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

U.S. Citizenship
and Immigration
Services

H3

[redacted]

FILE: [redacted] Office: BOSTON Date: SEP 21 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 (the Act), 8 U.S.C. section 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, Chief
Administrative Appeals Office

DISCUSSION: The waiver application was denied by the District Director, Boston, Massachusetts, and 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 the United Kingdom. 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. 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 U.S. citizen spouse.

The applicant was admitted into the United States under the visa waiver program on January 31, 2001 and was authorized to stay through April 30, 2001. The applicant remained in the United States beyond the period of authorized stay. On September 7, 2002, the applicant married his U.S. citizen spouse, [redacted] The applicant voluntarily departed from the United States on a cruise ship on September 10, 2002. He arrived in Hawaii and was denied admission on September 13, 2002 for having violated the terms of the visa waiver program by remaining in the United States for more than one year beyond the period of authorized stay. The applicant voluntarily departed the United States on the same date. On October 28, 2002, the applicant's spouse filed a Petition for Alien Relative (Form I-130) on the applicant's behalf. In November 2002, the applicant's spouse filed a Petition for Alien Fiancé(e) (Form I-129F) on the applicant's behalf. The Form I-129F petition was approved on January 6, 2003 and the applicant was admitted into the United States on K-3 visa on March 16, 2003. The Form I-130 was approved on September 11, 2003. On November 17, 2003, the applicant filed a Form I-485 Application for Register Permanent Residence or Adjust Status. On June 9, 2004, the applicant filed an Application for Waiver of Grounds of Excludability (Form I-601).

The district director concluded that the applicant had failed to establish that his bar to admission would impose extreme hardship on a qualifying relative and denied the waiver application accordingly. *Decision of Director*, dated September 29, 2005.

On appeal, counsel asserts that the district director's decision lacks specificity and that the applicant was denied due process as evidenced by discriminatory comments against "the Irish" made by the interviewing officer. Counsel contends that the applicant has demonstrated that his spouse will suffer extreme hardship should she relocate to the U.K. because she will be separated from her family, lose her job as an occupational therapist with poor employment options in Northern Ireland, and be unable to receive adequate medical care for her eczema. Counsel asserts that the applicant may face obstacles to practicing her religion as a Protestant Christian because of hostility in Northern Ireland between Protestants and Catholics, particularly because the applicant is from a Catholic family. Counsel also contends that the applicant has demonstrated that his spouse will suffer extreme hardship if she remains in the United States because she will lose the applicant's financial assistance and be forced to sell the couple's home.

The record contains an affidavit from the applicant's spouse, affidavits from her supervisor and her dermatologist, photographs depicting the applicant's spouse's skin condition, and tax and financial documents for the applicant and his spouse. The entire record has been reviewed and considered in rendering a decision on the appeal.

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

> (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 Secretary, 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 was admitted into the United States under the visa waiver program on January 31, 2001 and was authorized to stay through April 30, 2001. The applicant remained in the United States beyond the period of authorized stay until voluntarily departed from the United States on September 10, 2002. The applicant was unlawfully present from April 30, 2001 until September 10, 2002, a period in excess of one year.

A waiver of inadmissibility under section 212(a)(9)(B)(v) is dependent upon a showing that the bar to admission imposes an extreme hardship on a qualifying relative, *i.e.,* the U.S. citizen or lawfully resident spouse or parent of the applicant. Hardship to the applicant is not relevant under the statute and will be considered only insofar as it results in hardship to a qualifying relative in the application. The applicant's U.S. citizen spouse is the only qualifying relative. If extreme hardship to a qualifying relative is established, the Secretary then assesses whether an exercise of discretion is warranted. Section 212(a)(9)(B)(v) of the Act; s*ee also Matter of Mendez-Moralez,* 21 I&N Dec. 296 (BIA 1996).

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 applicant has established extreme hardship to a qualifying relative pursuant to section 212(i) of the Act. 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.

> 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).

In addition, the Ninth Circuit Court of Appeals in reversing the denial of suspension of deportation to the petitioner in *Salcido-Salcido v. INS,* 138 F.3d 1292, 1293 (9th Cir. 1998), held that, "the most important single hardship factor may be the separation of the alien from family living in the United States", and that, "[w]hen the BIA fails to give considerable, if not predominant, weight to the hardship that will result from family separation, it has abused its discretion." (Citations omitted), *see also Cerrillo-Perez v. INS,* 809 F.2d 1419, 1424 (9th Cir. 1987) ("We have stated in a series of cases that the hardship to the alien resulting from his separation from family members may, in itself, constitute extreme hardship.") (citations omitted). The AAO notes that the present case arises within the jurisdiction of the Ninth Circuit Court of Appeals. Separation of family will therefore be given appropriate weight in the assessment of hardship factors in the present case.

An analysis under *Matter of Cervantes-Gonzalez* is appropriate. The AAO notes that extreme hardship to a qualifying relative must be established in the event that he or she accompanies the applicant or in the event that he or she remains in the United States, as a qualifying relative is not required to reside outside of the United States based on the denial of the applicant's waiver request.

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 faces extreme hardship the applicant is not granted a waiver of inadmissibility.

The AAO recognizes that the applicant's spouse, a native of the United States, would experience social and economic disruption if she relocated to the U.K. with the applicant. However, the applicant has not demonstrated that this hardship in an atypical consequence of removal or inadmissibility, and it does not rise to the level of extreme hardship based on the record. U.S. court decisions have repeatedly held that the common results of removal or inadmissibility are insufficient to prove extreme hardship. *See Hassan v. INS,* 927 F.2d 465, 468 (9th Cir. 1991). In addition, *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.

The assertions that the applicant's spouse will be unable to obtain medical care for her skin condition, have poor employment options and face religious discrimination in the U.K. are not supported by sufficient evidence. Although the statements made by counsel, the applicant's spouse and others are relevant and have been taken into consideration, little weight can be afforded them in the absence of supporting evidence. *Matter of Kwan,* 14 I & N Dec. 175 (BIA 1972) ("Information in an affidavit should not be disregarded simply because it appears to be hearsay; in administrative proceedings, that fact merely affects the weight to be afforded it."). Going on record without supporting documentary evidence is not sufficient for purposes of

meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998)(citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)).

The AAO recognizes that the applicant's spouse would suffer emotionally as a result of separation from the applicant if she chooses to remain in the United States. However, although the applicant has demonstrated that his spouse benefits from his financial assistance, he has not submitted sufficient evidence showing that he will be unable to continue this financial assistance through employment in the U.K., or that his spouse will be unable to support herself in the United States. The hardship described in the record is typical of individuals separated as a result of removal or inadmissibility and does not rise to the level of extreme hardship based on the record. U.S. court decisions have repeatedly held that the common results of removal or inadmissibility are insufficient to prove extreme hardship. *See Hassan v. INS*, 927 F.2d 465, 468 (9th Cir. 1991). In addition, *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. Furthermore, [redacted] is employed and does not depend on the applicant for financial support.

In this case, the record does not contain sufficient evidence to show that the hardships faced by the qualifying relative, considered in the aggregate, rise beyond the common results of removal or inadmissibility to the level of 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 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. *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.