



U.S. Citizenship
and Immigration
Services

H2

[REDACTED]

FILE:

[REDACTED]

Office: JACKSONVILLE, FLORIDA

Date: DEC 03 2009

IN RE:

Applicant:

[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:

[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.

If you believe the law was inappropriately applied or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. Please refer to 8 C.F.R. § 103.5 for the specific requirements. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$585. Any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen, as required by 8 C.F.R. § 103.5(a)(1)(i).

Michael Shumway

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Field Office Director, Jacksonville, Florida, 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 Lebanon 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 10 years of her last departure from the United States. The record indicates that the applicant is married to a naturalized United States citizen and she is the beneficiary of an approved Petition for Alien Relative (Form I-130). The applicant 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 her United States citizen husband and children.

The Field Office Director found that the applicant failed to establish that extreme hardship would be imposed on the applicant's spouse and denied the Application for Waiver of Grounds of Excludability (Form I-601) accordingly. *Decision of the Field Office Director*, dated June 19, 2007.

On appeal, the applicant, through counsel, claims that the applicant's husband and children "would suffer should [the applicant] be sent back to Lebanon or in the alternative if [the applicant's husband] were to go with her." *Appeal Brief*, dated July 16, 2007.

The record includes, but is not limited to, counsel's appeal brief, a letter from the applicant's husband, letters and medical documents regarding the applicant's husband's medical conditions, and the applicant's marriage certificate. The entire record was reviewed and considered in arriving at 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 [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 AAO notes that the record contains several references to the hardship that the applicant's children would suffer if the applicant were denied admission into the United States. Section 212(a)(9)(B)(i) of the Act provides that a waiver, under section 212(a)(9)(B)(v) of the Act, is applicable solely where the applicant establishes extreme hardship to her citizen or lawfully resident spouse or parent. Unlike a waiver under section 212(h) of the Act, Congress does not mention extreme hardship to United States citizen or lawful permanent resident children. In the present case, the applicant's husband is the only qualifying relative, and hardship to the applicant's children will not be considered, except as it may cause hardship to the applicant's spouse.

In the present application, the record indicates that the applicant entered the United States on October 7, 1999 on a B-2 nonimmigrant visa with authorization to remain in the United States until April 6, 2000. On February 18, 2000, the applicant's lawful permanent resident husband filed a Form I-130 on behalf of the applicant. The applicant departed the United States on February 14, 2003. On May 4, 2003, the applicant attempted to reenter the United States; however, she was denied admission based on her previous overstay and was returned to Lebanon. On September 3, 2003, the applicant entered the United States on a V-1 nonimmigrant visa with authorization to remain in the United States until September 2, 2005. On August 17, 2005, the applicant's Form I-130 was approved. On November 2, 2005, the applicant filed an Application to Register Permanent Residence or Adjust Status (Form I-485). On September 21, 2006, the applicant's husband became a United States citizen. On June 7, 2007, the applicant filed a Form I-601. On June 19, 2007, the Field Office Director denied the Form I-601, finding the applicant accrued more than a year of unlawful presence and she failed to demonstrate extreme hardship to her United States citizen spouse.

The applicant accrued unlawful presence from April 6, 2000, the date the applicant's authorization to remain in the United States expired, until February 14, 2003, the date the applicant departed the United States. The applicant is attempting to seek admission into the United States within 10 years of her February 14, 2003 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 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. Hardship the applicant herself experiences upon removal is irrelevant to a section 212(a)(9)(B)(v) waiver proceeding. 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).

In *Matter of Cervantes-Gonzalez*, 22 I&N Dec. 560, 565-66 (BIA 1999), the Board of Immigration Appeals (Board) provided a list of factors it deemed relevant in determining whether an alien has established extreme hardship to a qualifying relative. The 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.

In counsel's appeal brief dated July 16, 2007, counsel states the applicant's husband has "various medical conditions such as Bell's Palsy and suffers from a high level of anxiety." In a letter dated June 8, 2006, [REDACTED], a neurologist, states he has been treating the applicant's husband for "severe anxiety," but provides no further details concerning the basis of this diagnosis and the treatment provided. The AAO notes that other than [REDACTED] letter, there are there are no professional psychological evaluations for the AAO to review to determine if the applicant's husband is suffering from any anxiety, or whether any anxiety is beyond that experienced by others in the same situation. In a letter dated July 13, 2007, [REDACTED] states the applicant's husband has "had some health issues, mostly neck pain.... He has also had some headaches at times." The AAO notes that medical documentation in the record establishes that the applicant's husband suffers from various medical conditions, including Bell's Palsy; however, the AAO notes that there was no documentation submitted establishing that the applicant's husband could not receive treatment for his medical conditions in Lebanon or that he has to remain in the United States to receive his medical treatments. Additionally, the AAO notes that there was nothing from a doctor indicating any prognosis or what assistance is needed and/or given by the applicant.

In a letter dated July 7, 2007, [REDACTED], who treats the applicant's children, states the applicant "has usually taken the primary responsibility for [her children's] medications, treatments, and general medical care." In a letter dated July 17, 2007, the applicant's husband states if the applicant returned to Lebanon, he cannot "imagine what would happen to [his] kids.... [His] children are attached to [the applicant]." The AAO notes that when the applicant returned to Lebanon on February 14, 2003, she took her two oldest children with her, and there is no evidence in the record that they experienced any hardship while visiting Lebanon. Additionally, though the applicant's children may experience some hardship in residing in Lebanon, they are not qualifying relatives for a waiver under section 212(a)(9)(B)(v) of the Act.

The applicant's husband states it would be difficult to return to Lebanon, because he has established a career in the United States and has adopted the American lifestyle. Counsel states that if the applicant's husband joins the applicant in Lebanon, he "would not be able to find a position in computer technology for which his training and experience have prepared him." The AAO notes that the applicant's husband is employed as an engineering technician, and it has not been established that the applicant's husband has no transferable skills that would aid him in obtaining a job in Lebanon and that there are no employment opportunities for him there.

The AAO notes that on September 29, 2009, the State Department issued a travel warning to United States citizens to avoid all travel to Lebanon due to current safety and security concerns. Additionally, the State Department states that "Americans living and working in Lebanon should understand that they accept risks in remaining and should carefully consider those risks." The AAO notes that the applicant's husband is a native of Lebanon and he spent some of his formative years in Lebanon. Additionally, the

AAO notes that it has not been established that the applicant's husband does not speak the local language and that he has no family ties to Lebanon. In fact, the AAO notes that the applicant's husband's parents reside in Lebanon. The AAO finds that the applicant failed to establish that her husband would suffer extreme hardship if he joins her in Lebanon.

In addition, counsel does not establish extreme hardship to the applicant's husband if he remains in the United States, maintaining his employment. As a United States citizen, the applicant's husband is not required to reside outside of the United States as a result of denial of the applicant's waiver request. The applicant's husband states if his children remain in the United States, "[he] would not be able to pay for day cares and work and support [his] kids." The AAO notes that it has not been established that the applicant's spouse is unable to provide or obtain adequate care for their children in the applicant's absence or that this particular hardship is atypical of individuals separated as a consequence of removal or inadmissibility. Additionally, the AAO notes that beyond generalized assertions regarding country conditions in Lebanon, the record fails to demonstrate that the applicant cannot obtain employment in Lebanon or that she will be unable to contribute to her husband's financial wellbeing from a location outside of the United States. Moreover, the United States 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).

United States 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 Board 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. In *Hassan, supra*, the Ninth Circuit Court of Appeals 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.

A review of the documentation in the record fails to establish the existence of extreme hardship to the applicant's spouse 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.