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U.S. Citizenship
and Immigration
Services

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FILE: [REDACTED] Office: BALTIMORE Date:

IN RE: [REDACTED]

MAR 13 2009

APPLICATION: Application for Waiver of Grounds of Inadmissibility under section 212(a)(9)(B) of the
Immigration and Nationality Act, 8 U.S.C. § 1182(a)(9)(B)

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.

If you believe the law was inappropriately applied or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. Please refer to 8 C.F.R. § 103.5 for the specific requirements. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$585. Any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen, as required by 8 C.F.R. § 103.5(a)(1)(i).

John F. Grissom, Acting Chief
Administrative Appeals Office

DISCUSSION: The waiver application was denied by the District Director, Baltimore. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained.

The applicant is a native and citizen of New Zealand 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 for more than one year and seeking readmission within 10 years of her last departure. The applicant seeks a waiver of inadmissibility in order to remain in the United States and reside with her U.S. citizen husband.

The district director found that the applicant failed to establish extreme hardship to her U.S. citizen husband and denied the Form I-601 application for a waiver accordingly. *Decision of the District Director*, dated September 20, 2006.

On appeal, counsel for the applicant asserts that the applicant's husband will suffer extreme hardship should the applicant be prohibited from remaining in the United States. *Brief from Counsel*, submitted October 19, 2006.

The record contains a brief from counsel; a statement from the applicant's husband; a psychological evaluation for the applicant's husband; medical documentation for the applicant's husband; statements from the applicant; numerous statements from acquaintances of the applicant attesting to her good character; a copy of the applicant's birth certificate; a copy of the applicant's husband's birth certificate; a copy of the applicant's marriage certificate; tax records for the applicant, and; verification of the applicant's husband's employment. The entire record was reviewed and considered in rendering a decision on the appeal.

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 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 reflects that the applicant entered the United States in B-2 status as a visitor for pleasure on October 25, 1996. She was authorized to remain until April 24, 1997. She filed a Form I-485 application to adjust her status to permanent resident on October 8, 2004. Thus, the applicant accrued over seven years of unlawful presence. Thereafter she departed the United States and reentered on November 21, 2004. She was deemed inadmissible to the United States under section 212(a)(9)(B)(i)(II) of the Act 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 applicant does not contest her inadmissibility on appeal.

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 U.S. citizen or lawfully resident spouse or parent of the applicant. Hardship the applicant experiences upon being found inadmissible is not a basis for a waiver under section 212(a)(9)(B)(v) of the Act. 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).

Matter of Cervantes-Gonzalez, 22 I&N Dec. 560 (BIA 1999) provides a list of factors the Board of Immigration Appeals deems relevant in determining whether an alien has established extreme hardship pursuant to section 212(i) of the Act. These 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.

On appeal, counsel asserts that the applicant's husband will suffer extreme hardship should the applicant be prohibited from entering the United States. *Brief from Counsel*, submitted October 19, 2006. The applicant's husband is 44 years old, and the applicant and her husband married in September 2004. Counsel states that the applicant's husband is the general manager of his family business, where he has worked for 20 years. *Id.* He provides that if the applicant is compelled to depart the United States, her husband will have to choose between relocating to New Zealand and leaving behind his business, or continuing his business and being separated from the applicant. *Id.* at 2-3.

Counsel explains that the applicant's husband has a history of health problems. *Id.* at 3. Counsel states that the applicant's husband was diagnosed with Hodgkin's Lymphoma when he was 20 years

old for which he received chemotherapy treatments. *Id.* Counsel asserts that, while the applicant's husband's Lymphoma has been in remission for years, there is the chance that it could resurface which causes the applicant's husband chronic worry and concern. *Id.* Counsel provides that the applicant's husband takes prescription medication to treat vasculitis and panniculitis, and he recently underwent back surgery. *Id.* Counsel explains that the applicant's husband has feelings of depression and reclusiveness dating to 1992, and that his depression has been labeled severe for which he takes Zoloft. *Id.* Counsel notes that the applicant's husband receives counseling for the stress related to the applicant's possible departure. *Id.* at 3-4. Counsel contends that the applicant's husband's many health problems represent an unusual hardship that is not typically confronted by individuals who face the possible deportation of their spouses. *Id.* at 4.

Counsel asserts that the future of the applicant's husband's business will be jeopardized should the present waiver application be denied, which will create additional stress and hardship for the applicant's husband. *Id.*

The applicant's husband explained that he has lived in Baltimore, Maryland since his birth, and that he has been employed with his father and brother in their family business for 20 years. *Statement from Applicant's Husband*, undated. He stated that he cannot see himself without the applicant, and that they need to take care of each other. *Id.* at 1. He noted his history of health problems including hypertension, vasculitis, and cancer, and that the applicant's immigration difficulties are causing him significant hardship. *Id.* He indicated that he and the applicant purchased a home and they have obtained possessions together. *Id.* He explained that his life would change drastically should he depart the United States, as his family depends on him for their business. *Id.* at 2. He indicated that he and the applicant have had a poor quality of life due to the prospect of her departure. *Id.*

The applicant provided a psychological evaluation of her husband conducted by [REDACTED]. Dr. [REDACTED] described the applicant's husband's background and medical history, including his prior experiences with cancer, a vertebrae fusion procedure, vasculitis, panniculitis, and depression. *Report from [REDACTED]* dated June 20, 2006. Dr. [REDACTED] stated that the applicant's possible deportation is causing the applicant's husband stress which exacerbates his conditions. *Id.* at 1. Dr. [REDACTED] observed that the applicant's husband lost 15 pounds in the previous four months, and that he described waking up feeling "shaken and really sad." *Id.* Dr. [REDACTED] recommended that the applicant's husband continue to receive outpatient medication management services as well as ongoing therapy. *Id.* at 4.

The applicant submitted a letter from [REDACTED] regarding her husband's health. Dr. [REDACTED] noted that the applicant's husband has suffered from depression since 1992, and that he has responded to taking medication and long-term therapy. *Statement from [REDACTED]* dated March 10, 2006.

The applicant provided a statement from [REDACTED] who explained that the applicant's husband has been under his care since 1996 for hypertension and chronic severe depression. *Statement from [REDACTED]* dated March 15, 2006. Dr. [REDACTED] stated that the applicant's husband's medical conditions are ongoing, and that he does not anticipate the applicant's husband ever being able to stop his medications or treatment. *Id.* at 1. He indicated that, due to the

applicant's husband's severe depression, the applicant's departure would create extreme hardship for him. *Id.*

The applicant stated that she works at a care center and she is attending a nursing school. *Statement from Applicant*, dated April 10, 2006.

Upon review, the applicant has established that her husband will experience extreme hardship if she is prohibited from remaining in the United States. The applicant provided evidence to show the state of her husband's physical health. The record reflects that the applicant's husband suffers from physical ailments, including a prior experience with Hodgkin's Lymphoma. It is noted that the doctors who submitted statements regarding the applicant's husband referenced treatment he has received, yet the record does not contain complete medical documentation of the treatments. Nor does the record contain a clear explanation of how the applicant's husband's physical health issues affect his ability to perform daily tasks, or a detailed analysis of the future treatment he will require. Yet, the applicant has shown by a preponderance of the evidence that her husband has physical health issues that require medication and the care of a physician. It is reasonable that the applicant's husband's physical health status would create hardship for him should he relocate to New Zealand or remain in the United States without the applicant.

The applicant has submitted documentation to show that her husband has suffered from depression since 1992, for which he takes medication and has received care. It is noted that the report from Dr. [REDACTED] was generated in a single session, and does not represent a relationship with a mental health professional or ongoing treatment. Yet, taking into consideration the three letters from doctors regarding the applicant's husband, including references to his history of depression and treatment, the applicant has shown by a preponderance of the evidence that her husband has significant mental health challenges. It is evident that the major life change of separating the applicant's husband from the applicant, or uprooting his life and work to relocate to New Zealand after residing in Baltimore for his entire life, would result in serious emotional challenges for him.

The record contains references to the applicant's husband's work with his family business. The applicant has not provided a detailed explanation of her husband's family business or his role in the company. Thus, the applicant has not shown that her husband's business would suffer or fail should he discontinue his direct involvement. The applicant has not shown that her husband lacks economic resources to sustain him should he relocate to New Zealand. However, the AAO acknowledges that ending the applicant's husband's employment in a family business after 20 years represents a significant emotional hardship.

Based on the foregoing, the applicant has provided adequate documentation to show by a preponderance of the evidence that her husband will experience extreme hardship should she be compelled to depart the United States. The AAO makes this finding primarily based on the applicant's husband's mental health in light of the totality of hardship factors presented. While the applicant has not clearly established individual elements of hardship to her husband that rise to the level of extreme hardship, the combination of factors indicate that the applicant's husband will

experience extreme hardship, whether he relocates to New Zealand to maintain family unity or remains in the United States and endures separation from the applicant.

In *Matter of Mendez-Morales*, 21 I&N Dec. 296 (BIA 1996), the BIA held that establishing extreme hardship and eligibility for a waiver of inadmissibility does not create an entitlement to that relief, and that extreme hardship, once established, is but one favorable discretionary factor to be considered. The Attorney General (now Secretary of the Department of Homeland Security) has the authority to consider all negative factors in deciding whether or not to grant a favorable exercise of discretion. See *Matter of Cervantes-Gonzalez*, *supra*, at 12.

The negative factors in this case consist of the following:

The applicant remained in the United States without a legal immigration status for over seven years, thus she knowingly violated U.S. immigration law for a lengthy period of time.

The positive factors in this case include:

The applicant has not been convicted of any crimes; the record does not reflect that the applicant has committed further violations of immigration law; the applicant's U.S. citizen husband would experience extreme hardship should the present waiver application be denied; the applicant has ties to her community in the United States; the record shows that the applicant acts as a caregiver in her employment, which is a benefit to those she assists; and the record suggests that the applicant has a close, stable marriage.

The positive factors in this case outweigh the negative factors.

In proceedings for an application for waiver of grounds of inadmissibility under section 212(a)(9)(B)(v) of the Act, the burden of establishing that the application merits approval remains entirely with the applicant. Section 291 of the Act, 8 U.S.C. § 1361. In this case, the applicant has met her burden that she merits approval of her application.

ORDER: The appeal is sustained.