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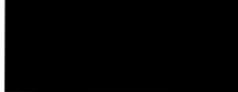
U.S. Citizenship
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FILE:



Office: NEWARK, NEW JERSEY

Date:

FEB 29 2008

IN RE:



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:



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 waiver application was denied by the District Director, Newark, New Jersey. 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 native and citizen of Slovakia who 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 and seeking readmission within 10 years of her last departure from the United States. The record indicates that the applicant is married to a citizen of the United States and she is the beneficiary of an approved Petition for Alien Relative (Form I-130). 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 reside in the United States with her husband and lawful permanent resident daughter.

The District Director found that the applicant failed to establish that extreme hardship would be imposed on her spouse and denied the Application for Waiver of Grounds of Excludability (Form I-601) accordingly. *District Director's Decision*, dated June 15, 2006.

On appeal, the applicant, through counsel, asserts that the applicant's spouse and daughter will suffer extreme hardship if the applicant is removed from the United States. *Form I-290B*, filed July 14, 2006.

The record includes, but is not limited to, a letter from counsel, statements by the applicant, her spouse, and her daughter, and a psychological evaluation of the applicant's spouse and daughter. The entire record was reviewed and considered in arriving at a decision on the appeal.

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.

The AAO notes that the record contains several references to the hardship that the applicant's lawful permanent resident daughter would suffer if the applicant were denied admission into the United States. Section 212(a)(9)(B)(i)(II) of the Act provides that a waiver, under section 212(a)(9)(B)(v) of the Act, is applicable solely where the applicant establishes extreme hardship to her citizen or lawfully resident spouse or parent. Congress specifically does not mention extreme hardship to a United States citizen or lawful permanent resident daughter. In the present case, the applicant's spouse is the only qualifying relative, and hardship to the applicant's daughter will not be considered, except as it may cause hardship to the applicant's spouse.

In the present application, the record indicates that the applicant initially entered the United States on September 7, 1996. At some point, the applicant departed the United States and reentered on a B-2 nonimmigrant visa on March 23, 1998, with authorization to remain in the United States until September 22, 1998. The applicant received an extension of her departure date, and was authorized to remain in the United States until January 22, 1999.¹ On February 24, 2003, the applicant married [REDACTED] Sheets, a United States citizen, in Vero Beach, Florida. On May 20, 2003, the applicant filed an Application to Register Permanent Residence or Adjust Status (Form I-485), and the applicant's husband filed a Form I-130 on behalf of the applicant, which was approved on December 20, 2004. On December 20, 2004, the applicant's Form I-485 was denied. On January 24, 2005, the applicant filed a motion to reopen the denial of her Form I-485. On April 19, 2004, the applicant departed the United States on advance parole and reentered on May 22, 2004. On October 13, 2005, the applicant filed a Form I-601. On June 15, 2006, the applicant's Form I-485 was denied. Also on June 15, 2006, the District Director denied the applicant's Form I-601, finding that the applicant failed to demonstrate extreme hardship to her United States citizen spouse.

The applicant accrued unlawful presence from January 22, 1999, the date the applicant's authorization to remain in the United States expired, until May 20, 2003, the date the applicant's Form I-485 was filed. The applicant is attempting to seek admission into the United States within 10 years of her April 2004 departure from the United States. The applicant is, therefore, inadmissible to the United States under section 212(a)(9)(B)(II) of the Act for being unlawfully present in the United States for a period of more than one year.

A section 212(a)(9)(B)(v) waiver of the bar to admission resulting from section 212(a)(9)(B)(i)(II) of the Act is dependent first upon a showing that the bar imposes an extreme hardship to the citizen or lawfully resident spouse or parent of the applicant. Hardship the applicant herself experiences upon removal is irrelevant to a section 212(a)(9)(B)(v) waiver proceeding. Once extreme hardship is established, it is but one favorable factor to be considered in the determination of whether the Secretary should exercise discretion. *See Matter of Mendez*, 21 I&N Dec. 296 (BIA 1996).

In *Matter of Cervantes-Gonzalez*, 22 I&N Dec. 560, 565-66 (BIA 1999), the Board of Immigration Appeals (BIA) provided a list of factors it deemed relevant in determining whether an alien has established extreme

¹ The AAO notes that at the applicant's adjustment interview, she claims she departed the United States at some point and returned on February 6, 2001; however, there is no evidence in the record establishing that the applicant departed the United States in 2001 and returned on February 6, 2001.

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.

Counsel asserts that the applicant's spouse and daughter would face extreme hardship if the applicant were removed from the United States. As noted above, the applicant's lawful permanent resident daughter is not a qualifying relative for a waiver under section 212(a)(9)(B) of the Act. Counsel states that the District Director's "decision denying the application for waiver of grounds of excludability is based upon a misunderstanding of the fact situation. [The applicant] originally entered the United States legally with a non-immigrant visa.... [The applicant] applied for advance parole so as to be able to travel outside the United States for a humanitarian purpose. Her advance parole was granted and she was found inadmissible upon her return." *Form I-290B*, filed July 14, 2006. The AAO notes that the applicant entered the United States legally on a B-2 nonimmigrant visa; however, she remained in the United States beyond January 22, 1999, and at that time, was unlawfully present. [REDACTED] states the applicant departed the United States on April 19, 2004 with an advance parole, so that she could visit her ill brother, and she returned to the United States on May 22, 2004. *See Psychological Evaluation by [REDACTED]* dated May 30, 2006.

The AAO notes that on the second page of the Authorization for Parole of an Alien into the United States (Form I-512), it clearly states: "...If, after April 1, 1997, you were unlawfully present in the United States for more than 180 days before applying for adjustment of status, you may be found inadmissible under section 212(a)(9)(B)(i) of the Act when you return to the United States to resume the proceedings of your application. If you are found inadmissible, you will need to qualify for a waiver of inadmissibility in order for your adjustment of status application to be approved." Clearly, the applicant was put on notice that if she departed the United States after 180 days of unlawful presence in the United States, she may be found inadmissible. The record establishes that the applicant was authorized to remain in the United States until January 22, 1999, based on her extension, and which was stated in the Departure Record (I-94). The applicant was not legally present in the United States until her Form I-485 was filed. Therefore, the applicant is inadmissible under section 212(a)(9)(B)(II) of the Act because she was unlawfully present in the United States for one year or more, and is seeking admission within 10 years of her April 19, 2004 departure.

The applicant's spouse states if he had to join the applicant in Slovakia, "[i]t would be very difficult for [him] to learn a new language to be able to get a job." *Statement from [REDACTED]*, dated September 26, 2005; *see also Statement from [REDACTED]*, dated September 26, 2005. The AAO notes that it has not been established that the applicant's spouse could not obtain employment in Slovakia. The applicant's spouse states it would be "difficult for [him] to pay child support [for his son] and have a relationship with [his] son." *Id.* The AAO notes that the applicant failed to establish that her spouse is still paying child support for his son, now that his son is an adult. [REDACTED] states that the applicant's spouse "repeatedly indicated that, if [the applicant] is forced to return to Slovakia, he would move to Slovakia with her." *See Psychological Evaluation by [REDACTED]*, *supra*. The AAO notes that the applicant and her husband's statements regarding the extreme hardship her spouse will suffer if she were not allowed to remain in the

United States were vague and not supported by documentation. [REDACTED] diagnosed the applicant's spouse with Adjustment Disorder with Depressed Mood and Major Depressive Disorder. *Id.* Although the input of any mental health professional is respected and valuable, the AAO notes that the submitted psychological evaluation is based on two interviews between the applicant's spouse and the counselor. There was no evidence submitted establishing an ongoing relationship between [REDACTED] and the applicant's spouse. Moreover, the conclusions reached in the submitted evaluation, being based on two interviews, do not reflect the insight and elaboration commensurate with an established relationship with a counselor, thereby rendering the counselor's findings speculative and diminishing the evaluation's value to a determination of extreme hardship. The AAO finds the applicant failed to establish that her spouse would suffer extreme hardship if he accompanied her to Slovakia.

In addition, counsel does not establish extreme hardship to the applicant's spouse if he remains in the United States, in close proximity to his son and maintaining his employment. As a United States citizen, the applicant's spouse 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 no documentation was submitted to indicate that the applicant's spouse will experience financial hardship as a result of the separation from the applicant. The applicant's husband faces the decision of whether to remain in the United States or relocate to avoid separation. However, this is a factor that every case will present, and the BIA has held, "election by the spouse to remain in the United States, absent [a determination of exceptional hardship] is not a governing factor since any inconvenience or hardship which might thereby occur would be self-imposed." *Matter of Mansour*, 11 I&N Dec. 306, 307 (BIA 1965). Further, the record fails to demonstrate that the applicant will be unable to contribute to her family's financial wellbeing from a location outside of the United States. Moreover, the United States Supreme Court has held that the mere showing of economic detriment to qualifying family members is insufficient to warrant a finding of extreme hardship. *INS v. Jong Ha Wang*, 450 U.S. 139 (1981).

Although the AAO is not insensitive to the applicant's situation, the emotional hardship of separation, including the applicant's husband's psychological condition, are common results of separation and do not rise to the level of "extreme" as contemplated by statute and case law. In limiting the availability of the waiver to cases of "extreme hardship," Congress provided that a waiver is not available in every case where a qualifying family relationship exists. The AAO recognizes that the applicant's husband will endure hardship as a result of separation from the applicant. However, his situation if he remains in the United States, is typical to individuals separated as a result of removal and does not rise to the level of extreme hardship.

United States court decisions have repeatedly held that the common results of deportation or exclusion are insufficient to prove extreme hardship. *See Hassan v. INS*, 927 F.2d 465, 468 (9th Cir. 1991). For example, in *Matter of Pilch*, 21 I&N Dec. 627 (BIA 1996), the BIA 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, *Perez v. INS*, 96 F.3d 390 (9th Cir. 1996), 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. In *Hassan, supra*, the Ninth Circuit Court of Appeals held further that the uprooting of family and separation from friends does not necessarily amount to extreme hardship but rather represents the type of inconvenience and hardship experienced by the families of most aliens being deported.

A review of the documentation in the record fails to establish the existence of extreme hardship to the applicant's spouse caused by the applicant's inadmissibility to the United States. Having found the applicant statutorily ineligible for relief, no purpose would be served in discussing whether she merits a waiver as a matter of discretion.

In proceedings for application for waiver of grounds of inadmissibility under section 212(a)(9)(B) 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.