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U.S. Citizenship  
and Immigration  
Services

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HA

[REDACTED]

FILE:

[REDACTED]

Office: LONDON, ENGLAND

Date:

JUL 25 2007

IN RE:

[REDACTED]

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:

[REDACTED]

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 Field Office Director, London, England and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native and citizen of Norway 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 ten years of her last departure from the United States. The applicant is the wife of a U.S. citizen and seeks a waiver of inadmissibility in order to reside in the United States with her husband.

The field office director found that the record failed to establish that the applicant's spouse would suffer extreme hardship if her waiver request were to be denied, noting that the only evidence of hardship was a statement from the applicant's spouse. The field office director also concluded that the applicant had failed to demonstrate that she merited a favorable exercise of discretion and denied the application accordingly. *Decision of the Field Office Director*, dated May 16, 2007.

On appeal, counsel contends that the field office director applied a more restrictive definition of extreme hardship than that commonly used by Citizenship and Immigration Services (CIS) and also failed to consider the hardships that would be experienced by the applicant's spouse in the aggregate. *Form I-290B and Attorney's Brief*, dated June 1, 2007.

The record indicates that the applicant was last admitted to the United States on or about January 19, 2003 under the Visa Waiver Program for 90 days and did not depart for Norway until April 7, 2005. On January 18, 2006, the applicant married her spouse, [REDACTED], who filed a Form I-130, Petition for Alien Relative, on her behalf. Although the Form I-130 has been approved with a priority date of November 3, 2006, the applicant has been found inadmissible to the United States under section 212(a)(9)(B)(i)(II) of the Act.

Section 301(b) of the Illegal Immigration and Immigrant Responsibility Act of 1996 Pub.L. 104-208, amended section 212(a) of the Act to render inadmissible any alien who departs the United States after accruing unlawful presence. The unlawful presence provisions of the Act became effective as of April 1, 1997. As defined in section 212(a)(9)(B)(ii) of the Act, an alien is deemed to be unlawfully present in the United States if:

The alien is present in the United States after the expiration of the period of stay authorized by the Attorney General [now Secretary of Homeland Security] or is present in the United States without being admitted or paroled.

In the present case, the applicant's lawful presence in the United States under the Visa Waiver Program ended on April 18, 2003. Between that date and her departure from the United States on April 7, 2005, she accrued more than two years of unlawful presence. In applying for an immigrant visa, the applicant is seeking admission within 10 years of her 2005 removal from the United States and is, therefore, inadmissible to the United States under section 212(a)(9)(B)(II) of the Act.

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.

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 lawful permanent resident spouse and/or parent of the applicant. Hardship that the applicant or other family members experience as a result of separation is not considered in section 212(a)(9)(B)(v) waiver proceedings, except to the extent that it causes hardship to the applicant's spouse and/or parent. In the present case, the applicant's only qualifying relative is [REDACTED]

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 U.S. 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 BIA has held:

Relevant factors, though not extreme in themselves, must be considered in the aggregate in determining whether extreme hardship exists. In each case, the trier of fact must consider the entire range of factors concerning hardship in their totality and determine whether the combination of hardships takes the case beyond those hardships ordinarily associated with deportation. [*Matter of O-J-O-*, 21 I&N Dec. 381, 383 (BIA 1996) (citations omitted)].

U.S. 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, *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. *Hassan v. INS, supra*, 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.

The AAO notes that extreme hardship to the applicant's spouse must be established if he resides in Norway or if he remains in the United States, as he is not required to reside outside of the United States based on the denial of the applicant's waiver request. The AAO will now consider the relevant factors in the adjudication of this case.

The first part of the extreme hardship analysis requires the applicant to establish extreme hardship to [REDACTED] in the event that he relocates to Norway. The record on appeal contains two undated statements from [REDACTED] in which he asserts that it would be an extreme hardship for him to relocate to Norway. [REDACTED] notes that he does not speak, read or write the Norwegian language and would have to leave all of his family in the United States. [REDACTED] indicates that he also needs to remain in the United States because of family health issues. He reports that his father is on disability, his maternal grandmother has been diagnosed with cancer, his maternal grandfather suffers from Parkinson's Disease and depression, his paternal grandfather is disabled and recovering from prostate cancer, and his paternal grandmother who has diabetes recently underwent open heart surgery. [REDACTED] further reports that he has obtained an entry-level position with the Transportation Security Administration (TSA) that may evolve into a federal government career and is planning on attending a Virginia university to pursue his doctorate. [REDACTED] contends that he would not be able to obtain the level of success in Norway that he believes would be able to achieve in the United States.

In his brief on appeal, counsel contends that [REDACTED] is the primary physical support for his disabled father and four grandparents who are in poor health and that he would suffer extreme emotional hardship if he were to relocate to Norway and were unable to be "constantly on hand for [their] general and specific needs." Evidence supporting this claim is provided by medical documentation relating to the health of [REDACTED] maternal grandparents, his father and his paternal grandmother, as well as a Social Security Administration disability determination in relation to [REDACTED]'s father and a statement from his maternal grandparents. While the AAO notes the statements offered by counsel and [REDACTED], and the medical and disability documentation related to the health problems affecting [REDACTED] family members, it finds no evidence in the record that establishes that [REDACTED] serves as the primary physical support for his father and grandparents as claimed by counsel.

The AAO notes the May 27, 2007 statement from [REDACTED] maternal grandparents, which indicates that they have relied on him during their hospital stays and when they have had health problems. However, this document, even when considered with the medical evidence just noted, does not establish [REDACTED] as the primary physical support for his maternal grandparents. Instead, the May 27, 2007 statement indicates that [REDACTED] has not been available to help his maternal grandparents during the preceding year. Moreover, the record indicates that [REDACTED] maternal grandparents live in Kansas and that [REDACTED] since October 2005, has lived in Virginia, where he plans to remain to work and continue his education if the applicant's waiver request is approved. In that the record does not establish [REDACTED] as the primary physical support for his maternal grandparents and no evidence has been submitted to establish him as a caregiver for his father or his

paternal grandparents, the record does not support counsel's claim that [REDACTED] would suffer extreme emotional hardship were he unable to continue his physical support of his father and grandparents. The AAO also notes that while [REDACTED] in his statements indicates his preference to remain in the United States in order to be close to his ailing father and grandparents, he does not describe himself as their primary physical support or indicate that he would suffer extreme emotional hardship if he ceased to be able to offer this support.

As noted above, [REDACTED] also indicates that he cannot relocate to Norway because he must remain in the United States to complete his educational and career goals. He reports that he has recently obtained an entry-level position with the Transportation Security Administration and has plans to complete his doctorate at a Virginia university. Counsel reiterates these claims on appeal, stating that [REDACTED] began employment with TSA upon his return from Norway and is in the process of transferring to another unidentified department in the U.S. Government. Counsel asserts that being unable to pursue a career with the U.S. Government or having to postpone a government career would be certain to result in extreme hardship for [REDACTED], as he would not be able to find commensurate employment in Norway. Counsel also contends that, as [REDACTED] is not literate in Norwegian, relocation would prevent [REDACTED] from pursuing his doctoral studies in Norway. The record, however, does not document that [REDACTED] is employed by the TSA or any other agency in the U.S. Government or that he plans to pursue a doctoral program of study at a Virginia university. Accordingly, it does not support counsel's claims that relocation to Norway would preclude [REDACTED] from continuing with his U.S. Government career or his education. Without supporting documentary evidence, the assertions of counsel will not meet the applicant's burden of proof in this proceeding. The assertions of counsel do not constitute evidence. *See Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980). Going on record without documentary evidence will not meet the applicant's burden of proof in these proceedings. *See 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, [REDACTED]'s inability to find Norwegian employment comparable to that he could obtain in the United States does not constitute extreme hardship. Economic detriment upon relocation is not unusual or extreme and there is no evidence in the record that demonstrates [REDACTED] would be unable to obtain any employment in Norway. *See Perez v. INS*, 96 F.3d 390 (9<sup>th</sup> Cir. 1996); *Ramirez-Durazo v. INS*, 794 F.2d 491, 498 (9<sup>th</sup> Cir. 1986).

The AAO acknowledges that [REDACTED] in relocating to Norway would encounter hardships, including separation from his family in the United States and the difficulties inherent in learning a new language, and living and working in a new culture. Such hardships, however, even if considered in the aggregate, do not constitute extreme hardship, but are those routinely encountered by spouses who relocate to join spouses living outside the United States. Therefore, the record does not establish that [REDACTED] would suffer extreme hardship if he moved to Norway to live with the applicant.

The second part of the analysis requires the applicant to prove that [REDACTED] would suffer extreme hardship if he continues to remain in the United States without the applicant. In his undated statements, [REDACTED] asserts that "4,000 miles of separation, 2+ years, thousands of dollars, educational/career delay, emotional turmoil, family trauma and disorganization" demonstrate extreme hardship. He also asserts that the applicant's inadmissibility prevents them from starting a family and that this is a potentially devastating future hardship. Counsel's brief notes that [REDACTED] has been separated from the applicant for 26 months and that he is already suffering extreme hardship as a result.

While the AAO notes the above claims, the record offers no documentary evidence that would indicate that the hardship [REDACTED] is experiencing as a result of living apart from the applicant is distinguishable from that normally experienced by individuals whose spouses reside outside the United States as a result of removal or inadmissibility. In nearly every qualifying relationship, whether between husband and wife or parent and child, there is a deep level of affection and a certain amount of emotional and social interdependence. While, in common parlance, the prospect of separation or involuntary relocation nearly always results in considerable hardship to individuals and families, in specifically limiting the availability of a waiver of inadmissibility to cases of "extreme hardship," Congress did not intend that a waiver be granted in every case where a qualifying relationship, and thus the familial and emotional bonds, exist. The point made in this and prior decisions on this matter is that the current state of the law, viewed from a legislative, administrative, or judicial point of view, requires that the hardship, which meets the standard in section 212(a)(9)(B)(v) of the Act, be above and beyond the normal, expected hardship involved in such cases. In the present case, the AAO does not find the applicant to have established that [REDACTED] would face extreme hardship if her waiver request were denied and she remained inadmissible to the United States.

When considered in the aggregate and in light of the *Cervantes-Gonzalez* factors cited above, the hardships described in the record do not support a finding that [REDACTED] would face extreme hardship if the applicant is refused admission. Accordingly, the applicant has failed to establish statutory eligibility for a waiver under section 212(a)(9)(B)(v) of the Act.

The issuance of a waiver under section 212(a)(9)(B)(v) is discretionary in nature. However, the exercise of discretion is undertaken only when an applicant has first established extreme hardship to a qualifying relative. The applicant in the present case has failed to demonstrate that the denial of the Form I-601 would result in extreme hardship to her only qualifying relative, [REDACTED]. She is, therefore, statutorily ineligible for relief under 212(a)(9)(B)(v) and no purpose would be served in discussing whether she merits a waiver as a matter of discretion. Accordingly, the appeal will be dismissed.

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.

**ORDER:** The appeal is dismissed.