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U.S. Citizenship
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Services

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FILE: [REDACTED] Office: DENVER Date: JUN 12 2009

IN RE: [REDACTED]

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

ON BEHALF OF APPLICANT:

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).

John F. Grissom
Acting Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the District Director, Denver, Colorado, 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 New Zealand who was found to be inadmissible to the United States pursuant to section 212(a)(9)(B)(i)(I) of the Act, 8 U.S.C. § 1182(a)(9)(B)(i)(I), for having been unlawfully present in the United States for more than 180 days but less than one year. 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 with his wife and children in the United States.

The district director found that the applicant failed to establish extreme hardship to his U.S. citizen spouse and denied the application accordingly. *Decision of the District Director*, dated June 6, 2006.

On appeal, counsel contends that a waiver of inadmissibility is no longer needed as more than three years have passed since the applicant's March 2002 departure. In addition, counsel requests that the applicant's wife's pregnancy be considered.

The record contains, *inter alia*: two letters from the applicant's wife, [REDACTED] letters from [REDACTED] parents; a copy of the U.S. Department of State's 2006 Country Reports on Human Rights Practices for New Zealand; letters from the applicant's and [REDACTED] employers; a copy of the couple's mortgage application; copies of credit card bills; a letter from a real estate broker; and a copy of a Psychological Evaluation for [REDACTED]. The entire record was reviewed and considered in rendering this decision on the appeal.

Section 212(a)(9) 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 -

(I) was unlawfully present in the United States for a period of more than 180 days but less than 1 year, voluntarily departed the United States . . . prior to the commencement of proceedings under section 235(b)(1) or section 240, and again seeks admission within 3 years of the date of such alien's departure or removal, . . . 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 this case, the record indicates that the applicant entered the United States under the Visa Waiver Program on February 28, 2001, with authorization to remain for ninety days until May 27, 2001. The applicant overstayed his visa and departed the United States on March 8, 2002. The applicant thus accrued unlawful presence of more than 180 days but less than one year. The applicant re-entered the United States under the Visa Waiver Program on April 26, 2002, with authorization to remain for ninety days. **The applicant again overstayed his visa.** On February 13, 2004, the applicant married a U.S. citizen. On August 9, 2004, the applicant filed an Application to Register Permanent Resident or Adjust Status (Form I-485) based on his marriage.

Counsel contends that a waiver of inadmissibility is no longer needed as more than three years have passed since the applicant's March 2002 departure. In support of this proposition, counsel submits a copy of the AAO's decision in another case which, according to counsel, found that the applicant's unlawful presence was "cured" . . . through the passage of time while his case was on appeal." *Motion to Supplement Appeal with Additional Legal Authority*, at 3. Counsel has misinterpreted the AAO's previous decision. In that case, the applicant entered the United States using a B-2 visitor's visa in December 1998, married a U.S. citizen in August 1999, and had his Petition for Alien Relative (Form I-130) approved in November 1999. After he filed an Application for Adjustment of Status (Form I-485), the applicant sought, and received, advance parole. Significantly, it was not until *after* he filed his application for adjustment of status that he departed the United States, rendering him inadmissible for unlawful presence. In that case, when the applicant's re-entered the United States under advance parole, he was continuing his previously filed application for adjustment of status.

In contrast, in the instant case, the applicant accrued unlawful presence from May 27, 2001, until his departure on March 8, 2002. Prior to his departure, he had not filed an application for adjustment of status. Rather, the applicant sought and was granted admission under the Visa Waiver Program in April 2002, within three years of his departure and without being granted a waiver of inadmissibility. It was not until February 2004, after overstaying his visa a second time, that the applicant married a U.S. citizen, and August 2004 when he filed an application for adjustment of status. Although an adjustment application is a "continuing" application decided on the facts and the law at the time the application is finally considered, *Matter of Alarcon*, 20 I&N Dec. 557, 562 (BIA 1992), when the applicant in this case was granted admission in April 2002, he had no "continuing" application. Under these circumstances, the applicant remains inadmissible.

A section 212(a)(9)(B)(v) waiver of the bar to admission resulting from section 212(a)(9)(B)(i)(I) of the Act is dependent first upon a showing that the bar imposes an extreme hardship to the U.S. citizen or lawfully resident spouse or parent of the applicant. *See* section 212(a)(9)(B)(v) of the Act, 8 U.S.C. § 1182(a)(9)(B)(v). 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).

Matter of Cervantes-Gonzalez, 22 I&N Dec. 560, 565-566 (BIA 1999), provides a list of factors the Board of Immigration Appeals deems relevant in determining whether an alien has established extreme hardship under the Act. These 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 this case, the applicant's wife, [REDACTED], states that she has lived her entire life in Colorado and is extremely close to her immediate family, all of whom live close by. She states she talks to her sister every day, talks to her brother and parents at least once a week, spends at least one day every week with her sister and her family, and has never spent a holiday without her family. [REDACTED] states that she is also close with her grandparents, and that her grandmother is legally blind, and her grandfather has a heart condition. In addition, [REDACTED] states that her family could not afford to visit her if she were forced to move to New Zealand to be with her husband. She states she cannot imagine never spending another holiday with her family and that she can't imagine life without seeing them on a consistent basis. [REDACTED] states that her entire support system is in the United States, that she has only met her in-laws in New Zealand once, and that she knows no one else there. She further states that the applicant was raised by his great aunt who has never been supportive of the applicant and who is biased against people who are not of [REDACTED] heritage. Furthermore, [REDACTED] states that her son loves his current day care providers, she wants him to grow up close to her family, and she does not want to take him out of such a loving environment. [REDACTED] also contends that moving overseas is not cheap and that she would lose money on her house if she had to sell it now during a slow housing market. She states she has worked hard for everything and does not want to give everything up to start over again. Finally, [REDACTED] states she has worked in the financial industry for the last thirteen years, would lose her seniority at work if she moved overseas, and does not know if she could find the same position overseas. *Letters from* [REDACTED], dated January 24, 2007, and February 2, 2006; *see also Letter from* [REDACTED] and [REDACTED], dated January 21, 2007 (letter from [REDACTED]; mother and step-father stating their family is extremely close); *Letter from* [REDACTED] and [REDACTED], dated January 18, 2007 (letter from [REDACTED] father and step-mother stating they would be unable to afford to visit [REDACTED] in New Zealand and that their family is extremely close).

A Psychological Evaluation in the record concludes that [REDACTED] would suffer financial hardship as a result of being a single mother if she stayed in the United States without her husband, and that she would become "isolated and unstable." The psychologist also concludes that if Ms. [REDACTED] moved to New Zealand, she would lose her entire support system, causing "ultimately[,] the decomposition of her mental health." In addition, the psychologist concludes that

because the applicant does not have strong ties to his family in New Zealand, the family would become “isolate[ed] and dysfunction[al.]” Furthermore, the psychologist concludes that “[f]inancially, it appears that [REDACTED] would be able to find employment with comparable salary and benefits in New Zealand,” although she would need to receive “clearance” in order to work as a non-resident. *Psychological Evaluation by [REDACTED] dated July 5, 2006.*

A letter from a real estate agent “strongly discourage[s]” the applicant and his wife from selling their home. The letter states that home sales in Denver, Colorado, have slowed down significantly and that “this is a particularly difficult time to sell properties” in that area. *Letter from [REDACTED], dated November 13, 2006.*

After a careful review of the evidence, it is not evident from the record that the applicant’s wife, Ms. [REDACTED], would suffer extreme hardship as a result of the applicant’s waiver being denied.

The AAO finds that if [REDACTED] had to move to New Zealand to be with her husband, she would experience extreme hardship. The record shows that [REDACTED], who was born in the United States, would be separated from her entire family with whom she is very close. She has lived her entire life in Colorado and sees her family every week. She has visited New Zealand only once and does not have any support system there, a difficult situation made even more complicated by the fact that she now has two young children. In addition, the record indicates her family would be unable to visit her in New Zealand. Furthermore, according to the letter from a real estate agent, she would have a difficult time selling her house at this time in preparation of a move overseas. In sum, the hardship [REDACTED] would experience if she had to move to New Zealand is extreme, going beyond those hardships ordinarily associated with deportation.

Nonetheless, [REDACTED] has the option of staying in the United States and the record does not show that she would suffer extreme hardship if she were to remain in the United States without her husband. Although the AAO is sympathetic to the family’s circumstances and recognizes the challenges of being a single parent, if [REDACTED] decides to remain in the United States, their situation is typical to individuals separated as a result of deportation or exclusion and does not rise to the level of extreme hardship based on the record. The record shows that [REDACTED] has an extensive support network, including parents who have helped care for her older child. *See Letter from [REDACTED] and [REDACTED], supra (“[O]n an average, for most of my Grandson’s life, we have had him for several days a week keeping an emotionally secure family environment, as well as providing a little financial relief from always using paid daycare.”).*

The Board of Immigration Appeals and the Courts of Appeals have repeatedly held that the common results of deportation or exclusion are insufficient to prove extreme hardship. 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. *See also Hassan v. INS*, 927 F.2d

465, 468 (9th Cir. 1991) (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).

Furthermore, the AAO notes that [redacted] does not claim she will suffer extreme financial hardship if she were to stay in the United States without her husband. Aside from a mortgage application and copies of credit card bills, there are no financial documents in the record describing the couple's income or monthly expenses, and there are no tax documents in the record. Although there are letters from the applicant's and [redacted] employers, there is no documentation of their wages. Without more detailed information, the AAO is not in the position to conclude that the denial of the applicant's waiver application would cause extreme financial hardship to Ms. [redacted]. In any event, even assuming some economic hardship, as the U.S. Supreme Court held in *INS v. Jong Ha Wang*, 450 U.S. 139 (1981), the mere showing of economic detriment to qualifying family members is insufficient to warrant a finding of extreme hardship. See also *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).

Regarding the Psychological Evaluation, although the input of any mental health professional is respected and valuable, the AAO notes that the evaluation in the record is based on two interviews conducted on June 29, 2006, and July 1, 2006. The record fails to reflect an ongoing relationship between a mental health professional and the applicant's wife. Moreover, the conclusions reached in the submitted evaluation, being based on two interviews conducted within days of each other, do not reflect the insight and elaboration commensurate with an established relationship with a psychologist, thereby rendering the therapist's findings speculative and diminishing the evaluation's value to a determination of extreme hardship.

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 he merits a waiver as a matter of discretion.

In proceedings for application for waiver of grounds of inadmissibility, 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.