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U.S. Department of Homeland Security
20 Mass. Ave., NW, Rm. 3000
Washington, DC 20529-2090

U.S. Citizenship and Immigration Services

PUBLIC COPY

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FILE: [redacted] Office: PHILADELPHIA, PA Date: OCT 29 2006

IN RE: [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, Chief
Administrative Appeals Office

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

The applicant is a native and citizen of Malaysia who 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 and seeking readmission within ten years of her last departure from the United States. The applicant is married to a U.S. citizen. She seeks a waiver of inadmissibility in order to reside in the United States with her spouse.

The District Director found that, based on the evidence in the record, the applicant had failed to establish extreme hardship to her qualifying relative. The application was denied accordingly. *Decision of the District Director,* dated July 31, 2005.

On appeal the applicant, through counsel, asserts that she has demonstrated that her qualifying relative would suffer extreme hardship if she were removed from the United States. *Form I-290B; Attorney's brief.*

In support of these assertions, counsel submits a brief. The record also includes, but is not limited to, a statement from the applicant's spouse; employment letters for the applicant and her spouse; earnings statements for the applicant's spouse; tax statements for the applicant and her spouse; a W-2 form for the applicant's spouse; bank statements; and a mortgage loan statement. 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.

In the present application, the record indicates that the applicant was admitted to the United States on June 17, 1990 with a B-2 visa valid until December 16, 1990. *Form I-94.* The applicant overstayed her visa and remained in the United States. *Form G-325A, Biographic Information sheet, for the applicant.* The applicant filed her Form I-485, Application to Register Permanent Resident or Adjust Status on June 4, 2001. The proper filing of an affirmative application for adjustment of status has been designated by the Attorney General [Secretary] as a period of stay for purposes of determining bars to admission under section 212 (a)(9)(B)(i)(I) and (II) of the Act. *See Memorandum by Johnny N. Williams, Executive Associate Commissioner, Office of Field Operations dated June 12, 2002.* The applicant accrued unlawful presence from April 1, 1997, the date of enactment of unlawful presence provisions under the Act, until June 4, 2001, the date she filed the Form I-485, a period of more than four years. The record does not specify the exact date that the applicant departed the United States and, thus, triggered the unlawful presence provisions of the Act. However, it does indicate that on October 30, 2002 she was authorized advance parole. *Form I-512.* Thereafter, she departed the United States, returning on June 29, 2003. *Id.* In applying to adjust her status to that of Lawful Permanent Resident (LPR), 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.

A section 212(a)(9)(B)(v) waiver of the bar to admission resulting from a violation of section 212(a)(9)(B)(i)(II) of the Act is dependent first upon a showing that the bar imposes an extreme hardship to the citizen or lawfully resident spouse or parent of the applicant. The plain language of the statute indicates that hardship that the applicant herself would experience upon removal is not directly relevant to the determination as to whether the applicant is eligible for a waiver under section 212(a)(9)(B)(v). The only relevant hardship in the present case is hardship suffered by the applicant's spouse if the applicant is found to be inadmissible. If 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 section 212(i) of the Act. These factors include the presence of a lawful permanent resident or United States citizen family ties to 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.

The AAO notes that extreme hardship to the applicant's spouse must be established whether he resides in Malaysia or the United States, as he is not required to reside outside of the United States based on the denial of the applicant's waiver request. The AAO will consider the relevant factors in adjudication of this case.

If the applicant's spouse travels with the applicant to Malaysia, the applicant needs to establish that her spouse will suffer extreme hardship. The applicant's spouse is a native of the United States, as are his parents. *Form G-325A, Biographic Information sheet, for the applicant's spouse.* The applicant's spouse does not have any familial or cultural ties to Malaysia. *Attorney's brief.* He does not speak the native language or any dialect of Chinese that would allow him to effectively integrate into Malaysian society upon relocation. *Id.* Due to these barriers, it would be difficult for the applicant's spouse to find a job and contribute to the financial well-being of his family. *Id.* The applicant's spouse notes that he also has elderly parents living in the United States for whom he is financially responsible. *Statement from the applicant's spouse*, dated February 2, 2004. The applicant has spent many years in the United States being unemployed. *Form G-325A, Biographic Information sheet, for the applicant.* The record shows that in 2004, the applicant worked part-time as a file clerk/receptionist. *Employment letter for the applicant*, dated January 7, 2004. When looking at the aforementioned factors, specifically the lack of familial and cultural ties, the language barriers, the limited financial opportunities available to the applicant's spouse, and the applicant's lack of employment experience, the AAO finds that the applicant has demonstrated extreme hardship to her spouse if he were to reside in Malaysia.

If the applicant's spouse resides in the United States, the applicant needs to establish that her spouse will suffer extreme hardship. As previously mentioned, the applicant was born and raised in the United States, and he has family ties to the United States. *Birth certificate; Form G-325A, Biographic Information sheet, for the applicant's spouse; Statement from the applicant's spouse*, dated February 2, 2004. The applicant's spouse is currently employed in the United States and helps to support his elderly parents. *Employment letter for the applicant's spouse,* dated January 9, 2004*; Earnings statements for the applicant's spouse; and statement from the applicant's spouse*, dated February 2, 2004. The applicant's spouse states that he and the applicant have been trying to have a family since they have been married, and if the government decides that she can no longer stay in the United States with the applicant, it would break their hearts. *Statement from the applicant's spouse*, dated February 2, 2004.

While the AAO acknowledges these emotions, 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). 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), 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. *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 removed. The AAO recognizes that the applicant's spouse will endure hardship as a result of separation from the applicant. However, the record does not distinguish his situation, if he remains in the United States, from that of other individuals separated as a result of deportation or exclusion. Accordingly, it does not establish that the hardship experienced by the applicant's spouse would rise to the level of extreme hardship. When looking at the aforementioned factors, the AAO does not find that the applicant has demonstrated extreme hardship to her spouse if he were to reside in the United States.

A review of the documentation in the record fails to establish the existence of extreme hardship to the applicant's qualifying relative caused by the applicant's inadmissibility to the United States. Having found the applicant statutorily ineligible for relief, no purpose would be served in discussing whether she merits a waiver as a matter of discretion.

In proceedings for application for waiver of grounds of inadmissibility under section 212(a)(9)(B) of the Act, the burden of proving eligibility remains entirely 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.