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U.S. Citizenship
and Immigration
Services

H2

FILE:

Office: NEW YORK

Date:

SEP 01 2009

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:

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).

A handwritten signature in black ink that reads "Michael Shumway".

John F. Grissom
Acting Chief, Administrative Appeals Office

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

The applicant, [REDACTED] is a native and citizen of Georgia. She 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 admission within 10 years of her last departure from the United States. 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 return to the United States to join her United States citizen husband, [REDACTED].

The District Director concluded that the applicant had failed to establish that her bar to admission would impose extreme hardship on a qualifying relative, her United States citizen spouse, and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) accordingly.

On appeal, counsel asserts that the applicant does not concede that her travel pursuant to a grant of advance parole by the District Director renders her subject to the provisions of section 212(a)(9)(B) of the Act. Counsel states that the decision did not appropriately evaluate the elements of extreme hardship. Counsel states that the decision fails to consider or discuss all relevant factors in this matter. On the Form I-290B, counsel indicated that a brief and/or evidence would be submitted to the AAO within 30 days. On July 24, 2009, the AAO sent a notice by fax to counsel stating that no such documentation had been received, and requesting that a copy of any additional brief or evidence along with evidence of the date it was originally filed be submitted within five business days. To date, no response to this notice has been received. Therefore, the record is considered complete. The entire record was reviewed and considered in rendering the decision on the appeal.

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

(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.

In the present application, the record reflects that the applicant was admitted to the United States for six months on November 15, 1999 as a B2 nonimmigrant visitor. The applicant remained in the United States and, on October 14, 2004, filed an Application for Adjustment of Status (Form I-485). Consequently, the applicant accrued unlawful presence from November 15, 1999 until the date she filed her adjustment of status application, October 14, 2004. The applicant departed the United States after she was issued an advance parole travel document. On September 5, 2005, the applicant was paroled into the United States as an arriving alien. The director found that the applicant's departure from the United States triggered the ground of inadmissibility arising under section 212(a)(9)(B)(i)(II) of the Act.

On appeal, counsel asserts that the applicant does not concede that her travel pursuant to a grant of advance parole by the District Director renders her subject to the provisions of section 212(a)(9)(B) of the Act. The AAO notes that counsel has failed to cite to pertinent statutes, regulations, case law, policy or any other authority to support his assertion. USCIS policy guidance on travel with advance parole provides that an alien with a pending adjustment of status application, who has accrued more than 180 days unlawful presence time, will trigger the bars to admission if she travels outside the United States subsequent to the issuance of an advance parole document.¹ The fact that the alien is permitted to return to the United States as a parolee does not confer a waiver of inadmissibility under section 212(a)(9)(B)(i)(I) and (II) of the Act.² The AAO finds that the applicant is, therefore, inadmissible to the United States under section 212(a)(9)(B)(i)(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 U.S. citizen or lawfully resident spouse or parent of the applicant. Hardship the alien herself experiences upon deportation is irrelevant to section 212(a)(9)(B)(v) waiver proceedings. 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).

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 (BIA) set forth a list of non-exclusive factors relevant to determining whether an applicant has established extreme hardship to a qualifying

¹ USCIS Memorandum, *Consolidation of Guidance Concerning Unlawful Presence for Purposes of Sections 212(a)(9)(B)(i) and 212(a)(9)(C)(i)(I) of the Act*, from Donald Neufeld, Acting Associate Director, Domestic Operations Directorate, Lori Scialabba, Associate Director, Refugee, Asylum and International Operations Directorate, Pearl Chang, Acting Chief, Office of Policy and Strategy, dated May 6, 2009.

² *Id.*

relative pursuant to section 212(i) of the Act. These factors include, with respect to the qualifying relative, the presence of family ties to United States 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).

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 reflects that the applicant wed [REDACTED], a U.S. citizen, on December 28, 2002. [REDACTED] is a qualifying family member for section 212(a)(9)(B)(v) of the Act extreme hardship purposes.

In support of the waiver application, the applicant furnished an affidavit from her husband, [REDACTED] dated November 17, 2006. Mr. [REDACTED] states that the applicant traveled to Georgia on August 24, 2005 to visit her father. He states that he could not travel with her because he was suffering from depression and Bradycardia. He states that he and his brother look after their mother who is elderly and lives alone. He states that his family members are close to each other and he cannot imagine his life without his mother and brother. He states that he cannot leave his mother and go to another country. He states that he would be unable to find a job in Georgia to support himself and the applicant. He states that he would face a language barrier and would not be able to find good medical treatment in Georgia. He states that if the applicant was forced to return to Georgia he would be extremely morally devastated. He states that he has developed a severe depression and insomnia, and fears being separated from his family.

The AAO will first address the applicant's spouse's assertion that he would suffer extreme hardship due to his medical conditions if he accompanied the applicant to Georgia. The AAO has reviewed the file and finds that there is no documentation in the record related to the applicant's diagnosis, prognosis, and treatment plan for Bradycardia, depression and insomnia. Further, the applicant has not demonstrated with country condition reports or other documentation that her spouse would be unable to seek commensurate medical care in Georgia. 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)). Although the applicant's spouse's unsupported assertions are relevant and have been considered, they can be afforded little weight in

the absence of supporting evidence. For these reasons, the AAO cannot conclude that the applicant's spouse has a medical condition that would contribute to a finding of extreme hardship.

The applicant's spouse asserts that if he accompanied his spouse to Georgia, he would face a language barrier and be unable to find a job to support himself and the applicant. The AAO observes that in making these assertions the applicant's spouse has not indicated his profession, skills and educational background. The applicant's spouse has not demonstrated that he has attempted to find employment in Georgia or otherwise researched employment opportunities in the country. Further, the applicant has not discussed her occupation, employment history, and whether she would be able to financially support the applicant in Georgia. The AAO notes that a reduction in the standard of living does not necessarily result in extreme hardship. In *Shoostary v. INS*, the Ninth Circuit Court of Appeals held that "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." 39 F.3d 1049, 1051 (9th Cir. 1994). As such, the AAO finds that evidence of financial hardship to the applicant's spouse, if he resided with the applicant in Georgia, is not demonstrated by the record.

The AAO will next address the applicant's spouse's assertions that he would suffer extreme hardship if he were separated from his mother. The applicant's spouse states that he looks after his mother; however he also notes that he has a brother who cares for her. Further, he indicated in his affidavit that his mother resides alone. As such, there is no indication that his mother is economically dependent on him or she is physically incapable of caring for herself. Moreover, there is no indication in the record of where his mother resides or how frequently he sees her. The AAO acknowledges that the applicant's spouse would suffer emotional hardship as a result of his separation from his mother and other family members in the United States. However, his situation is typical of individuals separated as a result of removal or inadmissibility, and does not, alone, rise to the level of extreme hardship. The AAO, therefore, finds that the applicant's spouse has not demonstrated that his separation from family in the United States, alone, rises to the level of extreme hardship if he accompanies the applicant to Georgia.

Finally, the AAO will address the applicant's spouse's assertion that if he remains in the United States and is separated from the applicant, he would be extremely morally devastated. The AAO acknowledges that the applicant's spouse will experience emotional hardship if he remains in the United States without the applicant, but finds that he has failed to demonstrate that this hardship, when combined with other hardship factors, will be extreme. The AAO recognizes the significance of family separation as a hardship factor, but concludes that the hardship described by the applicant's spouse, and as demonstrated by the evidence in the record, is the common result of removal or inadmissibility and does not rise to the level of extreme hardship. 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.

In this case, the record does not contain sufficient evidence to show that the hardships faced by the applicant's spouse, 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 eligibility for a waiver of inadmissibility 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 establishing that the application merits approval 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.