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U.S. Citizenship  
and Immigration  
Services

H<sub>7</sub>

**PUBLIC COPY**



FILE: [REDACTED] Office: ROME, ITALY Date: JUL 27 2007

IN RE: Applicant: [REDACTED]

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

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

Robert P. Wiemann, Chief  
Administrative Appeals Office

**DISCUSSION:** The District Director, Rome, Italy, denied the Form I-601, Application for Waiver of Ground of Excludability under Section 212(a)(9)(B)(v) of the Immigration and Nationality Act (the Act), 8 U.S.C. §§ 1182(a)(9)(B)(v). The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The record reflects that the applicant is 26-year-old native and citizen of Bulgaria who was found inadmissible to the United States pursuant to section 212(a)(9)(B)(i)(II) of the Act. The record reflects that the applicant's spouse, [REDACTED] was born in Bulgaria on March 4, 1981 and became a naturalized U.S. citizen on September 3, 2004. The applicant and [REDACTED] were married on October 8, 2004. The applicant is the beneficiary of an approved Form I-130, Petition for Alien Relative, filed on her behalf by her spouse. The applicant had previously been admitted to the United States in the year 2000 based upon an approved Form I-129F, Petition for Alien Fiancé. Nevertheless, the applicant did not marry her intended fiancé, and remained in the United States unlawfully for about two years. She currently resides in Bulgaria with her two daughters. Her eldest daughter, born on December 15, 2001, is a U.S. citizen. The applicant seeks a waiver of inadmissibility in order to return to the United States.

The district director denied the waiver of inadmissibility, finding that the applicant had failed to establish extreme hardship to her U.S. citizen spouse.

On appeal, the applicant submits a letter signed by her spouse, as well as the birth certificate and a medical statement relating to her U.S. citizen daughter.

Section 212(a)(9) of the Act, 8 U.S.C. § 1182(a)(9), 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.

The district director found the applicant inadmissible on the basis of her unlawful presence in the United States. The record reflects, and the applicant admits, that she was admitted as an Alien Fiancée in the year 2000, that she did not marry her intended fiancé, but nevertheless remained in the United States until 2002. The applicant had thus been unlawfully present in the United States for a period of more than one year and is subject to a 10 year bar to admission. Accordingly, the AAO finds that the applicant is inadmissible as

charged. The question remains whether she is eligible for a waiver under section 212(a)(9)(B)(v) of the Act, 8 U.S.C. §§ 212(a)(9)(B)(v).

A waiver under section 212(a)(9)(B)(v) is dependent upon a showing that the bar to admission imposes an extreme hardship on a U.S. citizen or lawfully resident spouse or parent of the applicant. Hardship to the applicant herself is not a permissible consideration under the statute. Hardship to the applicant's U.S. citizen daughter is also not a permissible consideration under the statute.

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 list of non-exclusive 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).

The applicant's husband, [REDACTED], is a 26-year-old native of Bulgaria who became a naturalized U.S. citizen in September 2004. He was married to the applicant on October 8, 2004 in Bulgaria. The applicant and [REDACTED] have two daughters, one born in the United States in 2001 and another born in Bulgaria in 2003. [REDACTED] is self employed as an IT professional. *See* Extreme Hardship Letter from [REDACTED]. He owns a home, which he purchased in April 2004. *Id.* [REDACTED] claims his wife's inadmissibility creates hardship because his "family unit is broken" and because he has to "support two households." *See* Letter from [REDACTED] in support of Appeal. He further claims that his U.S. citizen daughter is ill and needs further medical attention. *Id.* [REDACTED] claims he will suffer a serious financial loss should he sell his home. *See* Extreme Hardship Letter from [REDACTED]. He also states that he would not be able to maintain his standard of living should he relocate to Bulgaria. *Id.* Alternatively, he claims the separation from his wife and daughters cause him extreme psychological hardship. *Id.*

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 husband faces extreme hardship if the applicant is refused admission. Rather, the record demonstrates that he will face no greater hardship than the unfortunate, but expected, disruptions, inconveniences, and difficulties arising whenever a spouse is refused admission or removed from the United States. Congress provided for a waiver of inadmissibility, but under limited circumstances. In limiting the availability of the waiver to cases of "extreme hardship," Congress did not intend that a waiver be granted in every case where a qualifying relationship exists. 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 (9<sup>th</sup> Cir. 1991); *Perez v. INS*, 96 F.3d 390 (9<sup>th</sup> 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). 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).

In this case, the record does not contain sufficient evidence to show that the hardship faced by the applicant's husband rises to the level of extreme. The AAO notes that the applicant's husband is well employed in a professional field in the United States. He recently purchased a home, without his wife's assistance.<sup>1</sup> The AAO notes that the applicant does not claim to suffer from any medical conditions. The applicant has made no claim or submitted any evidence regarding her husband's family or community ties in the United States. Although the applicant's husband is a native of Bulgaria, he is reluctant to relocate there. As a U.S. citizen, he is not required to reside outside of the United States as a result of denial of the applicant's waiver request. The AAO notes that the applicant's husband's concerns in this regard are common to other individuals facing similar circumstances, and do not rise to the level of "extreme hardship." *See Ramirez-Durazo v. INS*, 794 F.2d 491, 499 (9<sup>th</sup> Cir. 1986) (holding that "lower standard of living in Mexico and the difficulties of readjustment to that culture and environment . . . simply are not sufficient"). The AAO notes that the applicant's child has suffered from tonsillitis and bronchitis, and has been treated in Bulgaria. As a U.S. citizen, the applicant's child is entitled to travel to and from, and reside in the United States should the family so decide. As mentioned above, hardship to the applicant's U.S. citizen child is not a relevant consideration under the statute, except to the extent that it causes hardship upon the applicant's husband. The applicant has not established that her husband faces "extreme hardship" due to their child's or family's situation.

The AAO has considered the applicant's husband's hardship given his decision to remain in the United States and due to his separation from the applicant. While the AAO has carefully considered the impact of the separation resulting from the applicant's inadmissibility, a waiver is nevertheless not to be granted in every case where separation from a spouse is at issue. *See Shoostary v. INS*, 39 F.3d 1049 (9<sup>th</sup> Cir. 1994) (stating that "the extreme hardship requirement . . . was not enacted to insure that the family members of excludable aliens fulfill their dreams or continue in the lives which they currently enjoy. The uprooting of family, the separation from friends, and other normal processes of readjustment to one's home country after having spent a number of years in the United States are not considered extreme, but represent the type of inconvenience and hardship experienced by the families of most aliens in the respondent's circumstances"). Although the AAO acknowledges the applicant's husband's claims that he would experience hardship if he continues to be separated from his wife, the AAO finds that his hardship is typical for any person in his circumstances and does not rise to the level of "extreme" as required by the statute.

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<sup>1</sup> The AAO notes that the record contains a copy of the Deed to the applicant's husband's home, indicating that he purchased the home as an "unmarried man."

The AAO has evaluated the applicant's husband's hardship claims individually and in the aggregate. The AAO finds that the applicant failed to establish extreme hardship to her 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).

In proceedings for application for waiver of grounds of inadmissibility, the burden of proving eligibility rests 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.