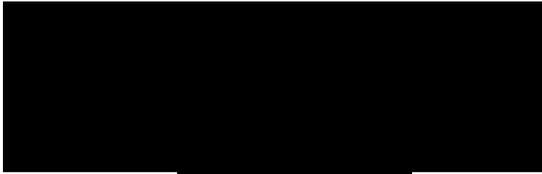


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Services

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H23

FILE:



Office: VIENNA, AUSTRIA

Date:

FEB 01 2006

IN RE:

Applicant:



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:

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 Officer in Charge, Vienna, Austria, 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). On October 9, 2007, the matter was rejected as untimely by the Administrative Appeals Office (AAO). The matter will be reopened *sua sponte* based on new information indicating that the appeal was timely filed. The appeal will be dismissed.

The record reflects that the applicant is a 28-year-old native and citizen of Latvia 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] is a 53-year-old native and citizen of the United States. The couple was married on December 9, 2002 in Chicago, and has one child. The applicant is the beneficiary of an approved Form I-130, Petition for Alien Relative, filed on her behalf by her spouse. The applicant was admitted to the United States in September 2002 for a period of 90 days as an Alien Fiancée. The applicant remained in the United States until May 2004, without having applied for adjustment of status on the basis of her marriage to a U.S. citizen. The applicant seeks a waiver of inadmissibility in order to return to the United States.

The officer in charge denied the waiver of inadmissibility finding that the applicant had failed to establish extreme hardship to her spouse and denied the application accordingly. The AAO notes that the officer in charge issued a request for evidence to the applicant on March 20, 2006, indicating the type of evidence required to establish extreme hardship. The applicant did not respond to the request for evidence.

On appeal, the applicant submits a letter stating that she did not intentionally remain unlawfully in the United States and that her separation from her spouse is causing extreme hardship. The applicant also submits a copy of letters her spouse sent to the Secretary of State and a Congressman, as well as a letter from David Lester regarding her spouse's tax documents.

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 consular officer found the applicant inadmissible on the basis of her unlawful presence in the United States. The record reflects, and the applicant does not dispute, that she was admitted to the United States as an Alien Fiancée for 90 days, but remained until May 2004 without having applied for adjustment of status. The applicant thus accrued more than one year of unlawful presence in the United States and became subject to a 10-year bar to admission. The AAO finds that the applicant is inadmissible as charged. The question remains whether she is eligible for a waiver of inadmissibility.

A waiver under section 212(a)(9)(B)(v) of the Act, 8 U.S.C. § 1182(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 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 AAO notes that the only evidence of hardship submitted by the applicant is included in the letter, dated November 27, 2006, where the applicant mentions the term extreme hardship and suggests that the process of obtaining her visa and the separation from her spouse amounts to extreme hardship. The record is devoid of any evidence of the claimed hardship. There is no indication in the record of what family or community ties the applicant's spouse has in the United States, nor is there any evidence that the couple's separation is causing emotional, financial, or other hardships. There is also no indication of what, if any, hardship the applicant's spouse would face should he decide to relocate to Latvia. Absent any evidence to the contrary, the AAO must find that if the applicant is refused admission, her spouse would face no greater hardship than the unfortunate, but expected disruptions, inconveniences, and difficulties faced by any other individual in similar 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”).

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.