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U.S. Citizenship and Immigration Services

[redacted]

MAR 0 2 2004

FILE: [redacted] Office: FRANKFURT, GERMANY Date:

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 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, Director
Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Officer in Charge, Frankfurt, Germany. 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 Switzerland. The applicant was found to be inadmissible to the United States pursuant to section 212(a)(9)(B)(i)(I) 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 180 days but less than one year. The applicant is married to a naturalized U.S. citizen and he seeks a waiver of inadmissibility in order to reside in the United States with his wife.

The officer in charge (OIC) determined that the applicant had failed to establish extreme hardship to his U.S. citizen wife. The application was denied accordingly.

On appeal, the applicant asserts that his wife (Ms. will suffer extreme hardship if his waiver application is not granted. The applicant asserts that although Ms. is a native of Switzerland and recently attempted to reside with her husband in Switzerland, she has no job options and would be unable to continue her art career in Switzerland. In support of his appeal, the applicant submits letters written by Ms. her former art professor and her employer, stating that Ms. wants to reside in the U.S. and that she needs to be in New York in order to remain in her subsidized apartment and to maintain and continue with her art career.

Section 212(a)(9)(B) of the Act provides, in pertinent part, that:

> (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 (whether or not pursuant to section 244(e) [1254]) prior to commencement of proceedings under section 235(b)(1) or section 240 [1229a], and again seeks admission within 3 years of the date of such alien's departure or removal.
> >
> > . . . .
> >
> > > (v) Waiver. – The Attorney General [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 *Matter of Cervantes-Gonzalez,* 22 I&N Dec. 560 (BIA 1999), the Board of Immigration Appeals (Board) provided a list of factors it deemed to be relevant in determining whether an alien had established extreme hardship for purposes of a waiver of inadmissibility. These factors include the presence of a lawful

permanent resident or United States citizen spouse or parent in the U.S.; 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 record reflects that Ms. is a Swiss native who was born and raised in Switzerland and who speaks the Swiss languages. The record contains no information or evidence indicating that Ms has family ties in the U.S. or that M has any significant health concerns. The AAO notes that Ms has participated in numerous art exhibits in Switzerland over the last few years. Furthermore, the record reflects that the applicant is a licensed electrician in Switzerland, and that he receives a medical pension and works part-time for his family's electrical heating business in Switzerland. The AAO additionally notes that the applicant returned to Switzerland on January 21, 2002, and that in January of 2005, he will no longer be subject to the three-year bar to admission.

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). In *Matter of Pilch,* 21 I&N Dec. 627 (BIA 1996), the Board held that emotional hardship caused by severing family and community ties is a common result of deportation and does not constitute extreme hardship. In *Perez v. INS,* 96 F.3d 390 (9th Cir. 1996), the Ninth Circuit of Appeals defined "extreme hardship" as hardship that was unusual or beyond that which would normally be expected upon deportation. The court emphasized that the common results of deportation are insufficient to prove extreme hardship. In *Shooshtary v. INS,* 39 F.3d 1049, 1051, (9th Cir. 1994), the Ninth Circuit Court of Appeal stated that, "[t]he 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" and that the "extreme hardship requirement . . . was not enacted to insure that the family members of excludable aliens fulfill their dreams or continue in the lives which they currently enjoy." 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.

A review of the documentation in the record, when considered in its totality, reflects that the applicant has failed to show that his wife would suffer hardship beyond that normally experienced upon the deportation or exclusion of an alien family member, if his waiver of inadmissibility is not granted.

In proceedings for application for waiver of grounds of inadmissibility, the burden of proving eligibility remains entirely with the applicant. 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.