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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

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H6

FILE:

Office: LONDON

DATE:

MAR 30 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 Field Office Director, London, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The record establishes that the applicant, a native of Lithuania¹, entered the United States with a B2 nonimmigrant visa in October 2001, with permission to remain until April 2002. She did not depart the United States until December 2003.² The applicant was thus 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. As noted correctly by the field office director, the applicant is inadmissible for 10 years from the date of her last departure, in May 2006.³ The applicant seeks a waiver of inadmissibility in order to obtain a K-1, Fiancée Visa, which would permit her to procure entry to the United States and marry her U.S. citizen fiancé within 90 days of her arrival in the United States.

The field office director concluded 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 Field Office Director*, dated November 13, 2007.

In support of the appeal, the applicant's fiancé submits a letter, dated November 26, 2007.⁴ In addition, on July 6, 2009, the AAO received a status inquiry request from the applicant's fiancé. The entire record was reviewed and considered in rendering this decision.

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

¹ The record indicates that the applicant currently resides in London, England.

² The record indicates that the applicant subsequently re-entered the United States on two separate occasions, in February 2006 and May 2006 as a B-2 nonimmigrant visitor, departing on both occasions prior to status expiration.

³ On appeal, the applicant's fiancé notes that the applicant's original departure date from the United States was in 2003, and thus, the ten year bar should commence as of 2003, not as of 2006, when the applicant last departed the United States. In visa petition proceedings, the burden is on the petitioner to establish eligibility for the benefit sought. *See Matter of Brantigan*, 11 I&N Dec. 493 (BIA 1966). The petitioner must prove by a preponderance of evidence that the beneficiary is fully qualified for the benefit sought. *Matter of Martinez*, 21 I&N Dec. 1035, 1036 (BIA 1997); *Matter of Patel*, 19 I&N Dec. 774 (BIA 1988); *Matter of Soo Hoo*, 11 I&N Dec. 151 (BIA 1965). Section 212(a)(9)(B)(i)(II) of the Act references the unlawful presence ten year bar with respect to the alien's "departure." The applicant's last departure was in May 2006. The applicant has not established, by a preponderance of the evidence, that the ten year bar commenced in December 2003, the applicant's original departure. As such, the ten year bar to admission is applicable as of May 2006.

⁴ On appeal, the applicant's fiancé also requests oral argument. *See Letter from* [REDACTED] dated November 26, 2007. The regulation at 8 C.F.R. § 103.3(b) provides that the affected party must explain in writing why oral argument is necessary. USCIS has the sole authority to grant or deny a request for oral argument and will grant such argument only in cases that involve unique factors or issues of law that cannot be adequately addressed in writing. In this case, no cause for oral argument is shown. Consequently, the request is denied.

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 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...

In *Matter of Cervantes-Gonzalez*, 22 I&N Dec. 560, 565-66 (BIA 1999), the Board of Immigration Appeals (BIA) provided a list of factors it deemed relevant in determining whether an alien has established extreme hardship to a qualifying relative. 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.

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).

The applicant's U.S. citizen fiancé contends that he will suffer emotional hardship if the applicant's waiver request is not granted. In a declaration he states that he wants the applicant to be allowed to enter the United States so they may marry. *Letter from* [REDACTED]. In addition, he contends that he and the applicant have worked hard to keep their relationship alive while physically

separated, and wish to share the remainder of their lives together in the United States. *Letter from* [REDACTED] dated November 26, 2007.

It has not been established that the applicant's U.S. citizen fiancé will suffer extreme emotional hardship if the applicant's waiver request is not granted. Moreover, it has not been established that marrying outside the United States would cause the applicant's fiancé extreme hardship. Finally, it has not been established that the applicant's fiancé is unable to travel abroad on a regular basis to visit his fiancée, as he has been doing since meeting her in 2005. 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)).

Although the depth of concern over the applicant's inadmissibility is neither doubted or minimized, the fact remains that Congress provided for a waiver of inadmissibility only under limited circumstances. In nearly every qualifying relationship, there is a deep level of affection and a certain amount of emotional and social interdependence. While, in common parlance, the prospect of separation or involuntary relocation nearly always results in considerable hardship to individuals and families, in specifically limiting the availability of a waiver of inadmissibility to cases of "extreme hardship," Congress did not intend that a waiver be granted in every case where a qualifying relationship exists. The current state of the law, viewed from a legislative, administrative, or judicial point of view, requires that the hardship be above and beyond the normal, expected hardship involved in such cases. U.S. court decisions have repeatedly held that the common results of removal are insufficient to prove extreme hardship. *See Hassan v. INS*, 927 F.2d 465, 468 (9th Cir. 1991), *Perez v. INS*, 96 F.3d 390 (9th Cir. 1996); *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). "[O]nly 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 recognizes that the applicant's fiancé will endure hardship as a result of continued separation from the applicant. However, his situation, if he remains in the United States, is typical to individuals separated as a result of removal and does not rise to the level of extreme hardship based on the record. The AAO concludes that based on the evidence provided, it has not been established that the applicant's U.S. citizen fiancé is suffering extreme emotional hardship due to the applicant's inadmissibility.

Extreme hardship to a qualifying relative must also be established in the event that he or she relocates abroad based on the denial of the applicant's waiver request. With respect to this criteria, the applicant's fiancé notes that he operates his own company and travels around the world doing the music production and announcing at major sporting events. He references the fact that he was in Qatar in 2006, at the Asian games for wrestling, and in Athens at the 2004 Olympic Games, and his plans to be at the Beijing Olympics in 2008 and in London at the 2010 Games, with the applicant at

his side as his assistant. *Supra* at 2. No documentation has been provided by the applicant's fiancé outlining the specific hardships he would experience were he to relocate abroad to reside with the applicant due to her inadmissibility. The record establishes that the applicant's fiancé is accustomed to traveling around the world, and it has not been established that he would experience extreme hardship were he to continue his work while residing in another country with the applicant. Nor has it been established that relocating abroad would cause him extreme hardship due to separation from his country and his adult children, as nothing would prohibit him from returning to the United States on a regular basis. As such, the applicant has failed to establish that her U.S. citizen fiancé would suffer extreme hardship were he to relocate abroad to reside with the applicant.

As such, a review of the documentation in the record, when considered in its totality, reflects that the applicant has failed to show that her U.S. citizen fiancé would suffer extreme hardship if she were not permitted to reside in the United States, and moreover, the applicant has failed to show that her U.S. citizen fiancé would suffer extreme hardship were he to relocate abroad to reside with the applicant. The record demonstrates that the applicant's fiancé faces no greater hardship than the unfortunate, but expected, disruptions, inconveniences, and difficulties arising whenever a fiancée is removed from the United States or refused admission. Having found the applicant statutorily ineligible for relief, no purpose would be served in discussing whether the applicant 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. 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. The waiver application is denied.