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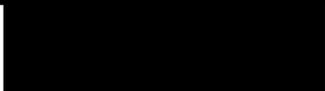


**U.S. Citizenship
and Immigration
Services**



H6

FILE:



Office: ROME, ITALY
(LONDON, UK)

Date:

APR 02 2010

IN RE:

Applicant:



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.

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).

Perry Rhew

Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the District Director, Rome, Italy, and 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 Iceland 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 record indicates that the applicant is married to a United States citizen and the mother of a United States citizen. She is the beneficiary of an approved Petition for Alien Relative (Form I-130). The applicant 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 in the United States with her United States citizen husband and son.

The District Director found that the applicant had failed to establish that extreme hardship would be imposed on a qualifying relative and denied the Application for Waiver of Grounds of Excludability (Form I-601) accordingly. *Decision of the District Director*, dated November 10, 2009.

On appeal, the applicant states her husband's "extreme hardship includes the separation from his son and [her]," but "it is not his only hardship." *Form I-290B*, filed December 8, 2009.

The record includes, but is not limited to, statements from the applicant and her husband; medical documents for the applicant's husband; letters of support; an evaluation of the applicant's husband's employability in Iceland by [REDACTED] a letter from [REDACTED], regarding the ability of the applicant's husband to obtain employment in Iceland; a letter from the Icelandic Department of Labor regarding the applicant's unemployment benefits; a letter from [REDACTED] regarding the applicant's welfare benefits; and articles on the Icelandic language and the economic situation in Iceland. The entire record was reviewed and considered in arriving at a 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 [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 the present application, the record indicates that on August 15, 1993, the applicant entered the United States. No departure information is available for this visit. On November 25, 1997, the applicant entered the United States under the Visa Waiver Pilot Program (VWPP), with authorization to remain in the United States until February 25, 1998. On March 2, 2000, the applicant voluntarily departed the United States. On August 10, 2000, the applicant entered the United States under the VWPP. On an unknown date, the applicant voluntarily departed the United States. On May 24, 2001, the applicant entered the United States under the VWPP, with authorization to remain in the United States until August 24, 2001. On December 8, 2004, the applicant voluntarily departed the United States. On January 8, 2005, the applicant entered the United States under the VWPP, with authorization to remain in the United States until April 7, 2005. On December 23, 2007, the applicant voluntarily departed the United States. On January 2, 2008, the applicant married [REDACTED], a United States citizen, in Iceland. On January 9, 2008, the applicant entered the United States under the VWPP, with authorization to remain in the United States until April 8, 2008. On December 23, 2008, the applicant voluntarily departed the United States. On January 7, 2009, the applicant attempted to enter the United States under the VWPP, but was refused entry based upon her previous overstays. On or about January 8, 2009, the applicant returned to Iceland. On February 12, 2009, the applicant's husband filed a Form I-130 on behalf of the applicant. On March 2, 2009, the applicant's husband filed a Petition for Alien Fiancé(e) (Form I-129F) on behalf of the applicant. On March 11, 2009, the applicant gave birth to her son in Iceland. On May 2, 2009, the Form I-130 and Form I-129F benefiting the applicant were approved. On September 17, 2009, the applicant filed a Form I-601. On November 10, 2009, the District Director denied the applicant's Form I-601, finding that the applicant had accrued more than a year of unlawful presence and had failed to demonstrate extreme hardship to her United States citizen spouse.

First, the applicant accrued unlawful presence from February 26, 1998, the day after her authorization to remain in the United States expired, until March 2, 2000, the date she departed the United States.¹ Second, the applicant accrued unlawful presence from August 25, 2001, the day after her authorization to remain in the United States expired, until December 8, 2004, the date she departed the United States.² Third, the applicant accrued unlawful presence from April 8, 2005, the day after her authorization to remain in the United States expired, until December 23, 2007, the date she departed the United States.³ Fourth, the applicant accrued unlawful presence from April 9, 2008, the day after her authorization to remain in the United States expired, until December 23, 2008, the date she departed the

¹ The applicant accrued 735 days of unlawful presence.

² The applicant accrued 1201 days of unlawful presence.

³ The applicant accrued 989 days of unlawful presence.

United States.⁴ The applicant is seeking admission to the United States within ten years of her December 23, 2008 departure from the United States. The applicant is, therefore, 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 citizen or lawfully resident spouse or parent of the applicant. Hardship the applicant herself experiences upon removal is not directly relevant to a section 212(a)(9)(B)(v) waiver proceeding. The AAO also notes that hardship that the applicant's son would suffer if the applicant were denied admission into the United States will also not be considered. Section 212(a)(9)(B)(i) of the Act provides that a waiver, under section 212(a)(9)(B)(v) of the Act, is applicable solely where the applicant establishes extreme hardship to her citizen or lawfully resident spouse or parent. Unlike a waiver under section 212(h) of the Act, Congress does not mention extreme hardship to United States citizen or lawful permanent resident children. Therefore, hardship to the applicant's son will not be considered in this proceeding except to the extent that it creates hardship for a qualifying relative. 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).

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 *Cervantes-Gonzalez*, the Board of Immigration Appeals (BIA) set forth a list of non-exclusive factors relevant to determining whether an applicant 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 also 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. courts have stated, "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

⁴ The applicant accrued 258 days of unlawful presence.

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). Separation of family will therefore be given appropriate weight in the assessment of hardship factors in the present case.

The AAO notes, however, that the courts have repeatedly held that the common results of removal or inadmissibility are insufficient to prove extreme hardship. *See Hassan v. INS*, 927 F.2d 465, 468 (9th Cir. 1991). The common results of deportation are insufficient to prove extreme hardship as extreme hardship has generally been defined as hardship that is unusual or beyond that which would normally be expected upon deportation. *See Perez v. INS*, 96 F.3d 390 (9th Cir. 1996); *see also Matter of Pilch*, 21 I&N Dec. 627 (BIA 1996) (holding that emotional hardship caused by severing family and community ties is a common result of deportation and does not constitute extreme hardship); *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). Only “in cases of great actual or prospective injury...will the bar be removed.” *Matter of Ngai*, 19 I&N Dec. 245, 246 (BIA 1984).

Extreme hardship to the qualifying relative in the present case, the applicant’s husband, must be established in the event that he relocates to Iceland or remains in the United States, as there is no requirement that a qualifying relative reside outside the United States based on the denial of an applicant’s waiver request.

In a letter dated December 27, 2009, the applicant’s husband states that all of his family reside in the United States and that they are “very close and involved in each other’s lives.” The applicant’s husband states that he loves his home in the United States, but if the applicant were not to be allowed to return to the United States, he would have to move to Iceland and it “would be devastating.” The applicant’s husband states it would be difficult for him to find employment in Iceland because he does not speak Icelandic. The applicant’s husband further states that he suffered a work-related injury to his back that has left him disabled.

The AAO notes that the record establishes that on June 13, 2001, the applicant had back surgery for a “slip-and-fall accident” that occurred in January 1997. Additionally, the AAO notes that the applicant’s husband has been approved for a disabled person placard for his vehicle. The AAO also observes that if the applicant’s husband joined her in Iceland, he would be ineligible for the Icelandic national health care for at least six months after he registered with Icelandic immigration authorities.

In a letter dated November 26, 2009, [REDACTED] on behalf of the Directorate of Labor, states “[t]he unemployment in Iceland is very high.... Looking at these facts and given [the applicant’s husband’s] disability [he] would say that the odds of finding employment quickly are extremely little.” In a letter dated December 22, 2009, [REDACTED] states that due to the applicant’s disability he would be “unable to perform any other work than those that involve minimal manual labor. In Iceland there has been a growing unemployment especially among the unskilled since

October 2008. The chances for him to get a job as a taxi-driver, bus or a truck driver are furthermore, minimal at best.” [REDACTED] states that it would be difficult for the applicant’s husband to obtain employment as a driver, because he “does not have an Icelandic occupational driver permit,” “there is significant unemployment in the field,” and “many of the jobs include long haul drives under harsh winter conditions but he would not qualify for such on medical grounds.” Further, [REDACTED] states that, given the applicant’s husband’s disability, he cannot “be expected due to medical reason[s] to be able to support [himself] or his family here in Iceland . . . [and would] be forced to live on [the applicant’s] income.” [REDACTED] states that the “figures show that it is very difficult to find a job in Iceland at the moment and if you don’t speak Icelandic the changes are a lot less.” The AAO notes that documentation in the record establishes that Icelandic is one of the hardest languages for an English speaker to learn. Based on the record before it, the AAO finds that the applicant has demonstrated extreme hardship to her husband if he were to relocate to Iceland. The applicant has not, however, established that her husband would suffer extreme hardship if he remains in the United States without her.

The applicant’s husband states that he is now supporting two households and, therefore, must work longer hours, which is hard on his injured back. The applicant and her husband also state his trips to Iceland are getting costly and he “will not be able to travel as much . . . if [he is] to support them from afar.” The applicant’s husband further asserts that while his employer has been understanding so far about his trips to visit the applicant that may not always be the case and that he risks losing his job each time he asks for time off. In a November 30, 2009 letter, the applicant’s employer, [REDACTED] states that the applicant’s husband’s trips to Iceland “have taken there [sic] toll on the family financially and emotionally, and [his company] operationally.” In a letter dated August 1, 2009, [REDACTED] states the applicant’s husband has “missed copious amounts of workdays.”

The AAO notes the above claims, but does not find the record to demonstrate that the applicant’s husband would experience extreme financial hardship in the applicant’s absence. It notes that the record establishes that because the applicant has not contributed to the Icelandic pension and unemployment systems, she has minimal rights. In a letter dated September 10, 2009, the Icelandic Department of Labor denied the applicant’s application for unemployment benefits because she had not been employed in the Icelandic domestic labor market for at least three out of the preceding twelve months. Additionally, in a letter dated November 23, 2009, the applicant’s application for welfare/financial benefits was denied. While the AAO acknowledges that the applicant is ineligible for unemployment and welfare benefits in Iceland, the record offers insufficient evidence that she, as a citizen of Iceland who speaks Icelandic, cannot obtain some type of employment that would reduce the financial burden on her husband. Additionally, the AAO notes that the applicant’s parents reside in [REDACTED], and the record does not indicate that they are unable or unwilling to provide her with assistance. The record also lacks any documentation that establishes the income earned by the applicant’s husband and, therefore, the AAO cannot determine how much of a financial hardship it is on him to support two households. The record also fails to establish that the applicant’s husband’s job is at risk as a result of his trips to Iceland. Although [REDACTED] letters state that the applicant’s husband has missed a significant number of workdays, they also establish the high regard in which [REDACTED] holds the applicant’s husband and his importance to [REDACTED] firm.

The applicant's husband states it has been difficult being separated from the applicant and their son, and family holidays have not been the same. He states that he has been suffering without his son, and he has "not been sleeping well and the stress is almost unbearable." The AAO acknowledges these claims but does not find the record to support them with documentary evidence, e.g., an evaluation by a licensed mental health or other medical practitioner. Going on record without supporting documentation is not sufficient to meet the applicant's burden of proof in this proceeding. *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)). Accordingly, the AAO finds that that the applicant has failed to establish that her husband would suffer extreme hardship if her waiver application is denied and he remains in the United States.

A review of the documentation in the record fails to establish the existence of extreme hardship to the applicant's spouse 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) 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.