



U.S. Citizenship  
and Immigration  
Services

H3

FILE:



Office: FRANKFURT, GERMANY

Date:

IN RE:



MAR 15 2005

APPLICATION:

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

ON BEHALF OF APPLICANT:

PUBLIC COPY

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.

Robert P. Wiemann, Director  
Administrative Appeals Office

**DISCUSSION:** The waiver application was denied by the Officer in Charge, Frankfurt, Germany and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native of the Former Yugoslav Republic of Macedonia and a citizen of Switzerland who was found to be inadmissible to the United States pursuant to § 212(a)(9)(B)(i)(I) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(9)(B)(i)(I), for having been unlawfully present in the United States for more than 180 days. The applicant is married to a U.S. citizen and is the beneficiary of an approved petition for alien fiancée. She seeks a waiver of inadmissibility in order to reside in the United States with her husband.

The officer in charge found that, based on the evidence in the record, the applicant had failed to establish extreme hardship to her U.S. citizen spouse. The application was denied accordingly. On appeal, the applicant's husband states that he is in great distress, because it was necessary to take their U.S. citizen daughter to Switzerland to live with the applicant. The applicant's husband explained that the applicant overstayed her permission to remain in the United States because she was pregnant with their first child, and her doctor advised her not to travel. The applicant's husband also noted that the applicant was pregnant with their second child as of the date of his letter (February 7, 2004), and it is presumed that she has given birth since then. The applicant's husband states that he cannot leave the United States to join the applicant in Switzerland due to his job responsibilities.

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-

(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 . . . prior to the commencement of proceedings under section 235(b)(1) or section 240, and again seeks admission within 3 years of the date of such alien's departure or removal, . . . is inadmissible.

....

(v) Waiver. - The Attorney General [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 on March 9, 2002 under the Visa Waiver Program. She was granted permission to remain until June 8, 2002, but she remained in the United States until April 2, 2003. The applicant is, therefore, inadmissible to the United States under

§ 212(a)(9)(B)(i)(I) of the Act for being unlawfully present in the United States for a period of more than 180 days. Pursuant to § 212(a)(9)(B)(i)(I), the applicant is barred from again seeking admission within three years of the date of her departure.

A § 212(a)(9)(B)(v) waiver of the bar to admission resulting from § 212(a)(9)(B)(i)(I) 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 or her children experience upon deportation is irrelevant to § 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 deems relevant in determining whether an alien has established extreme hardship pursuant to § 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.

The applicant's husband maintains that the applicant overstayed her permission due to medical advice, since she was in her last trimester of her pregnancy. This factor, however, is not a consideration in these proceedings. It appears that the type of hardship the applicant's husband suffers due to the applicant's inadmissibility is emotional. There is no evidence on the record that his distress can be considered beyond that which is usually experienced in similar situations. There is no medical evidence that his emotional stress is causing him to become incapacitated, unable to care for himself, or at risk of harming himself. The AAO notes that the applicant will be eligible to apply for admission to the United States in April 2006.

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 husband endures emotional hardship as a result of separation from the applicant. However, his situation is typical to individuals separated as a result of removal 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 she merits a waiver as a matter of discretion.

In proceedings for application for waiver of grounds of inadmissibility under § 212(a)(9)(B) of the Act, the burden of proving eligibility remains entirely with the applicant. *See* § 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.