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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
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Services

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FILE:

Office: ATHENS

Date:

JAN 08 2010

IN RE:

APPLICATION: Application for Waiver of Grounds of Inadmissibility under Section 212(a)(9)(B)(v)
of the Immigration and Nationality Act (INA), 8 U.S.C. § 1182(a)(9)(B)(v)

ON BEHALF OF APPLICANT: SELF-REPRESENTED

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 Field Office Director, Athens, Greece, denied the instant waiver application. The matter 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 Yemen, the husband of a U.S. citizen, the father of a two U.S. citizen sons, and the beneficiary of an approved Form I-130 petition.

The field office director found that the applicant had been unlawfully present in the United States for more than a year and is therefore inadmissible under section 212(a)(9)(B)(i)(II) of the Act. The field office director also found the applicant inadmissible under section 212(a)(9)(A)(ii)(II) of the Act as an alien who has been ordered removed from the United States within the past ten years.

The applicant seeks a waiver of inadmissibility in order to reside in the United States with her husband and daughter. The field office director also found that the applicant had not established that failure to approve the waiver application would cause extreme hardship to his U.S. citizen spouse, and denied the application. On appeal, the applicant's wife asserted that to deny the waiver application would cause her extreme hardship.

Section 212(a)(9)(B)(i) of the Act provides:

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 (whether or not pursuant to section 1254a(e) of this title) prior to the commencement of proceedings under section 1225(b)(1) or section 1229(a) of this title, and again seeks admission within 3 years of the date of such alien's departure or removal, or

(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.

Section 212(a)(9)(A)(ii) of the Act states, in pertinent part,

... Any alien ... who-

(I) has been ordered removed under section 240 or any other provision of law, or

(II) departed the United States while an order of removal was outstanding, and seeks admission within 10 years of the date of such alien's departure or removal (or within 20 years of such date in the

case of a second or subsequent removal or at any time in the case of an alien convicted of an aggravated felony) is inadmissible.

(iii) Exception.- Clauses (i) and (ii) shall not apply to an alien seeking admission within a period if, prior to the date of the alien's reembarkation at a place outside the United States or attempt to be admitted from foreign continuous territory, the Attorney General [now, Secretary, Department of Homeland Security] has consented to the alien's reapplying for admission.

The record shows that the applicant entered the United States without inspection on or about October 1, 1999. The applicant was apprehended in illegal status on October 1, 2003. On October 23, 2003 he was found to be inadmissible and was granted voluntary departure. On January 17, 2004 the applicant voluntarily departed the United States. The record does not demonstrate that the applicant ever attained any legal status in the United States.

On appeal, the applicant did not appear to dispute the finding that he was unlawfully present in the United States for more than one year and is inadmissible. He also did not appear to contest that, as the record demonstrates, he left the United States on January 14, 2004 pursuant to a grant of voluntary departure.

Contrary to the field office director's finding, the applicant does not appear to be inadmissible pursuant to section 212(a)(9)(A)(ii) of the Act, as he was never ordered removed from the United States. The decision of the field office director is withdrawn as to that finding.

The AAO finds, however, that the applicant is inadmissible pursuant to section 212(a)(9)(B)(i)(II) of the Act for having been unlawfully present in the United States for more than a year. The remainder of this decision will address whether waiver of the applicant's inadmissibility is available, and, if so, whether waiver of inadmissibility should be granted.

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

The Attorney General [now Secretary of Homeland Security] 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 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.

A waiver of inadmissibility under section 212(a)(9)(B)(v) of the Act is dependent upon a showing that the bar to admission imposes an extreme hardship on a qualifying relative, *i.e.*, the U.S. citizen or lawfully resident spouse or parent of the applicant. Hardship to the applicant or his children is not directly relevant under the statute and will be considered only insofar as it results in hardship to a qualifying relative in the application. The applicant's wife is the only qualifying relative in this case. If extreme hardship to a qualifying relative is established, the Secretary then assesses whether an exercise of discretion is warranted. *See Matter of Mendez-Morales*, 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 set forth a nonexclusive list of factors relevant to determining whether an alien has established extreme hardship to a qualifying relative. These factors include, with respect to the qualifying relative, the presence of family ties to U.S. 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. The BIA has held:

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).

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 record contains a letter, dated July 10, 2007, from the applicant’s wife. In it, she stated that she and the applicant have two children together. She further stated,

It would be a great help and a significant lightening of my family’s burden if my husband, [REDACTED] would be allowed back in the United States to work and support his children and me.

That letter does not otherwise address any hardship that failure to approve the waiver application would cause to the applicant’s wife.

The record contains another letter from the applicant’s wife, which is undated. Although the meaning of some portions of the letter are not completely clear, the applicant’s wife stated that she was raised principally in the United States, and that the denial of the waiver application affected her mentally and emotionally and caused her to require hospitalization. She did not elaborate further on her mental and emotional condition and provided no evidence to corroborate her condition or her claim that she had received treatment for it. She concludes that the decision of denial places too much hardship on her and her children.

To demonstrate that the applicant’s absence would cause extreme hardship to his wife, the applicant must show that, if he is absent from the United States and his wife moves to the United States to

live,¹ with or without their children, she will suffer extreme hardship. The applicant must also demonstrate that if he is unable to return to the United States and his wife continues to live in Yemen with him, that will cause her extreme hardship. The AAO will first consider the scenario of the applicant remaining in Yemen and his wife returning to the United States.

In her undated letter, the applicant's wife appeared to claim mental and emotional hardship as a result of living in Yemen. She did not assert that she would suffer mental and emotional hardship by living without her husband in the United States. Further, the applicant's wife indicated, in her July 10, 2007 letter, that her father lives in Fresno, California, has ten children, and provided her with financial and other assistance when she came to the United States to bear her children. He or the applicant's wife's siblings, if any live in the United States, may be able to render additional assistance if she comes to the United States to live. This possibility was not discussed.

Separation from one's spouse is, by its very nature, a hardship. The point made in this and prior decisions on this matter, however, is that the law requires that, in order to meet the "extreme hardship" standard, hardship must be greater than the normal, expected hardship involved in such cases. The record contains no evidence that, by living in the United States with her children but without the applicant, the applicant's wife would be exposed to hardship greater than what one would typically expect in a case where inadmissibility of a spouse causes spousal separation. The evidence in the record does not demonstrate that, if the applicant remains in Yemen and his wife and children move to the United States to live, she will suffer emotional or psychological hardship which, when considered together with the other hardship factors in this case, will rise to the level of extreme hardship.

The applicant's wife stated, in her July 10, 2007 letter, that the return of the applicant to the United States would significantly lighten her family's financial burden. She provided no further financial information. The record does not demonstrate that she and the applicant ever earned any income when they were in the United States. The record does not contain any estimate of the obligations the applicant's wife would incur by living in the United States. The only other evidence in the record pertinent to finances is the applicant's wife's statement that while she was in the United States bearing her children her father supported her. The record contains no indication that the applicant's wife's father or other family members would be unable to provide her with additional assistance if she returned to the United States. The record does not demonstrate that, if the applicant's wife returns to the United States, with her children but without the applicant, she will suffer financial hardship which, when considered together with the other hardship factors in this case, will rise to the level of extreme hardship.

The evidence in the record does not demonstrate that, if the applicant's wife returns to the United States with her children but without the applicant, the various hardship factors in this case, considered together, would cause her extreme hardship.

¹ The record shows that the applicant's wife is currently living in Yemen with the applicant, and apparently with their children.

The remaining scenario to consider is that of the applicant, his wife, and their children remaining in Yemen. The applicant's wife appeared to assert that she is currently suffering such mental and emotional distress from living in Yemen that she has required hospitalization. However, as was noted above, she provided no description of her condition and no corroborating evidence either of her condition or of its treatment.

Although the statements by the applicant's wife are relevant and have been taken into consideration, little weight can be accorded them in the absence of supporting evidence. An unsupported statement is insufficient to sustain 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)).

The evidence does not demonstrate that, if the applicant, his wife, and their children remain in Yemen, she will suffer mental and emotional hardship which, when considered together with the other hardship factors in this case, will rise to the level of extreme hardship. The record contains no evidence, nor even any assertions, pertinent to any other hardship the applicant's wife might suffer as a result of living in Yemen with the applicant and their children. Therefore, the evidence in the record does not demonstrate that, if the applicant, his wife, and their children remain in Yemen, the applicant's wife will suffer extreme hardship.

The record, reviewed in its entirety and in light of the *Cervantes-Gonzalez* factors, cited above, does not support a finding that the applicant's wife faces extreme hardship if the applicant's waiver application is not granted. Rather, the record suggests that she will face no greater hardship than the unfortunate, but expected, disruptions, inconveniences, and difficulties that typically arise when a spouse is inadmissible to the United States.

Although the depth of concern and anxiety over the applicant's immigration status is neither doubted nor minimized, the fact remains that Congress provided for a waiver of inadmissibility only under limited circumstances. In nearly every qualifying relationship, whether between husband and wife or parent and child, there is affection and a certain amount of emotional and social interdependence. While, in common parlance, separation or relocation nearly always results in considerable hardship to individuals and families, in specifically limiting the availability of a waiver of inadmissibility to cases of "extreme hardship," Congress made clear that it did not intend that a waiver be granted in every case where a qualifying relationship, and thus the familial and emotional bonds, exist.

U.S. court decisions have repeatedly held that the common results of removal are insufficient to prove extreme hardship. *See Hassan v. INS*, 927 F.2d 465, 468 (9th Cir. 1991), *Perez v. INS*, 96 F.3d 390 (9th Cir. 1996); *Matter of Pilch*, 21 I&N Dec. 627 (BIA 1996) (holding that emotional hardship caused by severing family and community ties is a common result of deportation and does not constitute extreme hardship); *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). "[O]nly in cases of great actual or prospective injury . . . will the bar be removed." *Matter of Ngai*, 19 I&N Dec. 245, 246 (BIA 1984). Further, demonstrated financial difficulties alone are generally

insufficient to establish extreme hardship. *See INS v. Jong Ha Wang*, 450 U.S. 139 (1981) (upholding BIA finding that economic detriment alone is insufficient to establish extreme hardship).

The AAO therefore finds that the applicant failed to establish extreme hardship to his U.S. citizen spouse as required under INA § 212(a)(9)(B)(v), 8 U.S.C. § 1186(a)(9)(B)(v) and that waiver is therefore unavailable. The AAO need not, therefore, consider whether this is an appropriate case in which to exercise its discretion to grant a waiver.

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 rests with the applicant. INA § 291, 8 U.S.C. § 1361. Here, the applicant has not met that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.