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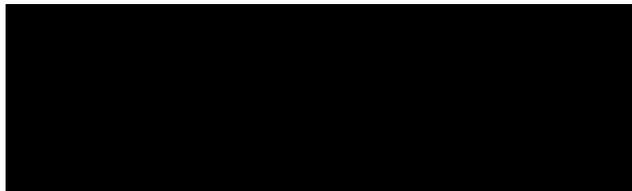
U.S. Department of Homeland Security
20 Massachusetts Ave. N.W., Rm. 3000
Washington, DC 20529



U.S. Citizenship
and Immigration
Services

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FILE: [REDACTED]

Office: BANGKOK, THAILAND

Date:

JUN 19 2008

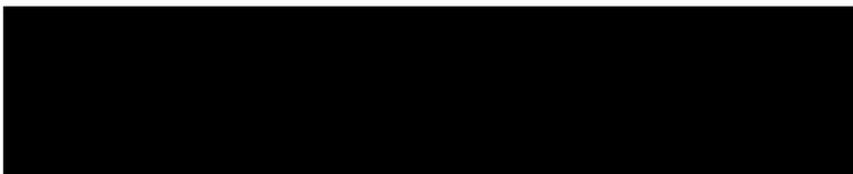
IN RE: Applicant:



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:



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 waiver application was denied by the District Director, Bangkok, Thailand and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native and citizen of Laos who procured entry into the United States with a valid K-1, Fiancée Visa, on February 23, 2004, with permission to remain until May 22, 2004. Pursuant to K-1 regulations, the applicant was required to marry the petitioner of the Form I-129F, Petition for Alien Fiancée, within 90 days of entry. The applicant did not marry the petitioner. On June 29, 2004, the applicant married another individual, also a U.S. citizen. On September 1, 2004, the applicant filed Form I-485, Application to Adjust to Permanent Resident Status, which was subsequently denied on December 17, 2005; it was determined that as the applicant had not married the petitioner of the K-1, she was not eligible to adjust status based on her marriage to a U.S. citizen. The applicant departed the United States in July 2007.

The applicant accrued unlawful presence from May 22, 2004 until the filing of her Form I-485 on September 1, 2004 and again from December 17, 2005, the date of the denial of her Form I-485, until her departure in July 2007, a period in excess of one year. The applicant was thus found to be inadmissible to the United States under 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.¹ She 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 be able to return to the United States to reside with her U.S. citizen spouse.

The district director concluded that the applicant had failed to establish that extreme hardship would be imposed on a qualifying relative and denied the Application for Waiver of Grounds of Excludability (Form I-601) accordingly. *Decision of the District Director*, dated January 25, 2008.

On appeal, counsel submits, a brief, dated February 14, 2008 and documentation previously submitted in response to a Notice of Intent to Deny, issued to the applicant on December 27, 2007. The entire record was reviewed and considered in rendering this decision.

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

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

¹ The applicant does not contest the district director's finding of inadmissibility. Rather, she is filing for a waiver of inadmissibility.

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 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 pursuant to section 212(i) of the Act. These factors include, with respect to the qualifying relative, the presence of family ties to United States 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 first step required to obtain a waiver is to establish that the applicant’s U.S. citizen spouse would experience extreme hardship if he relocated to Laos to reside with the applicant. To support this contention, the applicant asserts and documents that the applicant’s spouse, a U.S. citizen, is an active duty member of the United States Air Force whose current obligation does not end until 2011 and as such, he is unable to relocate to Laos. As the applicant’s spouse states,

...I have given my life in service to the United States for fifteen years and am enlisted until 2011. With one more year of service thereafter, I will be eligible for full benefits. When I enlisted in the Air Force in 1992, I intended to make a career of proudly serving the United States. I believe my service has been honorable and without interruption.

...If my wife cannot join me and I am forced to leave the Air Force to be with her, it will cause extreme hardship to me. I will lose my career, my education, my pension and other benefits, as well as my future. I love the Air Force and had planned to stay for many years. Your decision in this case could destroy my career.

My military background and security clearance require that significant aspects of my life and career remain confidential. Further, this background will also hamper my ability to find employment in the public section....

Affidavit of [REDACTED], dated January 15, 2008.

Based on a thorough review of the record, we have determined that extreme hardship would exist were the applicant's spouse to accompany the applicant to Laos, based on his active duty status and his obligations to the United States Air Force until 2011, and possibly beyond. The nature of his active duty status does not allow the applicant's spouse much freedom in terms of where he resides. Given his military obligations, it would not be feasible for him to relocate to Laos to reside with the applicant; this forced separation would be deemed extreme hardship.

However, the record fails to establish that the applicant's spouse will suffer extreme hardship were his spouse to remain outside the United States for a ten-year period while he remains in active duty status with the United States Air Force. Counsel has not provided any objective documentation to establish that the hardships he is facing due to the separation from his spouse are any different from other families separated as a result of immigration problems. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)).

Moreover, the record indicates that the applicant's spouse has been gainfully employed for over fifteen years with the same employing entity, the U.S. Air Force, and has not resided with the applicant for any prolonged period of time. Their long-distance relationship, the applicant's immigration situation and her inability to return to the United States for a ten-year period have clearly not hindered her spouse's ability to work full-time for the U.S. Air Force and achieve acclaim, as can be evidenced by the award he received from General David Petraeus in October 2007.

Finally, the record indicates that the applicant's spouse will be deployed for a two-year tour of duty in Germany in February 2008; it has not been established that the applicant would be unable to travel to Germany to visit and/or live with her spouse. While the unlawful presence bar restricts the applicant from returning to the United States for a ten-year period, it does not restrict her from residing in any other country, thereby ensuring closer proximity to her spouse.

In limiting the availability of the waiver to cases of "extreme hardship," Congress specifically provided that a waiver is not available in every case where a qualifying family relationship exists. As noted previously, United States 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). "[O]nly in cases of great actual or prospective injury . . . will the bar be removed." *Matter of Ngai*, 19 I&N Dec. 245, 246 (BIA 1984). 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).

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 spouse will face extreme hardship if the applicant is unable to reside in the United States. The record demonstrates that he faces no greater hardship than the unfortunate, but expected, disruptions, inconveniences, and difficulties arising whenever a spouse is removed from the United States or refused admission. Although CIS is not insensitive to his situation, the record does not establish that the hardships he would face rise to the level of "extreme" as contemplated by statute and case law. Having found the applicant statutorily ineligible for relief, no purpose would be served in discussing whether the applicant merits a waiver as a matter of discretion.

In proceedings for application for waiver of grounds of inadmissibility under section 212(a)(9)(B)(v) of the Act, the burden of proving eligibility remains entirely 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. The waiver application is denied.