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U.S. Department of Homeland Security
U. S. Citizenship and Immigration Services
Office of Administrative Appeals
Washington, DC 20529-2090



**U.S. Citizenship
and Immigration
Services**

H4

[Redacted]

FILE:

[Redacted]

Office: PHILADELPHIA

Date: **MAR 18 2009**

IN RE:

[Redacted]

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:

[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.

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, Philadelphia, Pennsylvania. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The record reflects that the applicant is a native and citizen of Morocco 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 U.S. citizen and 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 reside with his wife in the United States.

The acting district director found that the applicant failed to establish extreme hardship to his U.S. citizen spouse and denied the application accordingly. *Decision of the Acting District Director*, dated June 30, 2006.

On appeal, the applicant's wife, [REDACTED], claims she will suffer extreme hardship if her husband's waiver application is denied.

The record contains, *inter alia*: a copy of the marriage certificate of the applicant and his wife, [REDACTED] indicating they were married on November 1, 2004; an affidavit and a statement from [REDACTED] a letter from [REDACTED] employer; copies of financial documents and tax returns; and a copy of an approved 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:

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 acting district director found, and the applicant does not contest, that the applicant entered the United States using a visitor's visa on September 29, 2001, with authorization to remain in the United States until March 28, 2002. The applicant overstayed his visa and married Ms. [REDACTED] on November 1, 2004. On January 12, 2005, the applicant's wife filed a Petition for Alien Relative (Form I-130) and the applicant filed an Application to Register Permanent Residence or Adjust Status (Form I-485). The applicant departed the United States and returned on August 9, 2005, after being granted parole. The applicant, therefore, accrued unlawful presence for over one year from March 29, 2002, until he filed his adjustment application on January 12, 2005. He now seeks admission within ten years of his 2005 departure. Accordingly, he is inadmissible to the United States under section 212(a)(9)(B)(i)(II) of the Act for being unlawfully present in the United States for a period of one year or more.

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). 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 Board 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 has suffered or will suffer extreme hardship as a result of the applicant's waiver being denied.

In this case, [REDACTED] states that she will suffer extreme emotional and financial hardship if her husband's waiver application is denied. *Letter from* [REDACTED] undated. Ms. [REDACTED] states she "will no longer have a job as of December 23, 2005," and that her husband is "the backbone" of their family. *Id.* She further states that she speaks only English and that her entire family, including her parents, grandmother, and five siblings, live in the United States. *Affidavit of* [REDACTED] dated

September 27, 2006. She states she had hip surgery last year, that the surgery “was not as successful as [her] doctor had hoped,” and that she may need additional hip surgery. *Id.*

Even assuming, without deciding, that [REDACTED] would suffer extreme hardship if she moved to Morocco to be with her husband, nonetheless, she has the option of staying in the United States. After a careful review of the record, there is insufficient evidence to show that she will suffer extreme hardship if she were to remain in the United States without her husband. The AAO recognizes that [REDACTED] will endure hardship being separated from the applicant and is sympathetic to the couple’s circumstances. However, with respect to [REDACTED] financial hardship claim, there is insufficient evidence in the record to substantiate her claim. There is no documentation in the record addressing the couple’s expenses. The record shows that the applicant has not worked in the United States and, therefore, there is no evidence indicating he could financially support the couple or find employment. In fact, in her brief, dated nine months after [REDACTED] had claimed she would have been unemployed, [REDACTED] states “she is currently employed and supporting herself and her husband.” *Appellant’s Brief in Support of Appeal* at 5, dated September 27, 2006. Without more detailed information, the AAO is not in the position to find that the denial of the applicant’s waiver application would cause extreme financial hardship to the applicant’s spouse. In any event, even assuming some economic hardship, as the U.S. Supreme Court held in *INS v. Jong Ha Wang*, 450 U.S. 139 (1981), the mere showing of economic detriment to qualifying family members is insufficient to warrant a finding of extreme hardship. *See also 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).

Regarding [REDACTED]’s hip surgery, there is insufficient evidence in the record to show that her health condition has risen to the level of extreme hardship. There is no documentation in the record from [REDACTED] physician or any other health care professional addressing [REDACTED] hip problems. There is no explanation or elaboration regarding why [REDACTED] surgery was not as successful as the doctor had hoped. [REDACTED] does not elaborate on how her hip problem affects her and does not assert that she needs any assistance because of it. 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.

Although the AAO recognizes [REDACTED] will endure hardship by remaining 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 he 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.