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U.S. Citizenship and Immigration Services

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FILE: [redacted] Office: FRANKFURT, GERMANY Date: AUG 30 2007

IN RE: Applicant: [redacted]

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:

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.

Ellen C. Johnson

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Officer-in-Charge, Frankfurt, Germany, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant, [redacted], is a native and citizen of Germany 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. The applicant is married to a U.S. citizen, [redacted] She sought a waiver of inadmissibility pursuant to section 212(a)(9)(B)(v) of the Act, 8 U.S.C. § 1182(a)(9)(B)(v). The OIC denied the waiver application, finding that the applicant failed to establish hardship to a qualifying relative. *Decision of OIC, dated December 18, 2005.* The applicant submitted a timely appeal.

The AAO will first address the finding of inadmissibility pursuant to section 212(a)(9)(B)(i)(I) of the Act, 8 U.S.C. § 1182(a)(9)(B)(i)(I).

Section 212(a)(9)(B)(i)(II) of the Act provides that any alien (other than an alien lawfully admitted for permanent residence) who has been unlawfully present in the United States for one year or more, and again seeks admission within 10 years of the date of such alien's departure or removal, is inadmissible.

Unlawful presence accrues when an alien is present in the United States after the expiration of the period of stay authorized by the Attorney General or is present in the United States without being admitted or paroled. Section 212(a)(9)(B)(ii) of the Act, 8 U.S.C. § 1182(a)(9)(B)(ii). The periods of unlawful presence under sections 212(a)(9)(B)(i)(I) and ((II) are not counted in the aggregate.[1] For purposes of section 212(a)(9)(B) of the Act, time in unlawful presence begins to accrue on April 1, 1997.[2]

The three- and ten-year bars of sections 212(a)(9)(B)(i)(I) and (II) of the Act, 8 U.S.C. § 1182(a)(9)(B)(i)(I) and (II), are triggered by a departure from the United States following accrual of the specified period of unlawful presence. If someone accrues the requisite period of unlawful presence but does not subsequently depart the United States, then sections 212(a)(9)(B)(i)(I) and (II) of the Act, 8 U.S.C. § 1182(a)(9)(B)(i)(I) and (II), would not apply. *See* DOS Cable, note 1. *See also Matter of Rodarte,* 23 I&N Dec. 905 (BIA 2006)(departure triggers bar because purpose of bar is to punish recidivists). With regard to an adjustment applicant who had 180 days of unauthorized stay in the United States before filing an adjustment of status application, his or her return on an advance parole will trigger the three- and ten-year bar. Memo, Virtue, Acting Exec. Comm., INS, HQ IRT 50/5.12, 96 Act. 068 (Nov. 26, 1997).

The record reflects that the applicant entered the United States in March 1996 for a period of three months, and remained in the country until October 2002, when she voluntarily departed from the country, triggering the ten-year-bar. The applicant's spouse filed the Immediate Relative Petition, Form I-130, on her behalf on April 15, 2005. *Decision of OIC, dated December 18, 2005.* Consequently, the OIC was correct in finding her inadmissible pursuant to section 212(a)(9)(B)(i)(II) of the Act, 8 U.S.C. § 1101(a)(9)(B)(i)(II).

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[1] Memo, Virtue, Acting Assoc. Comm. INS, Grounds of Inadmissibility, Unlawful Presence, June 17, 1997 INS Memo on Grounds of Inadmissibility, Unlawful Presence (96Act.043); and Cable, DOS, No. 98-State-060539 (April 4, 1998).

[2] *See* DOS Cable, note 1; and IIRIRA Wire #26, HQIRT 50/5.12.

The AAO will now address the finding that a waiver of inadmissibility is not warranted.

Section 212(a)(9)(B) of the Act provides that:

> (v) Waiver. – The Attorney General [now Secretary, 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.

A waiver of inadmissibility under section 212(a)(9)(B)(v) is dependent upon a showing that the bar to admission imposes an extreme hardship on a qualifying relative, *i.e.,* the U.S. citizen or lawfully resident spouse or parent of the applicant. Hardship to the applicant is not included under the statute; and unlike section 212(h) of the Act where a child is included as a qualifying relative, they are not included under section 212(a)(9)(B)(v) of the Act. Thus, hardship to the applicant and her children will be considered only to the extent that it results in hardship to a qualifying relative, which in this case is the applicant's U.S. citizen husband. If extreme hardship to the qualifying relative is established, the Secretary then assesses whether an exercise of discretion is warranted. *See Matter of Mendez-Moralez,* 21 I&N Dec. 296 (BIA 1996).

In addition to other documents, the record contains a letter, dated December 30, 2005, from the applicant's husband. In this letter, the applicant's husband makes the following statements. He had lived with the applicant in Germany during 1992; they left when they could not find an apartment to rent due to the unwillingness to rent to an unmarried mixed-nationality couple with children. He took his family to the United States, where he and the applicant married in 1996. He attempted to resolve the immigration problems of the applicant and her children, which he blames himself for causing. He now lives in Germany. His German residence permit will expire on February 1, 2006, and it may be extended for only six months on account of his unemployment. He will have a difficult time finding employment due to his age and nationality. The anti-discrimination laws in Germany are not followed, as shown in the submitted documents. The company he worked for closed in February 2005; since then he has been unsuccessful in obtaining employment due to discrimination. On account of discrimination they have been unable to locate a more affordable apartment in case both he and his wife become unemployed. If he returns to the United States alone, he would be able to support a household in the United States and a household in Germany. He suffers from Bells Palsy, a neurological illness, which is triggered by emotional stress such as his wife's immigration problems. He has been hospitalized on two occasions due to Bells Palsy. He also is depressed. He has a potential job offer in the United States that requires a husband and wife driving team.

"Extreme hardship" is not a definable term of "fixed and inflexible meaning"; establishing extreme hardship is "dependent upon the facts and circumstances of each case." *Matter of Cervantes-Gonzalez,* 22 I&N Dec. 560, 565 (BIA 1999). The Board of Immigration Appeals (BIA) in *Matter of Cervantes-Gonzalez* lists the factors it considers relevant in determining whether an applicant has established extreme hardship pursuant to section 212(i) of the Act. 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. *Id.* at 565-566. The BIA indicated that these factors relate to the applicant's "qualifying relative." *Id.* at 565-566.

In *Matter of O-J-O-,* 21 I&N Dec. 381, 383 (BIA 1996), the BIA stated that the factors to consider in determining whether extreme hardship exists "provide a framework for analysis," and that the "[r]elevant factors, though not extreme in themselves, must be considered in the aggregate in determining whether extreme hardship exists." It further stated that "the trier of fact must consider the entire range of factors concerning hardship in their totality" and then "determine whether the combination of hardships takes the case beyond those hardships ordinarily associated with deportation." (citing *Matter of Ige*, 20 I&N Dec. 880, 882 (BIA 1994).

Applying the *Cervantes-Gonzalez* factors here, extreme hardship to the applicant's husband must be established in the event that he joins the applicant; and in the alternative, that he remains in the United States. A qualifying relative is not required to reside outside of the United States based on the denial of the applicant's waiver request.

Courts in the United States have stated that "the most important single hardship factor may be the separation of the alien from family living in the United States," and also, "[w]hen the BIA fails to give considerable, if not predominant, weight to the hardship that will result from family separation, it has abused its discretion." *Salcido-Salcido v. INS,* 138 F.3d 1292, 1293 (9th Cir. 1998) (citations omitted); *Cerrillo-Perez v. INS,* 809 F.2d 1419, 1424 (9th Cir. 1987) (remanding to BIA) ("We have stated in a series of cases that the hardship to the alien resulting from his separation from family members may, in itself, constitute extreme hardship.") (citations omitted).

However, in *Hassan v. INS,* 927 F.2d 465, 468 (9th Cir. 1991), the Ninth Circuit upheld the BIA's finding that deporting the applicant and separating him from his wife and child was not conclusive of extreme hardship as it "was not of such a nature which is unusual or beyond that which would normally be expected from the respondent's bar to admission." (citing *Patel v. INS,* 638 F.2d 1199, 1206 (9th Cir.1980) (severance of ties does not constitute extreme hardship). The Ninth Circuit in *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.

The record fails to establish that the applicant's husband would endure extreme hardship if he were to remain in the United States without his wife.

Although the applicant made an economic claim of hardship in the August 17, 2005 letter in the record, he makes no such claim in the December 30, 2005 letter.

[redacted]s claims that he suffers from Bells Palsy, which is triggered by emotional stress such as his wife's immigration problems. In support of the claim of Bells Palsy, the applicant submits medical records. However, because the applicant failed to submit certified translations of the medical records, the AAO cannot determine whether this evidence supports his medical claim. *See* 8 C.F.R. § 103.2(b)(3). Accordingly, the evidence is not probative and will not be accorded any weight in this proceeding.

The record reflects that [redacted] is very concerned about separation from his wife. The AAO is thoughtful of and sympathetic to the emotional hardship that would undoubtedly be endured as a result of separation from a loved one. However, the AAO finds [redacted] situation, if he were to return to the United States without his wife, is typical to individuals who are separated as a result of deportation or exclusion and does not rise to the level of extreme hardship as defined by the Act. The record before the AAO is insufficient to show that the emotional hardship that will be endured by [redacted], if he were to separate from his wife, is unusual or beyond that which is normally to be expected upon separation. *See Hassan and Perez, supra.*

The record is insufficient to establish extreme hardship to [redacted] if he joined his wife in Germany.

[redacted] has been living in Germany since February 2003, and he indicated that he lived in Germany from 1986 to 1996. [redacted] asserted that he has been unable to find employment in Germany since 2005 on account of age and national origin discrimination. In support of this assertion, he provided information about age discrimination in the European Union and Germany. However, because the applicant failed to submit certified translations of the documents in the German language, the AAO cannot determine whether the submitted evidence supports his claims. *See* 8 C.F.R. § 103.2(b)(3). Accordingly, the evidence that has not been translated is not probative and will not be accorded any weight in this proceeding. The documents in English provide general information about age discrimination in the European Union, but it is not specific to conditions in Germany. The document referencing Statistisches Bundesamt relies on information from the year 2003; thus, it is outdated and may not be relevant to the present conditions in Germany. The AAO observes that [redacted] stated in the December 30, 2005 letter that Germany has anti-discrimination laws in place.[3]

In any case, court decisions have shown that the difficulties [redacted] may experience in obtaining employment in Germany and the general economic conditions in that country are insufficient to establish extreme hardship. *E.g., Ramirez-Gonzales v. Immigration and Naturalization Service,* 695 F.2d 1208, 1211-13 (9th Cir.1983) (upholding BIA finding that [redacted] testimony and unsupported allegations are insufficient to establish inability to find employment in Guatemala); *Carnalla-Munoz v. INS*, 627 F.2d 1004 (9th Cir. 1980) (upholding the BIA's finding that hardship in finding employment in Mexico does not reach extreme hardship); *Kuciemba v. INS,* 92 F.3d 496, 500 (7th Cir. 1996), (citing *Marquez-Medina v. INS,* 765 F.2d 673, 676 (7th Cir.1985)) ("General economic conditions in an alien's native country will not establish "extreme hardship" in the absence of evidence that the conditions are unique to the alien."); *Bueno-Carrillo v. Landon,* 682 F.2d 143, 146 (7th Cir.1982) (claim by respondent that he had neither skills nor education and would be "virtually unemployable in Mexico" found insufficient to establish extreme hardship); and *Pelaez v. INS*, 513 F.2d 303 (5th Cir. 1975) (difficulty in obtaining employment is not extreme hardship).

With regard to [redacted] residence permit (the Aufenthaltserlaubnis), the submitted information does not indicate that a person will be granted an extension for only six months if he or she is employed; furthermore,

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[3] In 2006 the German General Equal Treatment Act (Allgemeines Gleichbehandlungsgesetz) (hereinafter the "Act"), which relates to discrimination in the context of professional life, was adopted by the German parliament. With the Act, the Federal Republic of Germany implements several European principles regarding equal treatment and anti-racism.

it does not state that employment is required in order to extend the residence permit. Based on the submitted evidence, it is the settlement permit (the Niederlassungserlaubnis) that requires "secure livelihood."

In considering the hardship factors raised here, the AAO examines each of the factors, both individually and cumulatively, to determine whether extreme hardship has been established. It considers whether the cumulative effect of claims of economic and emotional hardship would be extreme, even if, when considered separately, none of them would be. It considers the entire range of factors concerning hardship in their totality and then determines whether the combination of hardships takes the case beyond those hardships ordinarily associated with removal.

In the final analysis, the AAO finds that the requirement of significant hardships over and above the normal economic and social disruptions involved in removal has not been met so as to warrant a finding of extreme hardship. Having carefully considered each of the hardship factors raised, both individually and in the aggregate, it is concluded that these factors do not in this case constitute extreme hardship to a qualifying family member for purposes of relief under 212(a)(9)(B)(v) of the Act, 8 U.S.C. § 1182(a)(9)(B)(v).

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. The applicant has not met that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.