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U.S. Department of Homeland Security

Citizenship and Immigration Services

ADMINISTRATIVE APPEALS OFFICE
CIS, AAO, 20 Mass, 3/F
425 Eye Street N.W.
Washington, D.C. 20536

H4

FILE [redacted] Office: BANGKOK, THAILAND Date: JAN 20 2004

IN RE: Applicant: [redacted]

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 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.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. § 103.5(a)(1)(i).

If you have new or additional information that you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of Citizenship and Immigration Services (CIS) where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. *Id.*

Any motion must be filed with the office that originally decided your case along with a fee of $110 as required under 8 C.F.R. § 103.7.

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The waiver application was denied by the District Director, Bangkok, Thailand. 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 American Samoa. The applicant 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. The applicant is married to a naturalized U.S. citizen and she is the beneficiary of an approved Petition for Alien Relative, Form I-130 (LIN-01-240-57254). The applicant seeks a waiver of inadmissibility in order to reside in the United States with her U.S. citizen husband and child.

The district director found that based on the evidence in the record, the applicant had failed to establish extreme hardship to her U.S. citizen husband. The application was denied accordingly. *See District Director Decision,* dated January 13, 2003.

On appeal, the applicant asserts that the district director committed errors of law. Further, the applicant contends that the district director abused his discretion by failing to consider the evidence in its totality and the harm that inadmissibility will bring to a U.S. citizen. The applicant states that the findings of the district director are not supported by substantial evidence.

On appeal, the applicant submits a copy of the study entitled "Children in American Samoa: Results of the 2000 Census;" a copy of the U.S. passport photograph pages for the applicant's spouse and daughter; a copy of the naturalization certificate for the applicant's spouse; copies of the U.S. birth certificates for the applicant's daughter and the son of the applicant's spouse; a copy of the marriage certificate for the couple; copies of the social security cards issued to the applicant, her daughter and her spouse; a copy and translation of the birth certificate of the applicant's spouse; a copy of the applicant's Washington identification card; a copy of the Samoan passport for the applicant and a letter verifying the applicant's clean criminal record in American Samoa.

The record also contains letters of support; a letter from the applicant, dated December 5, 2002; a copy of the divorce decree for the applicant's spouse and his first wife; a copy of the child support agreement between the applicant's spouse and his first wife and a psychological evaluation performed by Robert Odell, MSW. The entire record was reviewed and considered in rendering a 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-

(I) was unlawfully present in the United States for a period of more than 180 days but less than 1 year, voluntarily departed the United States . . . prior to the commencement of proceedings under section 235(b)(1) or section 240, and again seeks admission within 3 years of the date of such alien's departure or removal, . . . is inadmissible.

. . . .

(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 on a visitor visa and overstayed her authorized period of stay. The applicant married her U.S. citizen husband on August 3, 1998. The applicant departed the country in May 2000 in order to attend her father's funeral and was not permitted to reenter the United States, as she was inadmissible owing to unlawful presence. The applicant accrued unlawful presence from April 1, 1997, the date of enactment of unlawful presence provisions under the Act, until she departed the United States in May 2000. The applicant is, therefore, inadmissible 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 and is subject to the section's 10-year bar to admission.

A section 212(a)(9)(B)(v) waiver of the bar to admission resulting from violation of section 212(a)(9)(B)(i)(I) 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.

Matter of Cervantes-Gonzalez, 22 I&N Dec. 560 (BIA 1999) provides a list of factors the Bureau of Immigration Appeals (BIA) deems relevant in determining whether an alien has established extreme hardship pursuant to section 212(a)(9)(B)(v) 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.

The applicant contends that maintaining two households is a severe financial hardship to her husband. However, the record does not establish that the applicant's husband would be unable to obtain employment in American Samoa beyond generalizations regarding prevalent country conditions and the record does not demonstrate that the applicant herself is unable to work in an effort to alleviate the hardship. Moreover, the U.S. Supreme Court held in *INS v. Jong Ha Wang,* 450 U.S. 139 (1981), that the mere showing of economic detriment to qualifying family members is insufficient to warrant a finding of extreme hardship.

While the AAO is sympathetic to the depression that the applicant's spouse is experiencing as a result of the couple's separation, the submitted psychological evaluation does not indicate whether or not the applicant's treatment was successful or whether he continues to receive treatment for his symptoms. *See* Letter from Robert Odell, MSW, dated November 27, 2002. The applicant's spouse has a child from a previous marriage from whom he would be separated if he relocated to American Samoa. The record does not establish the level of contact that the applicant's spouse currently has with his son from which to infer hardship.

U.S. 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). *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.

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.