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



U.S. Citizenship  
and Immigration  
Services



H6

FILE: [REDACTED] Office: BANGKOK, THAILAND

Date:

AUG 02 2010

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 (INA), 8 U.S.C. § 1182(a)(9)(B)(v)

ON BEHALF OF APPLICANT: SELF-REPRESENTED

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

If you believe the law was inappropriately applied by us in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. 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. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

Perry Rhew  
Chief, Administrative Appeals Office

**DISCUSSION:** The waiver application was denied by the Acting District Director, Bangkok, Thailand. The decision is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native and citizen of New Zealand who was found 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 a period of more than one year and seeking readmission within ten years of his last departure. He 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 his United States citizen (USC) spouse.

The record reflects that the applicant is the beneficiary of an approved Petition for Alien Relative, Form (I-130) filed on his behalf by his United States citizen (USC) spouse. The applicant filed an Application for Permission to Reapply for Admission into the United States after Deportation or Removal (Form I-212) on or about November 20, 2006 and an Application for Waiver of Grounds of Excludability (Form I-601) on or about September 1, 2006 in Bangkok, Thailand.

In a decision dated August 30, 2007, the acting district director found that the applicant accrued unlawful presence in the United States from September 25, 2002 until October 19, 2005, when he was deported from the United States. The acting district director concluded that the applicant had failed to establish that extreme hardship would be imposed on his USC wife and denied the Application for Waiver of Grounds of Excludability (Form I-601) accordingly. *Decision of the Acting District Director* dated August 30, 2007.

On appeal, the applicant's spouse asserts that she is experiencing extreme hardship as a result of having to choose between remaining in the United States with her family or relocating to New Zealand to live with the applicant.

The record includes, but is not limited to, personal statements from the applicant's spouse, supportive letters and statements from the applicant's wife's mother, aunt, friends and other family members, and copies of the applicant's wife's medical records from New Zealand and the United States. The entire record was reviewed and considered in rendering this decision.

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-

....

(I) was unlawfully present in the United States for a period of more than 180 days but less than 1 year, voluntarily departed the United States . . . prior to the commencement of proceedings under section 235(b)(1) or section 240, and again seeks

admission within 3 years of the date of such alien's departure of removal, or

(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 reflects that the applicant was admitted into the United States on September 25, 2002, at Los Angeles, California, under the Visa Waiver Program (VWPP) with authorization to remain in the United States for 90 days. *See copy of Form I-94W* in the file. The record reflects that the applicant remained in the United States beyond the 90 days and worked in the United States without prior authorization, in violation of his status. The record reflects that the applicant accrued unlawful presence in the United States from December 24, 2002, when he fell out of status until October 19, 2005, when he was deported from the United States. *See Warrant of Removal/Deportation* dated August 31, 2005. The applicant is seeking admission to the United States in order to reside with his USC spouse. The applicant has not disputed his inadmissibility on appeal. Thus, the AAO affirms the acting district director's finding that the applicant is inadmissible pursuant to section 212(a)(9)(B)(i)(II) of the Act.

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 himself experiences upon removal is irrelevant to a section 212(a)(9)(B)(v) waiver proceeding. Section 212(a)(9)(B)(v) of the Act provides that a waiver 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. In the present case, the applicant's wife is the only 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 *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 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 that

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 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).

The AAO notes that extreme hardship to a qualifying relative must be established in the event that he or she accompanies the applicant abroad 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's spouse, [REDACTED] native and citizen of the United States. The applicant and his wife were married in New Zealand [REDACTED] and do not have any children. The applicant's spouse asserts that she is suffering extreme emotional, physical and financial hardships as a result of the denial of the waiver.

The applicant's wife states that she will experience difficulties relocating to New Zealand to be with the applicant because of the extreme hardship she has suffered and continues to suffer as a result of separation from her family and friends. In a statement dated August 15, 2007, the applicant's wife states that she is very close to her family and since moving to New Zealand, "the stress concerning my family has increased ten-fold." The applicant's wife states that several members of her family are experiencing health issues, and so she had to come back to the United States to be with them. Specifically, the applicant's wife states that her aunt was recently diagnosed with breast cancer and after several months of chemotherapy and radiation, the cancer went into remission, however, the cancer is back and the prognosis does not look good. She states that while her aunt was away in Texas for treatment, she took care of her aunt's home, animals and other things for her in Wyoming. The applicant's wife states that her family needs her now and if she is forced to return to New Zealand and her aunt loses her battle with the cancer, "it will devastate a part of me that will never heal again." *Statement of Rebecca Swanson* dated August 15, 2007. The applicant's aunt, [REDACTED] states that the applicant's wife has been a strong support for her, emotionally as well as physically; that while she was away in Houston for treatment, the applicant's wife took care of her home and animals and that for six weeks, the applicant's wife drove her to and from her chemotherapy treatment. [REDACTED] further states that if the cancer is not controlled, she will undergo a bone marrow transplant in Houston, Texas, and will need to stay there for two months and that she will need the applicant's wife's help during that period. *Statement by* [REDACTED] dated October 17, 2007.

The applicant's wife also states that she has no close friends or family in New Zealand except the applicant. She states that she suffers from dizziness, fainting, and indigestion as a result of the stress of having to choose between helping her family and being with her husband. The applicant's wife further states;

After going to New Zealand I lost weight due to the stress of leaving my family behind, just to gain it back because of depression. My hair is falling out and I get migraine force headaches and in general struggle on a daily basis to find myself again...I have been on emotional rollercoaster, most days at the bottom...I don't want to talk to my mom or other friends and family about how I'm feeling because then they just worry about me and that only adds to my stress. *Statement of Rebecca Swanson* dated August 15, 2007.

The applicant's wife further states that, although her husband has a good job in New Zealand, his income is not enough to meet their financial obligations, she has been unable to find employment in New Zealand. *Statement from* [REDACTED] dated August 15, 2007. Consequently, they have been forced to exhaust their savings to pay bills and other financial obligations. *Id.* The applicant's wife also states that she wants to continue her college education in New Zealand, but that it will be impossible for her to do so because of limited finances, they will have to move to another city and

her husband would have to give up his "good" job, a costly proposition for the family. *Statement from [REDACTED] dated October 18, 2007.*

The record includes copies of the applicant's wife's medical records from New Zealand and the United States, and extensive medical records from [REDACTED] Houston, Texas, detailing [REDACTED] medical condition and the treatments she is receiving. The record does not contain any information about the family's income and expenses.

The AAO finds that the applicant's wife has provided sufficient evidence to show that she would suffer extreme hardship if she were to relocate to New Zealand to live with her husband. The record shows that the applicant's wife's has significant family ties in the United States and that all her family members reside in the United States, except for the applicant. The applicant's wife has lived most of her life in the United States, not too far from her family and friends. The evidence in the record shows that the applicant's wife is very instrumental in taking care of her sick aunt. Additionally, there is evidence in the record to show that the applicant's wife is very close to her relatives and friends and separation from them would cause her extreme hardship. *See Matter of Cervantes-Gonzalez, 22 I&N Dec. 565* (recognizing importance of the presence of family ties to the U.S. citizens or lawful permanent residents in the United States). The applicant has therefore established that relocation to New Zealand would cause extreme hardship to his wife.

The record however fails to establish extreme hardship to the applicant's wife if she remains in the United States. As a United States citizen, the applicant's wife is not required to reside outside of the United States as a result of the denial of the applicant's waiver request. The applicant's wife, states that she suffers and continues to suffer emotional and financial hardship as a result of separation from the applicant. The applicant's wife states that she loves her husband and wants to be with him, but does not want to choose between leaving her family and friends in the United States and being with the applicant. *Statement from [REDACTED] dated August 15, 2007.* The applicant's wife states that she and the applicant want to start a family, but that it has not been possible because of the separation. *Id.* The applicant's wife also states that the stress of her husband's immigration problems has caused her many sleepless nights, and depression, and that she is taking an anti-depression medication. The applicant's wife states, "since returning to the United States, I have gone to a doctor to get on antidepressant pills to help me alleviate the stress I'm feeling. It got to the point where I wanted to cry all the time. I was having a hard time concentrating on everyday things. I have never needed to take something extra to get me through my day, but because of the stress of the last 2 years, I need to." *Statement from Rebecca Swanson, dated October 18, 2007.* The record includes a medical report/record from [REDACTED] [REDACTED] Douglas, Wyoming, dated September 11, 2007.

While the AAO acknowledges the claims made by the applicant's wife, it does not find the evidence in the record sufficient to demonstrate that the challenges encountered by the applicant's wife, considered cumulatively, meet the extreme hardship standard. While the emotional hardship of separation is apparent from the applicant's wife's statements, the applicant did not provide professional psychological evaluations, detailed testimony, or other evidence to show that any emotional or psychological hardship his wife faces are unusual or beyond what would be expected

upon family separation due to one member's inadmissibility. The record contains copies of medical records, including hand-written progress notes containing medical terminology and abbreviations that are not easily understood, and laboratory results. The documents submitted were prepared for review by medical professionals or are otherwise illegible or indiscernible and do not contain a clear explanation of the current medical condition of the applicant's wife. Absent an explanation in plain language from the treating physician of the exact nature and severity of any condition and a description of any treatment or family assistance needed, the AAO is not in the position to reach conclusions concerning the severity of a medical condition or the treatment needed. Also, the record does not contain any information on the family's income and expenses. Absent any information about the family's income and expenses, the AAO cannot conclude that family separation has caused extreme financial hardship to the applicant's wife.

In sum, although the record shows that the applicant's wife would suffer hardship if forced to relocate to New Zealand because of her family ties in the United States and her limited ties to New Zealand, the record does not support a finding that the difficulties, faced by the applicant's wife when considered in the aggregate, would rise beyond the common results of removal or inadmissibility to the level of extreme hardship. *See Perez*, 96 F.3d at 392; *Matter of Pilch*, 21 I&N Dec. at 631. Although the distress caused by separation from one's family is not in question, a waiver of inadmissibility is only available where the resulting hardship would be unusual or beyond that which would normally be expected upon removal. *See id.* The AAO therefore finds that the applicant has failed to establish extreme hardship to his spouse, as required for a waiver of inadmissibility under section 212(a)(9)(B)(v) of the Act.

Section 291 of the Act, 8 U.S.C. § 1361, provides that the burden of proof is on the applicant to establish eligibility for the benefit sought. Here, the applicant has not met that burden. Accordingly, the appeal will be dismissed.

**ORDER:** The appeal is dismissed.