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U.S. Citizenship
and Immigration
Services

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713

FILE:

Office: SAN FRANCISCO DISTRICT OFFICE

Date: **APR 15 2008**

IN RE:

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.

A handwritten signature in black ink, appearing to read "Robert P. Wiemann".

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The waiver application was denied by the District Director, San Francisco, California, and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed. The waiver application will be denied.

The applicant, a citizen of Italy, was found inadmissible to the United States under 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. The applicant is the spouse of a United States citizen and 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 remain in the United States with her husband.

The District Director concluded that the applicant had failed to establish that extreme hardship would be imposed on her husband, the qualifying relative, and denied the Form I-601, Application for Waiver of Grounds of Inadmissibility. On appeal, the applicant contends that her husband would suffer extreme hardship if she is required to return to Italy. 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.

Regarding the applicant's grounds of inadmissibility, the record establishes that she entered the United States in WB status, under the visa waiver program, on January 21, 1999. As persons in WB status are permitted to remain in the United States 90 days, her period of authorized status ended on April 21, 1999. The applicant married her husband on February 24, 2000, and filed Form I-485, Application to Register Permanent Residence or Adjust Status, on May 24, 2000.

The proper filing of an affirmative application for adjustment of status has been designated by the Attorney General [Secretary] as an authorized period of stay for purposes of determining bars to admission under section

212 (a)(9)(B)(i)(I) and (II) of the Act.¹ The applicant was granted Form I-512, Authorization for Parole of an Alien into the United States, and she used the advance parole authorization to depart and reenter the United States. As a result of her February 2001 departure from the United States, the applicant accrued unlawful presence from April 21, 1999, the date her WB status expired, until May 24, 2000, the date she filed the Form I-485. In applying to adjust her status to that of a lawful permanent resident, the applicant is seeking admission within ten years of her departure from the United States. The applicant is, therefore, inadmissible to the United States under section 212(a)(9)(B)(II) of the Act for being unlawfully present in the United States for a period of more than one year.

Section 212(a)(9)(B)(v) of the Act provides that a waiver under section 212(a)(9)(B)(i)(II) of the Act is available solely where the applicant establishes extreme hardship to his or her citizen or lawfully resident spouse or parent. Extreme hardship to the applicant herself is not a permissible consideration under the statute. In the present case, the applicant's husband is the only qualifying relative, so hardship to the applicant may not be considered, except as it may affect the applicant's husband.

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). For example, in *Matter of Pilch*, 21 I&N Dec. 627 (BIA 1996), the BIA 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 Court of Appeals for the Ninth Circuit defined "extreme hardship" as hardship that was unusual or beyond that which would normally be expected upon deportation. The Ninth Circuit emphasized that the common results of deportation are insufficient to prove extreme hardship. The United States Supreme Court additionally 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 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 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. The BIA held in *Matter of O-J-O*, 21 I&N Dec. 381, 383 (BIA 1996) (citations omitted) that:

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.

Additionally, the Ninth Circuit Court of Appeals has held that "the most important single hardship factor may be the separation of the alien from family living in the United States," and, "[w]hen the BIA fails to give

¹ See Memorandum from Johnny N. Williams, Executive Associate Commissioner, Office of Field Operations, Immigration and Naturalization Service, *Unlawful Presence*, HXADN 70/21.1.24-P (June 12, 2002).

considerable, if not predominant, weight to the hardship that will result from family separation, it has abused its discretion.” *Salcido-Salcido v. INS*, 138 F.3d 1292, 1293 (9th Cir. 1998) (citations omitted). *See also Cerrillo-Perez v. INS*, 809 F.2d 1419, 1424 (9th Cir. 1987) (remanding to the BIA) (“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 the appropriate weight under Ninth Circuit law in the assessment of hardship factors in the present case.

The applicant’s husband is a forty-four-year-old citizen of the United States. As noted previously, he and the applicant have been married since February 24, 2000.

In her July 15, 2005 letter, the applicant states that she was unaware of the legal implications of utilizing her advance parole document; that the immigration agent gladly gave her the advance parole document without informing her that there would be repercussions;² that the hardship of not being able to see each other could destroy the couple’s marriage; that her husband cannot relocate to Italy because does not speak the language and it would be difficult for him to pursue his career there; and that her husband’s career as an actor is not stable in nature, and the couple relies upon the applicant to earn most of their income.

Courts considering the impact of financial detriment on a finding of extreme hardship have repeatedly held that, while it must be considered in the overall determination, “[e]conomic disadvantage alone does not constitute “extreme hardship.” *Ramirez-Durazo v. INS*, 794 F.2d 491, 497 (9th Cir. 1986) (holding that “lower standard of living in Mexico and the difficulties of readjustment to that culture and environment . . . simply are not sufficient.”); *Shoostary v. INS*, 39 F.3d 1049 (9th Cir. 1994) (stating, “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. The uprooting of family, the separation from friends, and other normal processes of readjustment to one’s home country after having spent a number of years in the United States are not considered extreme, but represent the type of inconvenience and hardship experienced by the families of most aliens in the respondent's circumstances.”); *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).

However, particularly in the Ninth Circuit, courts have recognized that, in certain cases, economic impact combined with related personal and emotional hardships may cause the hardship to rise to the level of extreme. “Included among these are the personal hardships which flow naturally from an economic loss decreased health care, educational opportunities, and general material welfare.” *Mejia-Carrillo v. INS*, 656 F.2d 520, 522 (9th cir. 1981) (citations omitted); *see also Santana-Figueroa v. INS*, 644 F.2d 1354, 1358 (9th cir. 1981)

² However, the AAO notes that both of the applicant’s advance parole documents contained, at page 2, the following warning:

If, after April 1, 1997, you were unlawfully present in the United States for more than 180 days before applying for adjustment of status, you may be found inadmissible under section 212(a)(9)(B)(i) of the Act when you return to the United States to resume the proceedings of your application. If you are found inadmissible, you will need to qualify for a waiver of inadmissibility in order for your adjustment of status application to be approved.

As the applicant was unlawfully present in the United States for more than 180 days before applying for adjustment of status she was, as warned, found inadmissible to the United States under section 212(a)(9)(B)(i) of the Act and, as also warned, must qualify for the instant waiver of inadmissibility before her adjustment of status application may be approved.

("Economic loss often accompanies deportation. Even a significant reduction in standard of living is not, by itself, a basis for relief. . . . But deportation may also result in the loss of all that makes life possible. When an alien would be deprived of the means to survive, or condemned to exist in life-threatening squalor, the "economic" character of the hardship makes it no less severe.")

As noted previously, the applicant is required to demonstrate that her husband would face extreme hardship in the event the applicant is required to return to Italy, regardless of whether he joins her in Italy or remains in California without her. In limiting the availability of the waiver to cases of "extreme hardship," Congress provided that a waiver is not available in every case where a qualifying family relationship exists.

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 husband will face extreme hardship if the applicant is required to return to Italy. If he chooses to remain in California without the applicant, the record does not demonstrate that he would face greater hardships than the unfortunate, but expected, disruptions, inconveniences, and difficulties arising whenever a spouse is removed from the United States or refused admission. Although the applicant claims to earn more money than her husband, she has not demonstrated that he is incapable of obtaining employment that would allow him to support himself in her absence. Although CIS is not insensitive to his situation, the financial strain of visiting the applicant in Italy, and the emotional and financial hardship of separation are common results of separation and do not rise to the level of "extreme" as contemplated by statute and case law.

Nor has the applicant established that her husband would face extreme hardship if he joined her in Italy, as the record fails to demonstrate that he would face hardship beyond that normally faced by others in his situation. Although the applicant states that her husband would be unable to pursue his chosen profession in Italy, she has failed to demonstrate that she would be unable to obtain employment that would allow her to financially support both of them. Moreover, diminished standards of living and cultural adjustment are to be expected in the applicant's husband's situation. In adjudicating this appeal, the AAO finds that the record fails to demonstrate that the applicant's husband would suffer hardship beyond that normally expected upon the deportation of a spouse.

A review of the documentation in the record, when considered in its totality, reflects that the applicant has failed to demonstrate that her United States citizen husband would suffer hardship that is unusual or beyond that normally expected upon the inadmissibility or removal of a spouse. As noted previously, the common results of deportation or exclusion are insufficient to prove extreme hardship; the emotional hardship caused by severing family and community ties and the financial hardship that results from separation are common results of deportation and do not constitute extreme hardship. "Extreme hardship" has been defined as hardship that is unusual or beyond that which would normally be expected upon deportation. Having found the applicant statutorily ineligible for relief, no purpose would be served in discussing whether the applicant 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), the burden of establishing that the application merits approval remains entirely with the applicant. Section 291 of the Act, 8 U.S.C. § 1361. The applicant has sustained not that burden. Accordingly, the AAO will not disturb the director's denial of the waiver application.

ORDER: The appeal is dismissed. The waiver application is denied.