



U.S. Citizenship
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MAR 05 2007

FILE:

[REDACTED]

Office: SAN FRANCISCO, CALIFORNIA

Date:

IN RE:

[REDACTED]

APPLICATION:

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

ON BEHALF OF APPLICANT:

[REDACTED]

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 District Director, San Francisco, California. 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 Fiji who was found to be inadmissible to the United States pursuant to § 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 ten years of his last departure from the United States. The applicant is married to a naturalized citizen of the United States and seeks a waiver of inadmissibility in order to remain in the United States with his wife.

The district director found that based on the evidence in the record, the applicant had failed to establish extreme hardship to his U.S. citizen spouse. The application was denied accordingly. On appeal, counsel asserts that the district director abused his discretion in rendering the negative decision and failed to correctly interpret the term "extreme hardship." Counsel contends that the applicant's spouse will experience extreme financial and emotional hardship if the applicant is removed.

On appeal, counsel submits a brief in support of the appeal, an affidavit by the applicant's wife, and a psychological evaluation of the applicant's wife. The AAO has considered the entire body of evidence in this proceeding, and it is concluded that the applicant has presented no evidence or arguments on appeal to overcome the district director's decision.

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 proper filing of an affirmative application for adjustment of status has been designated by the Attorney General [Secretary] as an authorized period of stay for purposes of determining bars to admission under section 212 (a)(9)(B)(i)(I) and (II) of the Act. *See Memorandum by Johnny N. Williams, Executive Associate Commissioner, Office of Field Operations dated June 12, 2002.* The applicant entered the United States without inspection in 1995, and he accrued unlawful presence from April 1, 1997, the date of enactment of unlawful presence provisions under the Act, until September 27, 2000, the date of his proper filing of the Form I-485. In applying to adjust his status to that of Lawful Permanent Resident (LPR), the applicant is seeking admission within ten years of his September 2002 departure from the United States. The applicant is, therefore, inadmissible to the United States under § 212(a)(9)(B)(i)(II) of the Act for being unlawfully present in the United States for a period of more than one year.

A § 212(a)(9)(B)(v) waiver of the bar to admission resulting from § 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 himself experiences upon deportation is irrelevant to § 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 Board of Immigration Appeals deems relevant in determining whether an alien has established extreme hardship pursuant to § 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, counsel contends that the applicant's spouse would experience financial hardship as a result of the applicant's departure. The record, however, fails to establish that the applicant and his spouse would be unable to alter their household situation and financial matters in order to address the changes caused by his departure from the United States. It is noted that 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).

Regarding the applicant's wife's emotional hardship, counsel submits a psychological report rendered by [REDACTED] on July 6, 2004. The report is based on an interview that [REDACTED] conducted with the applicant's wife on June 21, 2004. [REDACTED] noted that the applicant's wife reported that, due to her difficult first marriage and unhappy family situation, she attempted suicide on four occasions, the most recent occurring in 1984. After her first husband's death, the applicant's wife stated that she took anti-depressant medication. [REDACTED] wrote that the applicant's wife currently exhibits symptoms of depression and post-traumatic stress disorder (PTSD), and that she requires mental health services. [REDACTED] stated that if the applicant's wife is separated from the applicant, she will display strong symptoms

of depression and PTSD, she will be at risk of suicide, and will absolutely require professional treatment. Given [REDACTED] assessment of the applicant's current and future mental state, the AAO concludes that she would experience greater than usual emotional distress if separated from the applicant.

However, in order to qualify for the waiver of inadmissibility, the applicant must establish that his wife would suffer extreme hardship whether she remains in the United States without him or returns to her native Fiji to accompany him. Counsel makes no specific assertions regarding the outcome should the applicant's wife return to Fiji with the applicant. In her July 8, 2004 affidavit, the applicant's wife wrote that she did not want to return to Fiji or resettle in another country with the applicant, because her children and grandchildren live in the United States. She also noted that she could not expect to find employment comparable to her current position in Fiji. The record, however, contains no documentation establishing that the applicant's wife would experience extreme hardship should she choose to leave the United States in order to remain with the applicant.

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). For example, *Matter of Pilch*, 21 I&N Dec. 627 (BIA 1996), 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), defined extreme hardship as hardship that exceeds 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 documentation in the record fails to establish that the applicant's inadmissibility to the United States would cause the applicant's spouse to suffer extreme hardship if she accompanied the applicant outside 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 § 212(a)(9)(B) of the Act, the burden of proving eligibility remains entirely with the applicant. *See* § 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.