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U.S. Department of Homeland Security
U. S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
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U.S. Citizenship
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FILE:

Office: CHICAGO, IL

Date:

MAY 07 2009

IN RE:

APPLICATION:

Application for Waiver of Grounds of Inadmissibility 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 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 Acting District Director, Chicago, Illinois. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The record reflects that the applicant was born in Kuwait and is a citizen of Jordan who was found to be 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 in the United States for more than one year. The applicant is married to a naturalized U.S. citizen and seeks a waiver of inadmissibility pursuant to section 212(a)(9)(B)(v) of the Act, 8 U.S.C. § 212(a)(9)(B)(v), in order to reside with her husband and children in the United States.

The district director found that the applicant failed to establish extreme hardship to her U.S. citizen spouse and denied the application accordingly. *Decision of the Acting District Director*, dated April 14, 2006.

On appeal, counsel contends the applicant's husband, _____ will suffer extreme hardship if the applicant's waiver application is denied and submits a letter from _____ doctor documenting his back problem.

The record contains, *inter alia*: a copy of the marriage certificate of the applicant and her husband, _____ indicating they were married on August 16, 1999; copies of the birth certificates of the couple's four minor, U.S. citizen children; a letter from _____ doctor; a letter from Mr. _____ bank; a letter from _____ employer; tax documents; a copy of the couple's mortgage loan; a copy of the results of _____ MRI scan; and an approved Immigrant Petition for Alien Relative (Form I-130). The entire record was reviewed and considered in rendering this 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.

In this case, the record indicates, and counsel does not contest, that the applicant entered the United States in May or June 1999 using a six-month visitor's visa. The applicant overstayed her visa and remained until September 2001. Therefore, the applicant accrued unlawful presence of over one year. On March 27, 2003, the applicant reentered the United States within ten years of her 2001 departure using a non-immigrant V-1 visa. Accordingly, she is 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 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 U.S. citizen or lawfully resident spouse or parent of the applicant. *See* section 212(a)(9)(B)(v) of the Act, 8 U.S.C. § 1182(a)(9)(B)(v). Hardship the applicant's children may experience is not a permissible consideration under the Act. *Id.* 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, 565-566 (BIA 1999), provides a list of factors the Bureau of Immigration Appeals deems relevant in determining whether an alien has established extreme hardship under 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.

It is not evident from the record that the applicant's spouse would suffer extreme hardship as a result of the applicant's waiver being denied.

According to counsel, the applicant has met her burden of establishing extreme hardship based on the "evidence showing that her husband is suffering from chronic back pain and loss of height in the L4-L5 intervertebral disc." *Appellant's Brief* at 1. Counsel states that the applicant's husband has fathered four U.S. citizen children, all of whom are currently under the age of nine, and that "[i]f this is not a clear case of extreme hardship I do not know what . . . is." *Id.*

A letter from [REDACTED] physician states, in its entirety, that [REDACTED] “has been under [his] care since 11/2/2005. His diagnosis is Lumbar disc syndrome. Long sitting, driving and lifting will aggravate his condition.” Letter from [REDACTED] dated April 26, 2006. A copy of an MRI scan states that “[s]ome loss of height is noted in the L4-L5 intervertebral disc.” *Western Open M.R.I. & Imaging*, dated November 30, 2005.

Significantly, there are no statements, affidavits, or letters in the record from either the applicant or Mr. [REDACTED]. Although the record shows the couple has four minor children and that [REDACTED] has back problems which are aggravated by long sitting, driving, and lifting, without any statements from the applicant or her husband, it is unclear whether the hardship he would experience if the applicant’s waiver application were denied rises to the level of extreme hardship. There is no indication in the record addressing how [REDACTED]’s back condition affects his daily life. There is no claim the applicant assists her husband in any way due to his back condition. There is no indication that he is on any medication or receives any treatment for his back. The letter from [REDACTED] doctor does not discuss the severity or prognosis for [REDACTED]’s back problem, nor does it discuss whether his back condition is permanent or what treatment, if any, he requires. Furthermore, the letter does not indicate that [REDACTED] requires any assistance of any kind. Without more detailed information, the AAO is not in the position to reach conclusions regarding the severity of a medical condition, or the treatment and assistance needed.

Moreover, there is no discussion addressing the possibility of [REDACTED] moving back to Jordan, where he was born, to avoid the hardship of separation, and he does not address whether such a move would represent a hardship to him. According to the Biographic Information forms in the record (Form G-325A), [REDACTED]’s mother still lives in Jordan and both of the applicant’s parents live in Jordan. If [REDACTED] decides to stay in the United States, their situation is typical to individuals separated as a result of deportation or exclusion and does not rise to the level of extreme hardship based on the record. The Board of Immigration Appeals and the Courts of Appeals have repeatedly held that the common results of deportation or exclusion are insufficient to prove extreme hardship. For example, *Matter of Pilch*, 21 I&N Dec. 627 (BIA 1996), 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. *See also Hassan v. INS*, 927 F.2d 465, 468 (9th Cir. 1991) (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 husband 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)(v) 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.