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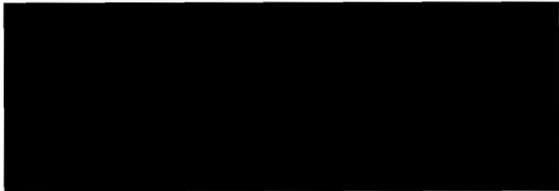


FILE: [REDACTED] Office: CALIFORNIA SERVICE CENTER Date: **AUG 12 2008**

IN RE: Applicant: [REDACTED]

APPLICATION: Application for Waiver of Grounds of Excludability 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:



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 Director, California Service Center, 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 a 43-year-old native and citizen of Israel who was found inadmissible to the United States pursuant to section 212(a)(9)(B)(i)(II) of the Act, 8 U.S.C. § 1182(a)(9)(B)(i)(II), for having been unlawfully present for more than one year. The applicant entered the United States as a B-2 Visitor for Pleasure in 1994 and overstayed. He triggered the unlawful presence bar when he departed and reentered the United States in 2003, 2004 and 2005. The applicant now seeks a waiver of inadmissibility in order to remain in the United States and adjust his status to lawful permanent resident. He maintains that denial of a waiver would result in extreme hardship to his U.S. citizen father.

The director found the applicant to be inadmissible and denied the waiver application. The director determined that the applicant had failed to establish that his father would face extreme hardship should the waiver be denied.

On appeal, the applicant, through counsel, maintains that his father would face extreme hardship should the waiver of inadmissibility be denied. Counsel states that the applicant was not advised of the consequences of departing the United States by his previous representative. The appeal is accompanied by an affidavit executed by the applicant's father and a letter from the applicant's father's physician.

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-

....

(I) has been unlawfully present in the United States for a period of more than 180 days but less than 1 years, voluntarily departed the United States ... and again seeks admission within 3 years of the date of such alien's departure ... is inadmissible.

(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 record indicates, and the applicant does not dispute, that the applicant was unlawfully present in the United States for a period of more than one year. The applicant began accruing unlawful presence on April 1, 1997 (the effective date of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996). The unlawful presence bar was triggered by the applicant's departure from the United States. The director's finding of inadmissibility is therefore affirmed. The applicant maintains that he departed the United States on advice of counsel. The AAO notes that the statute does not provide for a waiver of the unlawful presence bar on grounds of ineffective assistance of counsel. The issue before the AAO is limited to whether the applicant 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 himself or the applicant's children are not permissible considerations 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).

In support of his claim, the applicant submitted, in relevant part, an affidavit from his father and a letter from his father's physician. The record indicates that the applicant's father suffers from hypertension, high cholesterol, Parkinson's syndrome and senile dementia. According to the applicant's father's physician, he "must have a family member to supervise his conditions -24 hours a day." See Letter from [REDACTED]. The applicant maintains that his father resides with him, along with the applicant's wife and nine children. The applicant's father states that he has been unable to work since 1997. The Form I-864, Affidavit of Support, executed by the applicant's father indicates, however, that he retired in 2002. It further indicates that the applicant's father had an income of \$18,815 in 2004. In this regard, the AAO notes that the applicant's father's 2002-2004 income tax returns indicate that he is married and has a dependent son living with him.

The W-2 Forms indicate that his wife earned approximately \$18,000 per year.¹ The applicant claims that he cares for his father, and that his father is emotionally and financially dependent on him. The record does not contain any evidence regarding the applicant's father's wife or other son's whereabouts, or their ability to care for the applicant's father.

A careful review of the record in its entirety reflects that the applicant's father would face no greater hardship than the unfortunate, but expected disruptions, inconveniences, and difficulties faced by any other individual in his circumstances. 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 (9th Cir. 1991); *Perez v. INS*, 96 F.3d 390 (9th 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); *see also Ramirez-Durazo v. INS*, 794 F.2d 491, 499 (9th 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 the record is devoid of any evidence to suggest the applicant's father would face extreme hardship should he relocate to Israel. There is no evidence in the record to indicate that medical treatment for his conditions is unavailable there, or that he would otherwise experience hardship beyond the usual difficulties faced by any other individual in his situation. The AAO notes that, as a U.S. citizen, the applicant's father is not required to relocate. The AAO finds that should he remain in the United States, separated from his son, he would not experience extreme hardship either. As noted above, it appears that the applicant's father has other family in the United States who could care for him. While the AAO has carefully considered the impact of separation resulting from the applicant's inadmissibility, a waiver is nevertheless not to be granted in every case where possible separation from a spouse is at issue. *See Shooshtary v. INS*, 39 F.3d 1049 (9th 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"). In this case, the record does not contain evidence to show that the hardship faced by the applicant's father due to the separation from the applicant rises to the level of extreme. The AAO finds that the circumstances facing the applicant's father occur anytime a family is separated and do not rise to the level of "extreme" either individually, or in the aggregate.

The AAO therefore finds that the applicant failed to establish extreme hardship to his U.S. citizen father as

¹ The applicant's father states that he does not have any other relatives in the United States. *See* Affidavit by the Applicant's Father. The AAO notes, however, that in addition to his father's wife and son listed on the income tax returns, the applicant indicated on the Form I-601, Application for Waiver of Grounds of Inadmissibility, that he has three aunts residing in New York.

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 under section 212(i) of the Act, the burden of proving eligibility rests with the applicant. 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.