be unable to take advantage of the quality of education available to them in the United States. He states that his knowledge of the political and cultural background of the Czech Republic is so poor that he could not live there without being stigmatized and socially marginalized. He states that, through his research, he has learned of the corruption and disrespect of human rights in the Czech republic and is confident that his patience and lack of internal fiber would be stretched to their limits in the face of such corruption.

Having analyzed the hardships that counsel and [REDACTED] claim he will suffer if he were to join the applicant in the Czech Republic, the AAO finds that they do not constitute extreme hardship. The record reflects that the applicant is employed in the Czech Republic and there is no evidence in the record that establishes that [REDACTED] would be unable to obtain *any* employment there. While the employment [REDACTED] may be able to obtain may not be comparable to the employment he has in the United States, economic detriment of this sort is not unusual or extreme. *See Perez v. INS*, 96 F.3d 390 (9th Cir. 1996); *Ramirez-Durazo v. INS*, 794 F.2d 491, 498 (9th Cir.1986). As discussed above, there is no evidence in the record to suggest that [REDACTED] suffers from a mental or physical illness that would cause him to suffer hardship beyond that commonly suffered by aliens and families upon removal. While [REDACTED] states that he would be offended by the corruption and human rights abuses in the Czech Republic he provides no evidence to support his assertions that the Czech Republic government is corrupt or commits human rights abuses or any evidence that there would be physical or psychological consequences to him that are beyond those commonly experienced by spouses accompanying their spouses to a foreign country. Going on record without supporting documentary evidence is not sufficient to meet the applicant's burden of proof in this proceeding. *See 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)). While the hardships that would be faced by [REDACTED] upon relocation to the Czech Republic--adjusting to the culture, country, language, economy, environment, separation from his friends and family and the inability to pursue opportunities that are available in the United States--are unfortunate, they are what would normally be expected by any spouse joining a removed alien in a foreign country. Finally, as previously noted, [REDACTED] is not required to reside outside of the United States as a result of the denial of the applicant's waiver request and, as discussed above, [REDACTED] would not experience extreme hardship if he remained in the United States without the applicant.

The record, reviewed in its entirety and in light of the *Cervantes-Gonzalez* factors, cited above, does not support a finding that the applicant's spouse would face extreme hardship if the applicant were refused admission. Rather, the record demonstrates that [REDACTED] will face the unfortunate, but expected disruptions and difficulties arising whenever a spouse is denied admission to the United States. In nearly every qualifying relationship, whether between husband and wife or parent and child, there is a deep level of affection and a certain amount of emotional and social interdependence. While, in common parlance, the prospect of separation or involuntary relocation nearly always results in considerable hardship to individuals and families, in specifically limiting the availability of a waiver of inadmissibility to cases of "extreme hardship," Congress did not intend that a waiver be granted in every case where a qualifying relationship, and thus the familial and emotional bonds, exist. The point made in this and prior decisions on this matter is that the current state of the law, viewed from a legislative, administrative, or judicial point of view, requires that the hardship, which meets the standard in section 212(a)(9)(B)(v) of the Act, be above and beyond the normal, expected hardship involved in such cases. U.S. court decisions have repeatedly held that the common results of removal are insufficient to prove extreme hardship. See *Hassan v. INS*, 927 F.2d 465, 468 (9th Cir. 1991), *Perez v. INS*, *Supra.*; *Matter of Pilch*, 21 I&N Dec. 627 (BIA 1996) (holding that emotional hardship caused by severing family and community ties is a common result of deportation and does not constitute extreme hardship); *Matter of Shaughnessy*, 12 I&N Dec. 810 (BIA 1968) (holding that separation of family members and financial difficulties alone do not establish extreme hardship). "[O]nly in cases of great actual or prospective injury . . . will the bar be removed." *Matter of Ngai*, 19 I&N Dec. 245, 246 (BIA 1984). Further, demonstrated financial difficulties alone are generally insufficient to establish extreme hardship. See *INS v. Jong Ha Wang*, 450 U.S. 139 (1981) (upholding BIA finding that economic detriment alone is insufficient to establish extreme hardship).

The AAO therefore finds that the applicant has failed to establish extreme hardship to her U.S. citizen spouse as required under section 212(a)(9)(B)(v) of the Act, 8 U.S.C. § 1186(a)(9)(B)(v). 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 an application for waiver of grounds of inadmissibility under section 212(a)(9)(B)(v) of the Act, the burden of proving eligibility rests with the applicant. INA § 291, 8 U.S.C. § 1361. Here, the applicant has not met that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.