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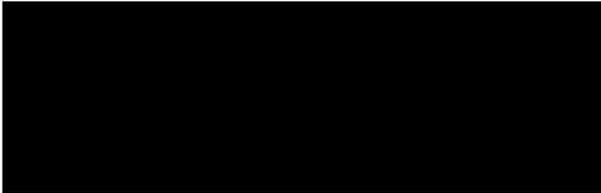
U.S. Department of Homeland Security  
U.S. Citizenship and Immigration Services  
Office of Administrative Appeals MS 2090  
Washington, DC 20529-2090



U.S. Citizenship  
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H6



FILE: [REDACTED] Office: GUANGZHOU, CHINA Date: JUL 23 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, 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,

*Tang Syed*  
for

Perry Rhew  
Chief, Administrative Appeals Office

**DISCUSSION:** The waiver application was denied by the Officer in Charge (OIC), Guangzhou, China, 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 the People's Republic of China (China) 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 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 spouse.

The OIC found that the applicant had failed to establish that extreme hardship would be imposed on the applicant's qualifying relative and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) accordingly. *Decision of the OIC*, dated February 11, 2008.

On appeal, the applicant's husband states he is suffering mental anxiety. *See statement from* [REDACTED], attached to Form I-290B, filed March 10, 2008.

The record includes, but is not limited to, statements from the applicant, her husband, and mother-in-law; tax and residential lease documents; and the applicant's marriage certificate. 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 case, the record indicates that the applicant entered the United States on June 23, 2000 using a B1/2 visa. On August 15, 2003, the applicant voluntarily departed the United States. On August 5, 2004, the applicant married her husband, a United States citizen, in China. On April 15, 2005, the applicant's husband filed a Form I-130 on behalf of the applicant. On June 28, 2005, the applicant's Form I-130 was approved. On October 30, 2007, the applicant filed a Form I-601. On February 11, 2008, the OIC denied the applicant's Form I-601, finding the applicant to have failed to demonstrate extreme hardship to her United States citizen husband.

The applicant accrued unlawful presence from the date between June 23, 2000 and December 23, 2000 on which her status expired, until August 15, 2003, when she departed the United States. The applicant is seeking admission into the United States within ten years of her August 15, 2003 departure. 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 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 on the citizen or lawfully resident spouse or parent of the applicant. Hardship the applicant experiences upon removal is not directly relevant to a section 212(a)(9)(B)(v) waiver proceeding. 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. 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 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 a qualifying relative must be established whether he or she relocates with the applicant or remains in the United States, as a qualifying relative is not required to reside outside the United States based on the denial of the applicant’s waiver request.

The record does not address what hardship the applicant’s husband would experience if he joined the applicant in China. The AAO acknowledges that the applicant’s husband is a native and citizen of the United States and that he may experience hardship in relocating to China. The AAO notes that the applicant’s husband is employed as a jeweler, and the record fails to contain documentary evidence, e.g., country conditions reports on China, that establishes that he would be unable to obtain employment upon relocation. Further, the record does not demonstrate that the applicant’s husband has no transferable skills that would aid him in obtaining employment in China. Additionally, the record also fails to indicate that the applicant’s husband has any medical condition, physical or mental, that would affect his ability to relocate. In that the record does not include any documentation of financial, medical, emotional or other types of hardship that the applicant’s husband would experience if he joined the applicant in China, the AAO does not find the applicant to have established that her husband would suffer extreme hardship upon relocation. Accordingly, the AAO finds that the applicant has failed to establish that her husband would suffer extreme hardship if he joined her in China.

In addition, the applicant has not established extreme hardship to her husband if he remains in the United States, maintaining his employment. The applicant’s husband states he has not seen his wife in five years because he has to work two jobs “to live” and “both jobs have different vacation times.” In a statement dated September 26, 2006, the applicant’s mother-in-law states her son is “very lonely.” The applicant’s husband states he needs the applicant “in [his] life to take care of [him].” He claims that he is “suffering tremendous mental and physical anxiety” but he has “not seen a doctor about this problem for the lack of time and money.” In a letter dated November 28, 2007, the applicant’s husband states his “mental and physical anxiety” is “making it very difficult to function in [his] work.” The AAO notes that there is no

evidence in the record establishing that the applicant's husband's anxiety is affecting his employment. Additionally, the AAO notes that, other than the applicant's husband's statement, the record does not contain an evaluation of his mental/emotional health that establishes he is suffering from anxiety or the severity of that anxiety. 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)). The applicant's husband states he speaks to the applicant "using only [his] cell phone or public telephones about 2 to 3 times a week [and] it's very expensive." The AAO notes that the applicant's husband may be experiencing some financial hardship in keeping in contact with the applicant; however, the record fails to demonstrate that the applicant is unable to contribute to her husband's financial well-being from a location outside the United States. Accordingly, the AAO finds 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 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 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)(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.