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U.S. Citizenship and Immigration Services

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[redacted]

FILE: [redacted] Office: ROME, ITALY Date: SEP 20 2007

IN RE: [redacted]

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

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, Chief
Administrative Appeals Office

DISCUSSION: The District Director, Rome, Italy, denied the waiver application, and it is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native and citizen of France who is 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 and seeking readmission within 10 years of his last departure from the United States. The applicant is the spouse of a naturalized U.S. citizen and the father of a U.S. citizen son. He seeks a waiver of inadmissibility pursuant to section 212(a)(9)(B)(v) of the Act, 8 U.S.C. § 1182(a)(9)(B)(v), in order to reside in the United States with his spouse and son.

The district director concluded that the applicant had failed to establish that extreme hardship would be imposed on a qualifying relative and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) accordingly. *Decision of the District Director*, dated August 9, 2006.

The record reflects that, on May 14, 2001, the applicant was admitted to the United States as a nonimmigrant visitor under the Visa Waiver Program (VWP). The applicant remained in the United States past his authorized stay, which expired on August 13, 2001. On October 30, 2001, the applicant married his spouse, [redacted] On September 13, 2004, immigration officers apprehended the applicant after police stopped him for a traffic violation in Florida. On September 20, 2004, the applicant was ordered removed from the United States. On September 21, 2004, [redacted] filed a Petition for Alien Relative (Form I-130) on behalf of the applicant, which remains pending. On October 13, 2004, the applicant was removed from the United States and returned to Guadeloupe, an overseas department of France. On April 25, 2005, [redacted] filed a Petition for Alien Fiancé(e) (Form I-129F) on behalf of the applicant, which was approved on June 23, 2005.

The applicant filed the Form I-601 with documentation supporting his claim that the denial of the waiver would result in extreme hardship to his spouse.

On appeal, [redacted] contends that the reality of living in France is painfully different from the district director's finding that to live in France would not be an extreme hardship. *See* [redacted] received September 29, 2006. In support of her contentions, [redacted] submits only the referenced letter. The entire record was reviewed in rendering a decision in this case.

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 district director based the finding of inadmissibility under section 212(a)(9)(B)(i)(II) of the Act on the applicant's unlawful presence in the United States from August 13, 2001, the date on which the applicant's authorized stay expired, until October 13, 2004, the date on which he was removed from the United States.

A section 212(a)(9)(B)(v) waiver of the bar to admission resulting from section 212(a)(9)(B)(i)(II) of the Act is dependent first upon a showing that the bar imposes an extreme hardship on the U.S. citizen or lawfully resident spouse or parent of the applicant. Hardship the alien experiences upon removal is not considered in section 212(a)(9)(B)(v) waiver proceedings. The AAO notes that Congress did not include hardship to an alien's children as a factor to be considered in assessing extreme hardship in 212(a)(9)(B)(v) cases. Thus, hardship to the applicant's U.S. citizen son will also not be considered in this decision, except as it may affect the applicant's spouse, the only qualifying relative.

The concept of extreme hardship to a qualifying relative "is not . . . fixed and inflexible," and whether extreme hardship has been established is determined based on an examination of the facts of each individual case. *Matter of Cervantes-Gonzalez,* 22 I&N Dec. 560, 565 (BIA 1999). In *Matter of Cervantes-Gonzalez*, the Board of Immigration Appeals set forth a list of non-exclusive factors relevant to determining whether an alien has established extreme hardship to a qualifying relative. These factors include, with respect to the qualifying relative, the presence of family ties to U.S. citizens or lawful permanent residents in the United States, family ties outside the United States, country conditions where the qualifying relative would relocate and family ties in that country, the financial impact of departure, and significant health conditions, particularly where there is diminished availability of medical care in the country to which the qualifying relative would relocate. *Id.* at 566. The BIA has held:

> Relevant factors, though not extreme in themselves, must be considered in the aggregate in determining whether extreme hardship exists. In each case, the trier of fact must consider the entire range of factors concerning hardship in their totality and determine whether the combination of hardships takes the case beyond those hardships ordinarily associated with deportation. *Matter of O-J-O-*, 21 I&N Dec. 381, 383 (BIA 1996). (Citations omitted).

Since the applicant's spouse is a U.S. citizen and is not required to reside outside the United States as a result of the denial of the applicant's waiver request, extreme hardship must be established whether she resides in the United States or France.

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).

The record reflects that [redacted] who became a lawful permanent resident in 1992 and a naturalized U.S. citizen in 2004. The applicant and [redacted] have a two-year old son who is a U.S. citizen by birth. The applicant and [redacted] are in their 30's.

On appeal, [redacted] in her letter, asserts that she is still under constant stress and is experiencing deep depression. She asserts that her son is affected by her state of mind. [redacted] in her letter accompanying the Form I-601, states that she has a good job in the United States working for her parents and also resides with them. She states that her mother and father help her a lot with her son and also financially. She states that not having the applicant with her is the most horrible feeling. She states that her son needs both his parents. She states that she suffers from depression and often has her mother care for her son when she is down because she does not want her child to see or feel her pain.

Letters from [redacted] mother and brother state that they are concerned for [redacted] s health because she is depressed. They state that [redacted] parents financially and physically support her in the applicant's absence.

A psychological report, prepared by [redacted] a licensed clinical social worker, states that [redacted] a reports always being stressed and that during the time that the applicant was removed from the United States she became very distressed and began to have panic attacks [redacted] reported that she was prescribed medication but refused to take it and opted for homeopathic treatment, which calmed her. [redacted] reported that even though she was able to live with the applicant abroad while pregnant she returned to the United States because she became depressed as a result of separation from her family and country. [redacted] reported that she is very distressed by the separation from her husband. [redacted] reported that she experienced significant trauma when she lost her best friend in a motorcycle accident at age eighteen and another close childhood friend in a car accident at age twenty [redacted] reported that she also lost her cousin to suicide when she was twenty-eight. The psychological report indicates that, while [redacted] denied any significant history of childhood trauma, she was negatively impacted by her father's behavior towards her mother when things did not go according to his wishes, resulting in [redacted] insecure quality of attachment in personality formation. The psychological report indicates that it is more likely that future separation and loss for [redacted] would be more difficult to cope with and to overcome than in someone who has a more secure, healthy type of attachment in their personality formation. The report adds that due to [redacted] of multiple, tragic loss in adulthood the loss of her marital relationship would also likely reopen the wounds caused by these devastating losses and trigger intense painful feelings that were associated with those losses, triggering a more intense grief response. The psychological report diagnoses [redacted] with adjustment disorder with mixed anxiety and depressed mood, generalized anxiety disorder and major depression, recurrent and moderate. The report concludes that if [redacted] is forced to permanently separate from the applicant she will likely become even more psychically overwhelmed, increasing the potential threat

to her emotional well-being. The report recommends that, since [redacted] is suffering from moderate to severe symptoms of depression and anxiety, which are negatively affecting her ability to function and to meet life goals, she should begin individual psychotherapy and be evaluated for psychotropic medication.

While the input of any medical health professional is respected and valued, [redacted] is based on a single interview with [redacted] A psychological report based on one interview does not reflect the insight and detailed analysis commensurate with an established relationship with a mental health professional, thereby rendering [redacted] findings speculative and diminishing her evaluation's value to a determination of extreme hardship. Moreover, the record does not contain evidence, besides [redacted]ts to the evaluator, that she has sought or received any other treatment or evaluation for anxiety and depression at any other time. The AAO specifically notes that the record contains no evidence that [redacted]as sought or received the treatment recommended by [redacted] Accordingly, [redacted]valuation will be given little evidentiary weight.

There is no evidence in the record, besides the psychological report, that [redacted] suffers from a physical or mental illness that would cause her to suffer hardship beyond that commonly suffered by aliens and families upon removal. While the AAO acknowledges that [redacted] would experience anxiety and depression as a result of separation from her spouse and the separation of her son from his father, the record does not establish that these reactions constitute hardships that are beyond those commonly suffered by aliens and families upon removal. Additionally, the record reflects that [redacted] has family members, such as her parents and siblings, in the United States who may be able to assist her physically and emotionally in the absence of the applicant.

The record does not establish that [redacted] would be unable to support herself and her son without the applicant's income. Instead, the record reflects that [redacted] has been employed as a secretary with her parents' business since 2004 and that in 2006 her salary was [redacted] Although it is unfortunate that [redacted] may essentially become a single parent and have the added expense of paying for childcare, this is also not a hardship that is beyond those commonly faced by aliens and families upon removal. The record also indicates that [redacted] is willing and able to financially and physically support her and her son in the absence of the applicant. Accordingly, the record does not support a finding of financial loss that would result in an extreme hardship to [redacted] if she had to support herself and her child, even when combined with the emotional hardship described above.

On appeal, [redacted] in her letter, asserts that her family is going through a personal tragedy and that, although it has been concluded by the district director that she would have no problem residing in France, the reality of the situation is painfully different for her. She asserts that France is a foreign country to her where she has absolutely no ties. She asserts that both of her parents reside in Miami, Florida and that prior to immigrating to the United States in 1992 she had resided in Switzerland for most of her life. [redacted] in her letter accompanying the Form I-601, states that she cannot live in France because it is a foreign and different world about which she does not know. She states that she has never lived in France and grew up in Switzerland. She states that, because she does not have a diploma from France, she will be unable to find employment there.

Having analyzed the hardships [redacted] claims she would suffer if she were to join the applicant in France, the AAO finds that they do not constitute extreme hardship. There is no evidence in the record that [redacted], who speaks French, German and English, and the applicant would be unable to obtain *any* employment in France. While the employment [redacted] and the applicant may be able to obtain in France may not be comparable to the employment they would have in the United States or allow for the standard of living to which [redacted] is accustomed, economic detriment of this sort is not unusual or extreme. *See Perez v. INS,* 96 F.3d 390 (9th Cir. 1996); *Ramirez-Durazo v. INS,* 794 F.2d 491, 498 (9th Cir. 1986). Moreover, the record reflects that the applicant has family members in France, such as his parents, who may be able to assist the applicant and [redacted] physically and financially. While the hardships that would be faced by [redacted] in relocating to France, her adjustment to the culture, economy, environment, separation from friends and family, and an inability to obtain the same opportunities she and her son would receive in the United States, are unfortunate, they are the types of hardships encountered by any spouse accompanying a removed alien to a foreign country. Moreover, the AAO notes, as previously indicated, that the applicant's spouse is not required to reside outside of the United States as a result of denial of the applicant's waiver request and, as discussed above, [redacted] would not experience extreme hardship if she remained in the United States without the applicant.

The record, reviewed in its entirety and in light of the *Cervantes-Gonzalez* factors, cited above, does not support a finding that the applicant's spouse would face extreme hardship if the applicant were removed from the United States. Rather, the record demonstrates that [redacted] would face the unfortunate, but expected disruptions and difficulties arising whenever a spouse is removed from the United States. In nearly every qualifying relationship, whether between husband and wife or parent and child, there is a deep level of affection and a certain amount of emotional and social interdependence. While, in common parlance, the prospect of separation or involuntary relocation nearly always results in considerable hardship to individuals and families, in specifically limiting the availability of a waiver of inadmissibility to cases of "*extreme* hardship," Congress did not intend that a waiver be granted in every case where a qualifying relationship, and thus the familial and emotional bonds, exist. The point made in this and prior decisions on this matter is that the current state of the law, viewed from a legislative, administrative, or judicial point of view, requires that the hardship, which meets the standard in section 212(a)(9)(B)(v) of the Act, be above and beyond the normal, expected hardship involved in such cases. 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), *Perez v. INS,* 96 F.3d 390 (9th Cir. 1996); *Matter of Pilch,* 21 I&N Dec. 627 (BIA 1996) (holding that emotional hardship caused by severing family and community ties is a common result of deportation and does not constitute extreme hardship); *Matter of Shaughnessy,* 12 I&N Dec. 810 (BIA 1968) (holding that separation of family members and financial difficulties alone do not establish extreme hardship). "[O]nly in cases of great actual or prospective injury . . . will the bar be removed." *Matter of Ngai,* 19 I&N Dec. 245, 246 (BIA 1984). Further, demonstrated financial difficulties alone are generally insufficient to establish extreme hardship. *See INS v.* [redacted] (upholding BIA finding that economic detriment alone is insufficient to establish extreme hardship).

The AAO therefore finds that the applicant has failed to establish extreme hardship to his U.S. citizen spouse as required under section 212(a)(9)(B)(v) of the Act. 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.

In proceedings for an application for waiver of grounds of inadmissibility under section 212(a)(9)(B)(v) of the Act, the burden of proving eligibility rests with the applicant. INA § 291, 8 U.S.C. § 1361. Here, the applicant has not met that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.