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U.S. Department of Homeland Security
U. S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services

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FILE: [REDACTED]

Office: PHOENIX

Date: SEP 01 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:

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 Field Office Director, Phoenix, Arizona, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The record reflects that the applicant, a native and citizen of Bulgaria, entered the United States with a valid nonimmigrant visa on August 9, 2002, with permission to remain until March 31, 2004. The applicant filed the Form I-485, Application to Register Permanent Resident or Adjust Status (Form I-485) on June 19, 2005. On March 10, 2006, the applicant was issued the Form I-512, Authorization for Parole of an Alien into the United States (Form I-512) and subsequently used the advance parole authorization to depart and re-enter the United States.

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. *See 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*, dated May 6, 2009. As such, the applicant accrued unlawful presence from April 1, 2004, upon expiration of her nonimmigrant stay, until June 19, 2005, the date of her proper filing of the Form I-485. Thus, the applicant is 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. The applicant does not contest this finding of inadmissibility. Rather, the applicant seeks a waiver of inadmissibility in order to reside in the United States with her U.S. citizen spouse.

The field office director concluded that the applicant had failed to establish that extreme hardship would be imposed on a qualifying relative and denied the Form I-601, Application for Waiver of Grounds of Excludability (Form I-601) accordingly. *Decision of the Field Office Director*, dated May 21, 2007.

In support of the appeal, counsel submits the following: a brief, dated August 6, 2007, and referenced exhibits. The entire record was reviewed and considered in rendering this decision.

Section 212(a)(9)(B)(i)(II) 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 *Matter of Cervantes-Gonzalez*, 22 I&N Dec. 560, 565-66 (BIA 1999), the Board of Immigration Appeals (BIA) 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.

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).

This matter arises in the Phoenix District Office, which is within the jurisdiction of the Ninth Circuit Court of Appeals. That court has stated, "the most important single hardship factor may be the separation of the alien from family living in the United States," and also, "[w]hen the BIA fails to give 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 Board of Immigration Appeals (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). 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 must first establish that her U.S. citizen spouse would suffer extreme hardship were he to remain in the United States while the applicant relocates abroad due to her inadmissibility. With respect to this criteria, counsel for the applicant contends that were the applicant's spouse to remain

in the United States while the applicant relocates abroad, the applicant's spouse would become dependent on his adult children, all of whom live out of state and are pursuing their own lives, which would make him a burden to his children. Moreover, counsel contends that the applicant's spouse would be unable to travel to Bulgaria to visit the applicant because of his advanced age and medical conditions. *See Brief in Support of Appeal*, dated August 6, 2007. Nothing was submitted to support these assertions. Without documentary evidence to support the claim, the assertions of counsel will not satisfy the petitioner's burden of proof. The unsupported assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980). As such, it has not been established that the applicant's U.S. citizen spouse would experience extreme hardship were he to remain in the United States while the applicant relocates abroad due to her inadmissibility.

The AAO notes that extreme hardship to a qualifying relative must also be established in the event that he or she accompanies the applicant abroad based on the denial of the applicant's waiver request. In this case, the applicant's U.S. citizen spouse contends that he will suffer extreme hardship were he to accompany the applicant to Bulgaria, as he would experience family and tribal separation¹, and unfamiliarity with the language, culture and customs of the country. In addition, he notes and documents that he suffers from numerous medical conditions and a relocation abroad would mean the loss of free medical care, due to his tribal membership, by physicians familiar with his medical conditions. Moreover, by relocating abroad, he would risk losing his position as an Elder for his church and membership in his choir.² Finally, he would be at risk of losing his tribal membership and his property interest in tribal lands that he inherited from his parents, as tribal membership and land ownership require the applicant's spouse to be present at tribal meetings. *Letter from* [REDACTED]

The AAO has determined that extreme hardship would exist were the applicant's U.S. citizen spouse to accompany the applicant to Bulgaria. The applicant's spouse, 73 years old at the time the appeal was filed, was born and raised in the United States and has a number of relatives residing in the United States. He has no ties to Bulgaria, and is in fact strongly immersed in his community and his tribe. **In addition, the applicant's spouse does not speak Bulgarian.** Given these factors, the applicant's spouse would experience extreme hardship if he were to accompany the applicant to Bulgaria.

¹ The record establishes that the applicant's spouse is a lifelong member of the Gila River Indian Community of Arizona. *See Tribal Identification Card*.

² The record establishes that the applicant's spouse is an Elder for the Presbyterian Church. Elder responsibilities include attending meetings, assisting in worship services, providing leadership and serving the presbytery. *See Book of Order, The Constitution of the Presbyterian Church (U.S.A.)*, 2005-2007. In addition, the applicant's spouse is an active member of the Orpheus Male Chorus. *See Orpheus Male Chorus Membership Roster 2006-2007*, dated September 13, 2006.

As such, a review of the documentation in the record, when considered in its totality, reflects that although the applicant has established that her U.S. citizen spouse would experience extreme hardship were he to relocate abroad due to the applicant's inadmissibility, the applicant has failed to establish that her spouse would suffer extreme hardship if he were to remain in the United States while the applicant relocated abroad. Rather, the record demonstrates that he will face no greater hardship than the unfortunate, but expected, disruptions, inconveniences, and difficulties arising whenever a spouse is removed from the United States. 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) of the Act, the burden of proving eligibility remains entirely with the applicant. 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. The waiver application is denied.