U.S. Department of Homeland Security
20 Mass, Rm. A3042, 425 I Street, N.W.
Washington, DC 20536

Identifying data deleted to prevent clearly unwarranted invasion of personal privacy

U.S. Citizenship and Immigration Services

PUBLIC COPY

[redacted]

FILE: [redacted] Office: FRANKFURT, GERMANY Date: MAR 0 2 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:

[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, Director
Administrative Appeals Office

[1] The AAO notes that although Jeremiah Wolf Stuchiner is listed as counsel of record, the applicant appears to have filed the present motion to reopen without the assistance of counsel.

DISCUSSION: The waiver application was denied by the Officer in Charge, Frankfurt, Germany. A subsequent appeal was dismissed by the Administrative Appeals Office (AAO). The matter is now before the AAO on a motion to reopen. The motion will be dismissed and the previous decision of the AAO will be affirmed.

The record reflects that the applicant is a native and citizen of Germany. 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 a period of more than 1 year, and pursuant to section 212(a)(9)(A)(ii)(I) of the Act, 8 U.S.C. § 1182(a)(9)(A)(ii)(I), as an alien who was previously ordered removed from the United States.

The record reflects that the applicant first entered the U.S. as a nonimmigrant visitor on July 21, 1993, with an authorized stay until October 21, 1993. The applicant remained beyond his authorized stay and on February 14, 1994, he applied for asylum in the United States. The applicant was denied asylum by the Immigration and Naturalization Service (Service, now Citizenship and Immigration Services, CIS) asylum office on February 13, 1995. The applicant was subsequently served with an Order to Show Cause on October 21, 1995. The record reflects that the applicant had an immigration court hearing regarding his asylum claim. The applicant's claim was denied by an immigration judge on October 12, 1996, and he was granted voluntary departure until February 12, 1997. The applicant did not depart the U.S., and he instead appealed the immigration judge's decision to the Board of Immigration Appeals (Board). The appeal was dismissed by the Board on July 14, 1997, and the applicant was granted an additional 30 days to voluntarily depart the country. The applicant did not depart the United States. The record reflects that the applicant filed a Petition for Review before the Ninth Circuit Court of Appeals. The petition was denied on January 14, 1999. The applicant nevertheless remained in the United States. On May 26, 1999, the Service sent a Surrender Notice to the applicant's last known address, however the applicant had moved without providing a current address to the Service, and the notice was returned. The record reflects that on April 4, 2001, the applicant was arrested and detained. He was subsequently deported to Germany on April 23, 2001.

The applicant married a naturalized U.S. citizen in June 1997, and he is the beneficiary of an approved petition for alien relative. The applicant seeks a waiver of his inadmissibility in order to return to the United States to reside with his U.S. citizen wife.

The officer in charge (OIC) determined that the applicant had failed to establish extreme hardship would be imposed on his wife. The application was denied accordingly on February 1, 2002.

On appeal, the applicant, through counsel, asserted that the applicant's wife (Ms. [redacted] would experience depression and financial hardship related to their family business if the applicant were unable to return to the United States. Counsel additionally asserted that as an Asian American who speaks no German, Ms. [redacted] would have problems assimilating into German society. Counsel submitted untranslated newspaper articles, which purportedly related to hate crimes and high unemployment in Germany. Counsel additionally submitted a doctor's letter and an affidavit from Ms. [redacted] stating that Ms. [redacted] suffers from depression due to her husband's immigration problems. Counsel also submitted documents and letters reflecting that the applicant and his wife established a business in April 1999, and that their business partner (H20 Concepts, International) has seen a deterioration in the handling of the business and the number of business accounts held by the company since the applicant was removed from the United States. The AAO determined that the aggregate effect of the hardship factors in the applicant's case failed to establish that Ms.

would suffer hardship over and above the normal social and economic disruptions involved when an alien is removed from the United States. The AAO dismissed the applicant's appeal accordingly.

8 C.F.R. § 103.5(a) states in pertinent part:

> (a) Motions to reopen or reconsider
>
> . . . .
>
> (2) Requirements for motion to reopen. A motion to reopen must state the new facts to be proved in the reopened proceeding and be supported by affidavits or other documentary evidence.
>
> . . . .
>
> (4) Processing motions in proceedings before the Service. A motion that does not meet applicable requirements shall be dismissed.

The applicant's motion to reopen fails to state any new facts to be proved in his reopened proceeding. Instead, the motion consists of a verbatim assertion of the claims previously presented in the appeal brief submitted by counsel. In addition, the documents submitted on motion by the applicant consist largely of the same evidence submitted previously on appeal. The AAO notes that the applicant resubmits newspaper articles that purportedly discuss hate crimes and high unemployment in Germany. However, the articles are in German and no certified translations are provided. As noted in the previous AAO decision, untranslated articles cannot be considered as evidence in the applicant's case. The AAO notes further that, even if the articles were translated, general newspaper articles that do not relate specifically to the applicant or his wife would carry little weight.

In his motion to reopen, the applicant submits new affidavits and letters from his wife, his employee and his business partner stating that his company has lost contracts and may go out of business if the applicant does not return to the United States. The applicant also submits an updated doctor's letter and an affidavit from his wife stating that Ms. suffers from depression related to the emotional separation from her husband and the financial problems she faces due to problems with the business. The AAO notes that Ms. depression is being treated with medication. The AAO notes further that the record fails to demonstrate that Ms. would be unable to receive similar medical treatment in Germany. In addition, the AAO notes that the applicant and his wife established their business several years after the applicant was issued a final order of removal from the United States. U.S. courts have repeatedly upheld the principal that less weight is given to equities acquired by an alien after an order of deportation has been issued. *See Garcia-Lopez v. INS,* 923 F.2d 72, 74 (7th Cir. 1991) (citing *Bothyo v. Moyer,* 772 F.2d 353, 357 (7th Cir. 1985); *see also, Carnalla-Munoz v. INS,* 627 F.2d 1004, 1006 (9th Cir. 1980) (citing *Wang v. INS,* 622 F.2d 1341 (9th Cir. 1980) and *Matter of Correa,* 19 I&N Dec. 130, 134 (BIA 1984)). Moreover, in *Ghassan v. INS,* 972 F.2d 631, 634-35 (5th Cir. 1992), the Fifth Circuit Court of Appeals held that giving diminished weight to hardship faced by a spouse who entered into a marriage with knowledge of the alien's possible deportation was proper. Based on the evidence in the record, Ms. should reasonably have known at the time of her June 1997, marriage, that the applicant had been ordered removed by an immigration judge on October 12, 1996, and that the applicant had been granted voluntary departure until February 12, 1997.

As noted in the previous AAO decision, 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). *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 did 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. 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.

The applicant has failed to state any new facts to be proved in his motion to reopen. The applicant has additionally failed to present any new evidence on motion to establish extreme hardship to his wife. Accordingly, the motion to reopen will be dismissed and the previous AAO decision will be affirmed.

ORDER: The previous AAO decision, dated October 16, 2002, is affirmed.