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U.S. Department of Homeland Security
20 Mass, Rm. A3042, 425 1 Street, N.W.
Washington, DC 20529



U.S. Citizenship
and Immigration
Services

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FILE:

[REDACTED]

Office:

SEOUL

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Date: JAN 31 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:

[REDACTED]

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.

Handwritten signature of Robert P. Wiemann in cursive.

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Officer in Charge (OIC) Seoul, Korea. 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 the United Kingdom who 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 readmission within 10 years of his last departure from the United States. The applicant is married to a citizen of the United States and seeks a waiver of inadmissibility in order to reside in the United States with his wife.

The OIC found that based on the evidence in the record, the applicant had failed to establish extreme hardship to his U.S. citizen spouse. The application was denied accordingly. *Decision of the Officer in Charge*, dated May 13, 2003.¹

On appeal, counsel asserts that the OIC failed to consider all relevant factors and equities, and abused his discretion in denying the application. *See Brief in Support of Appeal*, dated August 5, 2003. The brief details the factors which counsel believes demonstrate the applicant's showing of extreme hardship to his U.S. citizen spouse. The brief emphasizes the hardship that the applicant's wife has and would continue to endure based on having to assist her mother with the care of the wife's aging and ill father and grandmother in the United States, and alternatively the hardship she would endure if required to separate from her parents in order to join her husband abroad. The entire record was reviewed and considered in rendering a decision on the appeal.

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

¹ The record reflects that the OIC had also issued a Notice of Intent to Deny on March 28, 2003 to which, it appears, no response was provided.

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 case, the record indicates that the applicant last entered the United States on April 28, 1994 pursuant to the Visa Waiver program. He was authorized to remain in the United States for a period of 90 days, or until July 27, 1994. He overstayed his period of authorized stay, and was ordered deported from the United States by the District Director, and deported on December 5, 2000. The applicant and his wife were married on January 23, 2001, in the United Kingdom. The record reflects that the applicant and his wife subsequently filed a Petition for Alien Relative (Form I-130) and an application for Permission to Reapply for Admission Into the United States After Deportation or Removal (Form I-212) in order for the applicant to be able to return to the United States to join his wife. The Form I-130 petition was approved on February 21, 2002. However, the Form I-212 was denied by the Nebraska Service Center in a decision dated February 26, 2002. *See Decision of the Director, Nebraska Service Center*, dated February 26, 2002. The Director's decision advised the applicant that he could appeal the denial of the I-212 to the AAO within 30 days from service of the decision. However, no appeal was filed. However, subsequent to the denial of the I-212, a second Form I-212 was filed, which has not been adjudicated pending the ultimate decision on the Application for a Waiver of Inadmissibility (Form I-601) which was filed on December 20, 2002, the denial of which is the subject of the instant appeal before the AAO.

In applying to be admitted as an immigrant, the applicant is seeking admission within 10 years of his December 5, 2000, removal from the United States. The applicant is, therefore, inadmissible to the United States under section 212(a)(9)(B)(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 himself 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).

Matter of Cervantes-Gonzalez, 22 I&N Dec. 560 (BIA 1999) provides a list of factors the Board of Immigration Appeals (BIA) 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 asserts that the applicant's spouse has experienced extreme hardship due to her separation from the applicant, and would face extreme hardship were she to decide to join her husband abroad. *Counsel's Brief in*

Support of Appeal, dated August 5, 2003. The AAO will address each of these claims, noting the various factors contributing to extreme hardship that have been offered in support of the waiver request.

The primary contention on appeal is that the evidence has “established that exceptional hardships would befall his United States citizen wife” and that the hardships satisfy the requirements for a waiver of inadmissibility, and thus the denial of the waiver was an abuse of discretion. *See Counsel’s Brief in Support of Appeal*, at p. 4. The evidence in the record supporting the claim of extreme hardship consists of the following: 1) two statements submitted by the applicant’s spouse, dated February 24, 2003, and April 8, 2002; 2) a statement from the applicant dated December 20, 2002; 3) a letter from the spouse’s parents describing their relationship with their daughter and noting the support she provides them; 3) letters from several medical doctors describing the medical problems of the father of the applicant’s spouse; 4) various letters in support of the application which describe the close relationship of the applicant’s spouse to her family, including the supportive role she has played in helping to care for her father and, before her death, her grandmother. The evidence is offered to support the applicant’s claim that his U.S. citizen spouse requires his emotional support and presence in the United States, and that such support is critical to enabling her to provide assistance to her family. Alternatively, the assertion is that and alternatively, that if she were to leave the United States in order to reside with him, that she would be unable to assist her parents and would suffer emotional hardship. The AAO will address each of the claims in turn and notes that the entire record was reviewed and considered in rendering a decision on the appeal.

The claimed hardship to the applicant’s U.S. citizen spouse stems from her relationship to her parents and the extent to which she provides for their support. The record reflects that the applicant’s spouse is a thirty-six-year-old who resides in Denver, Colorado, and works in human resources/staffing for a Denver area hospital. Her parents, who also reside in the Denver, live nearby. Her father is a retired minister, and her mother works as a nurse practitioner caring for patients and traveling as a conference speaker. According to the statements in the record, the applicant’s spouse met the applicant when they were both enrolled as students at a university in Nebraska. They reunited several years later, had planned to marry, but those plans were interrupted by his deportation from the United States. Desiring to fulfill their marriage plans, the couple married in Scotland in January of 2000, one month after his removal from the United States. The applicant’s spouse then returned to the United States. According to her statement, she anticipated joining her husband abroad within two months, but upon returning to Colorado learned that her father had been diagnosed with Adult-Onset Hydrocephalus. *See Statement of Megan Devlin*, dated April 8, 2002. The statement notes that it was necessary for her father to have surgery in order to drain fluid from his brain. Consequently, the couple agreed that she needed to remain with her family instead of joining the applicant abroad.²

Following her decision to remain in the United States, the applicant’s spouse changed jobs taking a position closer to her parents, and bought a condominium two blocks from her family’s home. According to the spouse, she began to assist her mother in caring for her father, by taking him to doctor appointments, and

² The AAO notes what appears to be a puzzling contradiction in the statements provided by the applicant’s spouse and her parents. The spouse’s statement indicates that her father was diagnosed with his illness after the couple’s marriage in January of 2001. *See Statement of Megan Devlin*, dated April 8, 2002. However, the statement of the parents indicates that the father’s condition was discovered prior to the marriage, and asserts that the applicant (who the record reflects was deported in early December 2000) was present in the United States assisting his wife in supporting them during the early stages of the father’s illness. *See Statement of David and Cecilia Huffnagle*, dated April 10, 2001. The physician letters in the record indicate that medical treatment was begun in late January 31, 2001. *See Letter from Antonio J. Wood, M.D.*, dated April 11, 2002.

providing care for him when her mother is engaged in business travel, including ensuring that he takes medication, and occasionally staying with him at the house. The spouse's 2002 statement also indicated that she assisted with the care of her elderly grandmother, although it appears that the grandmother was living in a close-by nursing home, therefore, the spouse's support was more in the nature of emotional and social support. It appears, from the spouse's subsequent statement from 2003, that her grandmother has passed away. *See Statement of Megan Devlin*, dated February 24, 2003. While this is regrettable, one effect of the grandmother's death is that the applicant's spouse no longer is required to care for her grandmother as well. The applicant's spouse expresses concern that without her assistance, her mother would become the sole provider and caregiver if she were to join her husband abroad. She is concerned that this would require her mother to retire from her career which would greatly affect the family's financial resources. In terms of the father's medical condition, the record contains letters from three medical doctors who have treated him for matters related to his hydrocephalus. The first letter, from Dr. Stephen H. Shogan, a neurosurgeon, is dated April 5, 2002, and indicates that the spouse's father was treated in April 2001, and again in January 2002. A second letter, from Dr. Antonio Wood, indicates that he has treated the spouse's father since January 31, 2001, for complications from the hydrocephalus. The third letter is from Dr. Ryan Kramer, a family physician, who has treated the father since September 17, 2001, stemming from a car accident, which the doctor attributes to the hydrocephalus. All of the physician letters verify that the father's condition has resulted in various impairments, and have led him to be dependent in many ways on his family members. The letters also note that the applicant's spouse has assisted her mother in caring for the father. They all view her contributions as positive and support having the daughter remain in the United States and, in at least one case, note that the family would suffer additional stress should the applicant's spouse leave the United States to join her husband, affirming that the applicant is torn between her love for and responsibilities toward her husband and her parents.³

The AAO acknowledges that the evidence supports the existence of a close family relationship between the applicant's spouse and her parents. Furthermore, the AAO is persuaded that the applicant's spouse's father and mother would have benefited from the assistance that the spouse has provided them. Nevertheless, the weight of the evidence in support of the application in actuality reflect the hardships being experienced by the spouse's parents which would be exacerbated by a possible separation from their daughter, rather than hardships that relate to the applicant's spouse. Were it a situation where it was the applicant's parents who had experienced the medical difficulties, then the AAO would be in a position to consider the hardships they would suffer as a result of the separation from the applicant and his spouse as relevant because they would be qualifying relatives for purposes of the waiver. However, the hardship that the applicant's in-laws would experience is not contemplated by the statute. Rather, the qualifying relative in this instance is the applicant's spouse, and while her father has suffered from illness, she, herself does not suffer from any illness or disability for which it is necessary for her to remain the United States for the purpose of receiving treatment or other assistance not otherwise available to her. This is not to say that the situation of the spouse's parents does not create additional stress for her, or that her husband's presence would not provide her with comfort or support. However, it is this stress and its effect upon her, rather than the difficulties experienced by her parents, which is relevant. It appears that the spouse has taken reasonable measures such as changing jobs and relocating, to minimize, as much as possible, the negative impact upon her life while being available to

³ The record contains several other letters from health care workers and one other medical doctor, who being a gynecologist/obstetrician, is likely the mother's physician or a professional colleague. In general, however, all of the health care workers support the waiver application noting the close relationship between the applicant's spouse and her parents.

assist her parents as much as possible. Unquestionably, his presence in the United States would be beneficial to her as well. However, this does not mean that without her husband's presence, she would experience extreme hardship. While the family's situation is unfortunate, and is stressful for all involved, it involves the care of aging relatives whose health declines, a situation that is fairly common. There are no unique factors identified which make the spouse's situation especially compelling such that her situation constitutes hardship which is extreme and beyond hardship. At most, the spouse's statement indicates that her mother may have to obtain a new job in order to be more available to care for her spouse. This, while a hardship on her mother, is again, not hardship that directly affects the U.S. citizen spouse. In fact, such a development would actually serve to alleviate the spouse's hardship to some extent. Even if the applicant were in the United States, the citizen spouse's situation would not be markedly improved. She would still have parents who required her support, and would likely still be working and studying. It is likely that if the father's health deteriorates and he continues to require significant care that the applicant's spouse and her mother may have to adjust their situation in order to accommodate those needs. The AAO does not suggest that such adjustments would be easy and is aware that they would impose some hardship upon the family. However, it is likely that such accommodations may need to occur in any event, regardless of whether the applicant is in the United States.⁴ Thus, the failure to grant the waiver does not itself result in extreme hardship. Moreover, the record does not contain evidence of the degree to which the applicant's contributions would alleviate the existing hardship, or any additional unknown hardship that might accrue. Finally, and most significantly, to the extent that the applicant's extreme hardship is caused by her anxiety at being unable to assist her parents, she can avoid such hardship by maintaining the status quo and remaining in the United States with them.

The AAO believes that the primary claim being made is that the applicant's spouse lacks the emotional support that the applicant could offer to her while she seeks to assist her parents and that being separated from him constitutes extreme hardship. The various statements support the fact that the applicant would be aided by the applicant's emotional support. However, 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. The AAO recognizes that the applicant's wife will endure hardship as a result of separation from the applicant. The AAO presumes that the applicant and his spouse have continued to keep in touch despite the fact that they have been separated, and it is reasonable to assume that he will continue to provide her with emotional support. However, it also appears possible that during the period of their separation, the couple could arrange to periodically spend time together in other locations outside of the

⁴ In addition, the record is devoid of any evidence of financial hardship being experienced by the U.S. citizen spouse. The AAO notes that the record reflects that the applicant's spouse is employed and appears financially qualified enough to have purchased a home close to her parents. The record contains no evidence on the degree, if any, of the applicant's financial contributions to the applicant or her parents. As far as the AAO can detect, there has not been an adverse financial effect upon the applicant's spouse resulting from his inability to reside with her in the United States. Assuming even that she would, or has suffered financial hardship, no evidence has been offered.

United States. Nevertheless, even if they are not able to do so, their situation is typical to individuals separated as a result of deportation or exclusion and does not rise to the level 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 under section 212(a)(9)(B) of the Act, 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.