U.S. Department of Homeland Security
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Washington, DC 20529

Identifying data deleted to prevent clearly unwarranted invasion of personal privacy

U.S. Citizenship and Immigration Services

H3

[redacted]

FILE: [redacted] Office: FRANKFURT, GERMANY Date: JAN 31 2007

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]

PUBLIC COPY

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 applicant submitted a waiver application in 2003, which the Assistant Officer in Charge, Vienna, Austria, denied. The applicant appealed that decision, but the Administrative Appeals Office (AAO) dismissed the appeal and affirmed the decision of the assistant officer in charge. The applicant submitted a second waiver application, which was denied on March 14, 2006 by the Officer in Charge, Frankfurt, Germany. The matter is now once more before the AAO on appeal. The appeal will be dismissed.

The applicant is a native and citizen of Macedonia 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 her 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 reside in the United States with her husband and U.S. citizen child.

The officer in charge found that the applicant had failed to establish extreme hardship to her U.S. citizen spouse. The application was denied accordingly. On appeal, counsel asserts that the officer in charge improperly failed to analyze the positive and negative discretionary factors presented. Counsel cites *Matter of Kao & Lim*, 23 I&N Dec., 45 at 49 (BIA 2001); however, *Kao & Lim* does not hold that discretionary factors must be considered in the absence of a finding of extreme hardship. Counsel also contends that the applicant's spouse is experiencing extreme emotional harm due to the separation from the applicant, and that he would experience severe financial difficulties if he returned to Macedonia to live with the applicant. Counsel submits a memorandum of law, documents related to the applicant's husband's student loan balances, two letters from Dr. [redacted] regarding the applicant's husband's and child's mental health, a pediatric psychiatric evaluation of the applicant's child, a letter from Macedonian physician Dr. [redacted] regarding the applicant's daughter's mental health, a psychiatric evaluation of the applicant herself, and other documents. The entire record was reviewed and considered in rendering a decision on the appeal.

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 applicant is the beneficiary of a petition for alien relative filed by her husband. The record reflects that the applicant entered the United States without inspection on or about April 15, 2001, and she remained in this country until July 2002, accruing over one year of unlawful physical presence. She now seeks admission within ten years of her July 2002 departure from the United States; thus, she is inadmissible to the United States pursuant to § 212(a)(9)(B)(II) of the Act.

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 herself or her child experiences upon removal is irrelevant to § 212(a)(9)(B)(v) waiver proceedings. For this reason, the impact of the applicant's inadmissibility on her child will be considered only insofar as it causes the applicant's spouse to suffer extreme hardship. It should be noted that 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.

Counsel asserts that the applicant's spouse would face extreme financial hardship if he relocated to Macedonia in order to remain with the applicant, because he would be unable to earn enough money to repay substantial student loan balances. The AAO notes, however, that the applicant's U.S. citizen spouse is not required to reside outside of the United States. This type of financial situation is a common, albeit negative, consequence of the inadmissibility of one member of a married couple, and it does not amount to an extreme circumstance.

Counsel also contends that the applicant's husband will suffer extreme emotional harm should he remain in the United States without the applicant. To this effect, counsel submits two letters, written on September 15, and November 15, 2006 by Dr. [redacted], M.D. [redacted] writes that the applicant's husband has been under his treatment since July 28, 2005, and that the applicant's husband has exhibited symptoms of major depression. Dr. [redacted] states that the depression is due to separation from the applicant and the stress caused by having to care for his daughter as a single parent. The AAO notes that the record reflects that

the applicant's husband's brother and sister live in the Chicago area, and the applicant's daughter plays with her cousins. To some extent, then, the applicant's husband can avail himself of his siblings' assistance. Dr. [redacted] also notes that the applicant's child, who apparently moved to Chicago in the fall of 2006 in order to begin school in the United States, suffers from psychological and social regression because of the separation from the applicant, but the record does not contain evidence regarding the impact this factor has on the applicant's husband. Dr. [redacted] states that he believes that the only possible resolution to the applicant's husband's depression would be an ongoing reunion with the applicant.

Although Dr. [redacted] states in his letter of November 15, 2006 that the applicant's husband is responding poorly to therapy, he does not specify what type of therapy the applicant's husband receives or what constitutes a poor response. Dr. [redacted] does not describe the applicant's husband's ability to carry out daily activities such as working and caring for himself and his daughter. While the AAO does not doubt that the applicant's husband is experiencing depression, the record does not establish that his response is extreme when compared to other similarly situated individuals.

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. It is also 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).

The AAO recognizes that the applicant's husband endures hardship as a result of separation from the applicant. However, his situation is typical to individuals separated as a result of inadmissibility or removal. and does not rise to the level of extreme hardship. Therefore, having found the applicant statutorily ineligible for relief, no purpose would be served in discussing whether he merits a waiver as a matter of discretion. Contrary to counsel's assertion on appeal, it is not necessary to analyze the positive and negative factors in this case.

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.