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U.S. Citizenship  
and Immigration  
Services

H3

FILE:

Office: FRANKFURT, GERMANY Date: MAY 23 2007

IN RE:

Applicant:

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.

Robert P. Wiemann, Chief  
Administrative Appeals Office

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

The record reflects that the applicant is a native and citizen of Germany. 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. The record reflects that the applicant initially entered the United States on September 17, 1998, under the visa waiver program. The applicant did not depart the United States when her authorized stay expired on December 16, 1998. The applicant married a U.S. citizen on December 7, 1998, and she departed the United States voluntarily on September 19, 2003. The applicant became subject to section 212(a)(9)(B)(i)(II) of the Act unlawful presence inadmissibility provisions upon her departure from the United States. The applicant's husband filed a Form I-130, Petition for Alien Relative on the applicant's behalf on February 17, 2004. The Form I-130 was approved on October 5, 2004. The applicant presently seeks a waiver of inadmissibility under section 212(a)(9)(B)(v) of the Act, 8 U.S.C. § 1182(a)(9)(B)(v).

The officer in charge found the applicant had failed to establish that her husband would suffer extreme hardship if the applicant were denied admission into the United States. The applicant's Form I-601, Application for Waiver of Grounds of Inadmissibility (Form I-601 Application) was denied accordingly.

On appeal, the applicant asserts that her husband will suffer extreme financial, physical and emotional hardship if he moves to Germany with the applicant, or if he remains in the United States without her.

Section 212(a)(9)(B) of the Act provides, in pertinent part, that:

(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 Secretary, Department 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 record reflects that the applicant is married to a U.S. citizen. The applicant's husband is thus a qualifying family member for section 212(a)(9)(B)(v) of the Act extreme hardship purposes. The AAO notes that the applicant's son is not a U.S. citizen or U.S. lawful permanent resident. Moreover, a U.S. citizen or lawful permanent resident child is not included as a qualifying relative for section 212(a)(9)(B)(v) of the Act extreme

hardship purposes. The applicant's son is therefore not a qualifying relative for section 212(a)(9)(B)(v) purposes, and the hardship claims made with regard to her son shall not be considered.

In *Matter of Cervantes-Gonzalez*, 22 I&N Dec. 560, 565-66 (BIA 1999), the Board of Immigration Appeals (Board) provided a list of factors it deemed relevant in determining whether an alien has established extreme hardship to a qualifying relative. The 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 Board held in *Matter of Ige*, 20 I&N Dec. 880, 882, (BIA 1994), that, "relevant [hardship] factors, though not extreme in themselves, must be considered in the aggregate in determining whether extreme hardship exists."

"Extreme hardship" has been defined as hardship that is unusual or beyond that which would normally be expected upon deportation. See *Perez v. INS*, 96 F.3d 390 (9<sup>th</sup> Cir. 1996). Court decisions have repeatedly held that the common results of deportation or exclusion [now removal or inadmissibility] are insufficient to prove extreme hardship. See *Perez*, *supra*. See also, *Hassan v. INS*, 927 F.2d 465, 468 (9<sup>th</sup> Cir. 1991). 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. In *Matter of Pilch*, 21 I&N Dec. 627 (BIA 1996), the Board held that emotional hardship caused by severing family and community ties is a common result of deportation and does not constitute extreme hardship. The U.S. Ninth Circuit Court of Appeals held further in *Ramirez-Durazo v. INS*, 794 F.2d 491, 498 (9<sup>th</sup> Cir. 1986), that hardship involving a lower standard of living, difficulties of readjustment to a different culture and environment and reduced job opportunities, did not rise to the level of "extreme hardship."

The record contains the following evidence relating to the applicant's husband's [REDACTED] extreme hardship claim:

A December 14, 2005, letter written by the applicant stating in pertinent part that she and her husband miss each other, and that her husband must help her financially so that she and her son can afford to live without him in Germany.

A December 5, 2005, medical letter signed by [REDACTED] stating that [REDACTED] has been treated at the Affinity Medical Group clinic for anxiety, and that [REDACTED] takes medication for hypertension. The letter states that [REDACTED]: "has multiple cardiac workups for his hypertension and chest wall pain." The letter additionally states that [REDACTED] is "being treated for a rash, possibly secondary to anxiety episodes."

A July 26, 2005 letter from [REDACTED] stating in pertinent part that although he can support his family in the U.S., he cannot, in the long term, afford to financially support two households. The letter states further that he owns his home and vehicles in the U.S., that he has worked for the same employer in the U.S. for the last 20 years, and that it would be impossible for him to obtain gainful employment in Germany because he cannot speak, read, or write German fluently. In addition, [REDACTED] states that his separation from his wife and stepson has caused them all stress and emotional hardship.

The AAO finds that the cumulative evidence contained in the record fails to establish that if [REDACTED] remained in the U.S., he would suffer financial, physical or emotional hardship that goes beyond that ordinarily associated with removal. The medical letter contained in the record states that [REDACTED] has been treated at the Affinity Medical Group clinic for anxiety, and that [REDACTED] takes medicine for hypertension. The letter does not contain any information regarding the cause of [REDACTED]'s anxiety or hypertension, and the letter provides no information to establish when [REDACTED] began to suffer from the conditions, or to indicate that his conditions are the result of his wife and stepson's departure from the United States. The letter also does not indicate that [REDACTED]'s hypertension would improve if the applicant were in the United States. In addition, the letter does not describe the extent of [REDACTED]'s anxiety symptoms, or indicate how he has been treated for the symptoms, or the effect of any treatment. The record also lacks evidence to corroborate the assertion that [REDACTED] must support the applicant financially in Germany, or to establish the level of financial support he provides and that it is causing him extreme financial hardship. The AAO finds further that the record lacks evidence to corroborate the assertion that [REDACTED] has worked at the same company for twenty years, or that he owns a home and property. The AAO is therefore also unable to conclude that the applicant would lose his home, career and employment related benefits if he moved to Germany, or that he would otherwise suffer hardship beyond that normally associated with readjustment to a different culture and country.

A section 212(a)(9)(B)(v) of the Act waiver of inadmissibility is dependent first upon a showing that the bar to admission imposes an extreme hardship on a qualifying family member. If extreme hardship is established, the Secretary then assesses whether an exercise of discretion is warranted. Because the applicant failed to establish that her husband would suffer extreme hardship if her Form I-601 application is denied, the AAO finds it unnecessary to address whether discretion should be exercised in the present matter.

Section 291 of the Act, 8 U.S.C. § 1361, provides that the burden of proof is on the applicant to establish eligibility for the benefit sought. The applicant has failed to meet her burden of proof in the present matter. Accordingly, the appeal will be dismissed and the application denied.

**ORDER:** The appeal is dismissed. The application is denied.