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

U.S. Citizenship and Immigration Services

H6

FILE: [redacted] Office: LONDON, ENGLAND Date: MAR 22 2010

IN RE: Applicant: [redacted]

APPLICATION: Application for Waiver of Grounds of Inadmissibility under section 212(a)(9)(B)(v) of the 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).

Michael Shumway

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Field Office Director, London, England, and 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 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. The applicant is the spouse of a citizen of the United States. The applicant sought a waiver of inadmissibility pursuant to section 212(a)(9)(B)(v) of the Act, 8 U.S.C. § 1182(a)(9)(B)(v), so as to immigrate to the United States. The director concluded that the applicant had failed to establish that his admission would impose extreme hardship on a qualifying relative, and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) accordingly. *Decision of the Field Office Director*, dated July 6, 2007. The applicant filed a timely appeal.

The AAO will first address the finding of inadmissibility for unlawful presence, which is found under section 212(a)(9)(B) of the Act. That section provides, in part:

> (B) Aliens Unlawfully Present
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> > (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 . . . and again seeks admission within 3 years of the date of such alien's departure or 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.
>
> . . .

U.S. Citizenship and Immigration Services (USCIS) records reflect that the applicant was admitted to the United States on April 4, 1997 under the Visa Waiver Program with authorization to remain for a temporary stay that was not to extend beyond July 4, 1997. The applicant remained in the United States without authorization until his removal on November 15, 2004. He therefore accrued unlawful presence from July 5, 1997 until his removal on November 15, 2004, which removal triggered the ten-year bar, rendering him inadmissible under section 212(a)(9)(B)(i)(II) of the Act.

The waiver for unlawful presence is found under section 212(a)(9)(B)(v) of the Act. That section provides that:

(v) Waiver. – The Attorney General [now Secretary, 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.

The waiver under section 212(a)(9)(B)(v) of the Act is dependent upon a showing that the bar to admission imposes an extreme hardship on a qualifying relative, *i.e.,* the U.S. citizen or lawfully resident spouse or parent of the applicant. Hardship to an applicant is not a consideration under the statute, and will be considered only to the extent that it results in hardship to a qualifying relative, who in this case is the applicant's U.S. citizen spouse. Once extreme hardship is established, it is but one favorable factor to be considered in determining whether the Secretary should exercise discretion. *See Matter of Mendez-Moralez,* 21 I&N Dec. 296, 301 (BIA 1996).

"Extreme hardship" is not a definable term of "fixed and inflexible meaning"; establishing extreme hardship is "dependent upon the facts and circumstances of each case." *Matter of Cervantes-Gonzalez,* 22 I&N Dec. 560, 565 (BIA 1999). The Board of Immigration Appeals (BIA) in *Matter of Cervantes-Gonzalez* lists the factors it considers relevant in determining whether an applicant has established extreme hardship a qualifying relative pursuant to section 212(i) of the Act. The 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. *Id.* at 565-566.

In *Matter of O-J-O-,* 21 I&N Dec. 381, 383 (BIA 1996), the BIA stated that the factors to consider in determining whether extreme hardship exists "provide a framework for analysis," and that the "[r]elevant factors, though not extreme in themselves, must be considered in the aggregate in determining whether extreme hardship exists." It further stated that "the trier of fact must consider the entire range of factors concerning hardship in their totality" and then "determine whether the combination of hardships takes the case beyond those hardships ordinarily associated with deportation." (citing *Matter of Ige*, 20 I&N Dec. 880, 882 (BIA 1994).

In rendering this decision, the AAO has carefully considered all of the evidence in the record.

Extreme hardship to the applicant's spouse must be established in the event that she remains in the United States without the applicant, and alternatively, if he joins the applicant to live in England. A qualifying relative is not required to reside outside of the United States based on the denial of the applicant's waiver request.

In her undated letter, conveys that she moved to England to be with her husband, but that she needs to be in the United States in order to take care of her mother. She states that her

mother's memory is failing and that she has frequent falls. asserts that her brother has diabetes and gout and recently had his arm amputated so he is no longer able to take care of their mother. avows that her husband has a close relationship with her mother and drove her to medical appointments. The letter by , dated May 11, 2005, reflects that 81-year-old mother-in-law receives treatment for breast cancer. maintains that she has atrial fibrillatin and neuropathy and requires family support in order to continue her medical care appropriately. He avers that she receives blood thinner (warfarin), a treatment requiring close monitoring to prevent complications and a stroke. The note by dated July 12, 2007, states that mother "can no longer live alone and requires the assistance of her daughter." The physical therapist's statement, dated July 9, 2007, conveys that mother is homebound and unable to walk, that she requires assistance with all activities of daily living, and is alone in her home and needs her daughter's help. The record contains a letter by mother dated July 16, 2007, wherein she declares that she takes medication because of potassium in her legs and that she cannot walk, clean, or cook. In a letter dated July 14, 2007, daughter states that on June 24, 2007, she drove five hours to her grandmother's house and due to the physical state of her grandmother brought her to the hospital's emergency room. She states that her grandmother was diagnosed with malnourishment and a fracture in her spine due to a previous fall. She asserts that her grandmother refuses to be placed in a nursing home and wants and the applicant to take care of her. daughter indicates that her mother is a certified nursing assistant.

In a letter dated October 26, 2007, avows that she returned to Florida to take care of her mother and that she needs her husband with her. The note by , dated October 1, 2007, indicates that mother is receiving treatment for gout, hypertension, and her spine. In a letter dated February 28, 2008, states that she was diagnosed with fibromyalgia and that she has difficulty taking care of her mother due to pain in her hands and feet. She conveys that she tried working part time, but her mother becomes confuses when left alone. She asserts that help from her husband would be a great relief. The medical record by dated April 6, 2009, states that mother was brought to the emergency room after passing out while at home. His discharge diagnosis reflects she has a jejunal abscess, arteriosclerotic heart disease, left pleural effusion, and organic brain syndrome. He indicates that she is confused, does not walk much at home, and lives with her daughter. In her letter dated July 6, 2009, asserts that since September 2007 she has been struggling on her own taking care of her mother and that she needs her husband to help her. The medical record printout shows that on December 20, 2006, had essential hypertension. The marriage certificate shows that the applicant and his wife married in England on January 15, 2005. The letter by , dated January 25, 2008, conveys that he is a sleep medicine specialist and that is being followed in a clinical trial for fibromyalgia.

Family separation must be considered in determining hardship. *See, e.g., Salcido-Salcido v. INS,* 138 F.3d 1292, 1293 (9th Cir. 1998) ("the most important single hardship factor may be the separation of the alien from family living in the United States").

However, courts have found that family separation does not conclusively establish extreme hardship. In *Hassan v. INS,* 927 F.2d 465, 468 (9th Cir. 1991), the Ninth Circuit upheld the finding that deporting the applicant and separating him from his wife and child was not conclusive of extreme hardship as it "was not of such a nature which is unusual or beyond that which would normally be

expected from the respondent's bar to admission." (citing *Patel v. INS,* 638 F.2d 1199, 1206 (9th Cir.1980) (severance of ties does not constitute extreme hardship). In *Perez v. INS,* 96 F.3d 390, 392 (9th Cir. 1996), states that "[e]xtreme hardship" is hardship that is "unusual or beyond that which would normally be expected" upon deportation and "[t]he common results of deportation or exclusion are insufficient to prove extreme hardship." (citing *Hassan v. INS,* 927 F.2d 465, 468 (9th Cir.1991).

The evidence described in the foregoing account, demonstrates that mother has serious health problems and requires close supervision and assistance in her daily life activities. asserts that she is unable to work part time because her absence will impact her mother's mental state, and she declares that she needs her husband to assist in the care of her mother. The record shows that has hypertension and receives treatment for fibromyalgia. However, the record also shows that is trained as a certified nursing assistant, which suggests that she is knowledgeable about how to take care of her mother. Furthermore, no evidence has been submitted to show that s mother is unable to afford a care provider to assist her daughter, or that the applicant is unable to provide financial support. When the evidence is considered in the aggregate, we find that n has not fully demonstrated that her emotional hardship, as a result of separation from her husband and taking care of her mother without the support of her husband, is unusual or beyond that which would normally be expected upon removal. Thus, the applicant has shown that his spouse would experience extreme hardship if she remains in the United States without him.

We find that collectively the documentary evidence supports claim that she would experience extreme hardship if she were to join her husband to live in England. The record indicates that lived in England from June 2005 until September 2007. conveys that while she lived in England she was concerned about her mother's well-being and decided to return to the United States in September 2007 in order to take care of her mother, whose condition had deteriorated. The record demonstrates that mother requires the assistance of a caregiver and lives with her daughter. Thus, has shown that she would experience extreme emotional hardship if she were to join the applicant to live in England while her mother remains in the United States. However, the applicant has not demonstrated that his spouse would experience extreme hardship if she remained in the United States caring for her mother.

The AAO notes that the record also conveys that on August 23, 1983 and November 3, 1982 the applicant was convicted under section 47 of the Offenses Against the Person Act 1861 of "assault occasioning actual bodily harm."[1] He received a conditional discharge of twelve months for his 1983 conviction. For the 1982 conviction, he was sentenced to imprisonment for three months and ordered to pay legal aid costs. Although the full record of conviction is not in the record, the AAO notes that if the applicant's assault convictions are crimes involving moral turpitude, the applicant is

[1] With regard to the applicant's other criminal convictions, which were committed when the application was under the age of 18, section 212(a)(2)(A)(ii) of the Act states, in part, that an alien is not inadmissible for the crimes committed when the alien was under 18 years of age, if the crime was committed more than 5 years before the date of application for a visa and the date of application for admission to the United States.

also inadmissible under section 212(a)(2)(A)(i)(I) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(2)(A)(i)(I), for having been convicted of crimes involving moral turpitude. Furthermore, if these crimes were violent crimes, the applicant must meet the heightened waiver standards set out in 8 C.F.R. § 212.7(d) to warrant a favorable exercise of discretion. The applicant must address this issue in any future waiver proceedings.

Because the applicant is statutorily ineligible for relief, no purpose is 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 establishing that the application merits approval remains entirely with the applicant. *See* section 291 of the Act, 8 U.S.C. § 1361. The applicant has not met that burden.

Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed. The waiver application is denied.