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U.S. Citizenship
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FILE:

Office: FRANKFURT, GERMANY

Date:

DEC 15 2006

IN RE:

APPLICATION:

Application for Waiver of Grounds of Inadmissibility under Section 212(a)(9)(B)(v) of the Immigration and Nationality Act (the 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.

A handwritten signature in black ink, appearing to read "Robert P. Wiemann".

Robert P. Wiemann, Chief
Administrative Appeals Office

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

The applicant, [REDACTED] is a native of Senegal and citizen of Germany, who entered the United States under the Visa Waiver Program on June 11, 2002, with authorization to stay until September 10, 2002. He remained and lived in the United States in unlawful status until he was removed on November 22, 2003. He subsequently applied for an immigrant visa at the U.S. Embassy in Frankfurt. The applicant 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, departing, and seeking readmission within 10 years of his last departure. The applicant 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 join his U.S. citizen (USC) wife, [REDACTED] in the United States.

The record reflects that [REDACTED] entered the United States on the Visa Waiver Program on June 11, 2002, with authorization to stay until September 10, 2002. He resided in unlawful status in the United States until his removal on November 22, 2003. As a result of this unlawful presence, the OIC found him to be inadmissible to the United States. *OIC's Decision*, dated April 15, 2005. The OIC also found that the applicant failed to establish that extreme hardship would be imposed on a qualifying relative and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601). *Id.*

On appeal, counsel asserts that [REDACTED] wife will suffer extreme hardship if his Form I-601 is denied. *Letter, not dated accompanying the Form I-290B.* In addition to this letter, the record includes the following: a hardship statement from [REDACTED], not dated; [REDACTED] U.S. birth certificate; school records relating to her USC son, [REDACTED] and documents relating to [REDACTED] job as a pharmacist and the business she plans to launch in the near future, an African-themed children's camp. The AAO reviewed the record in its entirety before reaching its 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.

A section 212(a)(9)(B)(v) waiver of inadmissibility is dependent upon a showing that the bar to admission imposes an extreme hardship on the U.S. citizen or lawfully resident spouse or parent of the applicant. Direct hardship the applicant himself and his USC stepchild experience upon denial of admission is not considered in section 212(a)(9)(B)(v) waiver proceedings. Thus, hardship suffered by them will be considered only insofar as it results in hardship to [REDACTED].

If extreme hardship to a qualifying relative is established, the Secretary then assesses whether an exercise of discretion is warranted. Section 212(i) of the Act; *see also* [REDACTED] 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. [REDACTED] 22 I&N Dec. 560, 565 (BIA 1999). In [REDACTED] the Board of Immigration Appeals set forth a list of non-exclusive factors relevant to determining whether an applicant has established extreme hardship to a qualifying relative pursuant to section 212(i) of the Act. 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.

"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).

[REDACTED] asserts that her son's emotional and behavioral problems improved when [REDACTED] entered their lives and has deteriorated since he left. As mentioned above, direct hardship to an applicant's child is not considered in waiver proceedings under section 212(a)(9)(B)(v) of the Act. However, all instances of hardship to qualifying relatives must be considered in the aggregate. As counsel correctly suggests, hardship to a family unit or non-qualifying family member should be considered to the extent that it has an impact on qualifying family members. When a qualifying relative is alone in the United States while the other parent is in the home country caring for the child, it is reasonable to expect that the child's emotional state due to separation from that parent will have a significant impact on the qualifying relative. Yet counsel has not established that the applicant's wife has experienced consequences that are sufficiently different or more severe than those commonly experienced by families who are separated as a result of inadmissibility.

[REDACTED] asserts that she cannot relocate to join her spouse because she has a job as a pharmacist and would have to be recertified in a new country if she moved. Additionally, she asserts that she is planning to launch a business in the near future that she cannot abandon. The documentation she submits confirms that she works as a pharmacist and that she is planning to start an African-themed children's camp. She has not provided documents to establish that moving to a new country and having to be recertified as a pharmacist would result in extreme hardship to her or that being unable to go forward with plans for her camp in order to avoid separation from her husband would result in extreme hardship to her. Going on record without supporting documentary evidence is not sufficient for purposes of meeting 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 record, reviewed in its entirety and in light of the [REDACTED] factors, cited above, does not support a finding that [REDACTED] spouse faces extreme hardship if [REDACTED] is refused admission. The applicant's spouse explains that her mother is in the United States, implying that she would be deprived of her support and companionship should she relocate to join [REDACTED]. If the applicant's waiver application is denied, the applicant will be placed in the position of choosing whether to live close to her family in the United States, or with the applicant in Germany. The AAO recognizes that the applicant's wife will endure hardship as a result of separation from the applicant or her family members. However, her situation is typical to individuals separated as a result of deportation or exclusion and does not rise to the level of extreme hardship based on the record. U.S. court decisions have repeatedly held that the common results of deportation or exclusion are insufficient to prove extreme hardship. See [REDACTED] (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, [REDACTED] 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. [REDACTED], held further that the uprooting of family and separation from friends does not necessarily amount to extreme hardship but rather represents the type of hardship experienced by the families of most aliens being deported.

Although his wife may suffer emotionally if separated from her spouse, she faces the same decision that confronts others in her situation – the decision whether to remain in the United States or relocate to avoid separation – and this does not amount to extreme hardship under the law as it exists today. Based on the existing record, the effect of separation on [REDACTED] wife, while difficult, does not rise above what individuals separated as a result of inadmissibility typically experience and does meet the legal standard established by Congress and subsequent case law interpreting the meaning of extreme hardship.

The AAO therefore finds that the applicant failed to establish extreme hardship to his U.S. citizen spouse as required under section 212(a)(9)(B)(v) of the Act, 8 U.S.C. § 1182(a)(9)(B)(v). 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)(v) 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.