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HL6

FILE: [REDACTED] Office: ROME (LONDON) Date:
LND2007 583 002 (RELATES)

APR 27 2010

IN RE: [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.

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. 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 the United Kingdom. He 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 admission within 10 years of his last departure from the United States. 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 return to the United States to join his U.S. citizen parents.

The District Director concluded that the applicant had failed to establish that his bar to admission would impose extreme hardship on a qualifying relative, and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) accordingly.

On appeal, the applicant asserts that his parents' quality of life has declined and his mother is suffering from depression. He states that his siblings cannot assist his parents and they need his assistance. He states that his parents are being punished for his indiscretions. *Form I-290B, Notice of Appeal or Motion*, dated December 22, 2009.

In support of the application, the record contains, but is not limited to, medical documentation and letters from the applicant, the applicant's mother, the applicant's father and the applicant's parents' neighbors. The entire record was reviewed and considered in rendering a decision on the appeal.

Section 212(a)(9)(B) of the Act provides, in pertinent part:

(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.

The record shows that the applicant entered the United States on April 8, 2002 under the Visa Waiver Program. The applicant was authorized to remain in the United States for 90 days. The applicant remained in the United States until departing on January 19, 2009. The applicant accrued unlawful presence from July 7, 2002 until January 19, 2009. The applicant does not dispute this on appeal. The applicant is attempting to seek admission into the United States within ten years of his January 19, 2009 departure from the United States. The applicant is, therefore, inadmissible to the United States under section 212(a)(9)(B)(II) of the Act for having been unlawfully present in the United States for a period of more than one year and seeking admission to the United States within ten years of his last departure.

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. Hardship the alien himself experiences upon deportation is irrelevant to section 212(a)(9)(B)(v) waiver proceedings. 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 *Matter of 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 United States 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.

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).

An analysis under *Matter of Cervantes-Gonzalez* is appropriate. The AAO notes that extreme hardship to a qualifying relative must be established in the event that he or she accompanies the applicant or in the event that he or she remains in the United States, as a qualifying relative is not required to reside outside of the United States based on the denial of the applicant’s waiver request.

The record reflects that the applicant is the 53-year-old son of a naturalized U.S. citizen father, 80-year-old [REDACTED], and a naturalized U.S. citizen mother, 81-year-old [REDACTED].

The applicant's parents are qualifying family members for purposes of a section 212(a)(9)(B)(v) waiver.

The applicant's father states in his February 6, 2009 letter that he and his wife "were not in the best of health" when the applicant was living with them. He states that "To us it was a Godsend that [REDACTED] was able to remain to care for us, as the costs of his living with us being well beneath that of speciali[z]ed care." He states that the applicant "has taken care of all that [they] can no longer cope with." *Letter of [REDACTED]* dated February 6, 2009. Similarly, the applicant states in his letter filed with the waiver application that when he resided in the United States he cared for his parents. He states that if he is denied an immigrant visa, his parents would "suffer greatly." He states that other members of his family residing in the Atlanta area "are not easily able to take the place of caring for our elderly parents as [they] have their own families to attend to." *Applicant's Letter*, filed March 13, 2009. In a recent letter submitted to the AAO, the applicant's mother states that her husband "has a form of pneumonia that will continue to exist, requiring the constant use of oxygen." She notes that the applicant's father "has suffered a tremendous loss of weight as [he] is unable to swallow normally and is extremely emaciated, a feeding tube has now been inserted as considered necessary to sustain life." *Letter of [REDACTED]*, dated March 30, 2010.

The record contains a recent letter from the applicant's parents' physician stating that the applicant's father's medical condition has "dramatically worsened" and he is less mobile. He notes that the applicant's father was hospitalized for three weeks and is oxygen dependent. He states that the applicant's arrival in the United States to care for the applicant's father is essential. *Letter from [REDACTED]*, dated February 26, 2010. The physician's previous letter notes that the applicant's mother "is in constant, unrelenting pain" and "cannot walk well, prepare her meals, keep house, or even bathe well." He states that the applicant's mother "has had multiple epidural shots as well as bilateral hip replacements to no avail." He states that the applicant's father "suffers from severe chronic fatigue syndrome as well as refractory iron-deficient anemia." He notes that the applicant's father "cannot walk well, cannot care for [h]is wife and has poor balance." *Letter from [REDACTED]* dated December 15, 2009. The applicant submitted his mother's itemized list of medical and surgical procedures. *See Surgical History of [REDACTED]* dated December 14, 2009.

In denying the application, the director stated that the applicant has not submitted evidence to counter the argument that his other family members in Atlanta, Georgia could assist with caring for his mother and father. The director stated that the applicant has a sister, [REDACTED] brother, [REDACTED] and a twin brother, [REDACTED]. *Decision of the District Director*, dated November 27, 2009. The AAO notes that the applicant listed his sister, [REDACTED] of Douglasville, Georgia, as a U.S. lawful permanent resident on his waiver application. On appeal, the applicant notes that his sister, who is sixteen miles away from their parents, has full time employment and her husband has an aggressive form of prostate cancer. He states that the other members of his family are "far distant and/or with infant and junior children to care for." He states that he is the only one that can help. *Form I-290B, Notice of Appeal or Motion*, dated

December 22, 2009. The AAO has reviewed the record and observes that the applicant has not submitted letters from his siblings to demonstrate that they would not assist their parents. Nor have the applicant's parents explained their current living situation, how they now conduct their daily activities, and whether they have received living assistance since the applicant's departure. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *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)). While the applicant's assertions are relevant and have been considered, they are of little weight in the absence of supporting evidence.

Further, a Federal Bureau of Investigation (FBI) report based upon the applicant's fingerprints reveals that on August 29, 2008, the applicant was arrested by the Cobb County Police Department for *disorderly conduct* in violation of section 16-11-39 of the Georgia Code, a misdemeanor offense. While the final disposition of this charge is not in the record, a recent letter from the applicant's mother explains the circumstances of the arrest. The applicant's mother states that "the Cobb County Police were not intending to make any arrest over an argument that broke out between [REDACTED] and his brother, [REDACTED] and agreed to, only because his very irate father requested they do so." She notes, "Now very sorry that his annoyance with his son may be a cause for your decision." *Letter of [REDACTED]*, dated January 14, 2010. The AAO observes that the applicant's father's decision to press for the applicant's arrest at the very least draws into question the applicant's claim that his residence in the United States is beneficial to his parents' wellbeing.

The AAO acknowledges that the applicant's parents will experience emotional hardship if they remain in the United States without their son, but the applicant has failed to demonstrate that this hardship, when combined with other hardship factors, will be extreme. The AAO recognizes the significance of family separation as a hardship factor, but concludes that the hardship demonstrated by the record is the common result of removal or inadmissibility and does not rise to the level of extreme hardship. U.S. court decisions 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). 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.

Finally, the record indicates that the applicant's parents will remain in the United States if the applicant is denied a waiver of inadmissibility. As stated, extreme hardship to a qualifying relative must also be established in the event that he or she accompanies the applicant abroad. The applicant has not asserted, or submitted evidence to demonstrate, that his parents, who are natives of the United Kingdom, would suffer extreme hardship in the United Kingdom if they relocated there. For instance, the letters from [REDACTED] do not indicate whether it would be safe for the applicant's parents to travel to the United Kingdom with medical assistance. Nor do they state whether the applicant's parents could receive appropriate medical care in the United Kingdom. Accordingly, the AAO cannot determine that the applicant's parents would suffer extreme hardship if they relocated with the applicant to the United Kingdom.

In this case, the record does not contain sufficient evidence to show that the hardships faced by the applicant's parents, considered in the aggregate, rise beyond the common results of removal or inadmissibility to the level of extreme hardship. The AAO therefore finds that the applicant has failed to establish eligibility for a waiver of inadmissibility under section 212(a)(9)(B)(v) of the Act. 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.

The AAO notes that should the applicant reapply for an immigrant visa, the applicant's criminal record should be addressed by requesting the following: (1) the court records related to the applicant's August 29, 2008 arrest for disorderly conduct in violation of section 16-11-39 of the Georgia Code; and (2) police records related to the caution issued against the applicant for possessing cannabis. The applicant may be inadmissible to the United States under section 212(a)(2)(A) of the Act for having committed a crime involving moral turpitude and/or a violation of a law relating to a controlled substance.

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.