



U.S. Citizenship
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FILE: [REDACTED]

Office: SAN FRANCISCO, CA

Date: **APR 01 2005**

IN RE: [REDACTED]

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

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.

Robert P. Wiemann, Director
Administrative Appeals Office

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

The applicant is a native and citizen of Yemen who was determined 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. The applicant married a citizen of the United States on October 18, 1997 and is the beneficiary of an approved Petition for Alien Relative (Form I-130). He 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 his spouse and children.

The district director concluded that the applicant had failed to establish that extreme hardship would be imposed on a qualifying relative and denied the Application for Waiver of Grounds of Excludability (Form I-601) accordingly. *Decision of the District Director*, dated May 25, 2002.

On appeal, counsel states that the adjudicating officer erred by applying the incorrect standard of law. Counsel contends that the officer failed to consider the impact of losing the family business and failed to consider hardship to the applicant's children as required. *Form I-290B*, dated June 27, 2002.

In support of these assertions, the applicant's spouse submits a brief, dated July 24, 2002; a physician's letter confirming the pregnancy of the applicant's spouse and a letter from an Imam regarding Islamic custom. The entire record was reviewed and considered in rendering a decision.

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 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 the present application, the record indicates that the applicant entered the United States with a valid visitor visa on April 7, 1990. On February 11, 2000, the applicant filed an Application to Register Permanent Residence or Adjust Status (Form I-485). On February 22, 2000, the applicant was issued Authorization for Parole of an Alien into the United States (Form I-512) and subsequently used the advance parole authorization to depart and reenter the United States.

The proper filing of an affirmative application for adjustment of status has been designated by the Attorney General [Secretary] as a period of stay for purposes of determining bars to admission under section 212(a)(9)(B)(i)(I) and (II) of the Act. *See Memorandum by Johnny N. Williams, Executive Associate Commissioner, Office of Field Operations dated June 12, 2002.* The applicant accrued unlawful presence from April 1, 1997, the date of enactment of unlawful presence provisions under the Act, until February 11, 2000, the date of his proper filing of the Form I-485 application. 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 one year or more. Pursuant to section 212(a)(9)(B)(i)(II), the applicant was barred from again seeking admission within ten years of the date of his departure.

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 himself experiences upon deportation is irrelevant to section 212(a)(9)(B)(v) waiver proceedings; the only relevant hardship in the present case is that suffered by the applicant's spouse. 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 AAO acknowledges counsel's assertion that the instant case must be analyzed pursuant to the Ninth Circuit's decision in *Tukhowinich v. INS*, 64 F.3d 460 (9th Cir. 1995). The AAO notes that *Tukhowinich* was a suspension of deportation case. Although waiver proceedings pursuant to section 212(a)(9)(B)(v) of the Act and suspension of deportation proceedings pursuant to section 244 of the Act share consideration under a standard of extreme hardship, they differ in a significant respect; the language of section 244 of the Act expressly provides for consideration of extreme hardship imposed on the alien himself or herself as well as extreme hardship imposed on the child(ren) of the applicant. *See* 8 U.S.C. § 1254(a)(1). *See also Tukhowinich*, 64 F.3d at 462. Section 212(a)(9)(B)(v) of the Act considers only hardship imposed on the U.S. citizen or lawfully resident spouse or parent of the applicant. The assertions of counsel fail to recognize this distinction and are therefore unpersuasive. Counsel's assertions of hardship imposed on the applicant's children are considered only in so far as they impact the hardship suffered by the applicant's spouse.

Matter of Cervantes-Gonzalez, 22 I&N Dec. 560 (BIA 1999) provides a list of factors the Board of Immigration Appeals deems relevant in determining whether an alien has established extreme hardship pursuant to section 212(i) of 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.

Counsel contends that the applicant's spouse is unable to work in the absence of the applicant owing to a religious bar that prohibits a married woman from being employed near other men or, in fact, working at all. *Appellant's Opening Brief*, dated July 24, 2002. Counsel submits a letter from an [REDACTED] attesting to the fact that Islam prohibits a woman from working as a sales person in a grocery store when her husband is not present. *Letter from Salah Nasser AlAbbadi, Imam*, dated June 25, 2002. The AAO notes that the submitted letter confines its comments to a situation in which the applicant's spouse would be selling alcoholic beverages and/or working in a grocery store. The record fails to establish that the applicant's spouse is prohibited from working entirely as contended by counsel. The AAO notes that the initial letter of hardship submitted by the applicant's spouse fails to mention a religious bar to her employment, merely stating that she is not employed. *Statement of Hardship*, dated October 31, 2001. Although counsel contends that the applicant's spouse will be unable to continue the family business in the absence of the applicant, the record fails to demonstrate that the applicant and his spouse are unable to hire a manager to operate their business and/or are unable to sell their business for profit in an effort to sustain their family financially. The applicant's spouse indicates that the applicant has no prospects for employment in Yemen, however, the record fails to offer documentation substantiating this assertion. *Id.* at 2.

Counsel contends that the applicant's spouse would suffer hardship as a result of relocation to Yemen in order to remain with the applicant as she has no relatives there. *Appellant's Opening Brief* at 2. The AAO notes that the record fails to substantiate the hardship suffered by the applicant's spouse as a result of relocation to Yemen beyond this statement. As a U.S. citizen, the applicant's spouse is not required to reside outside of the United States as a result of denial of the applicant's waiver request. The AAO notes, however, that the hardship asserted in the record appears to center on separation of the family and fails to establish that relocation to Yemen in order to keep the family together would impose extreme hardship on the applicant's spouse.

U.S. 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, *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. *Hassan v. INS*, *supra*, 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. Moreover, the AAO notes that the U.S. Supreme Court held in *INS v. Jong Ha Wang*, 450 U.S. 139 (1981), that the mere showing of economic detriment to qualifying family members is insufficient to warrant a finding of extreme hardship. The AAO recognizes that the applicant's spouse would endure hardship as a result of separation from the applicant. However, her situation, based on the record, is typical to individuals separated as a result of deportation or exclusion and does not rise to the level of extreme hardship.