

identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

PUBLIC COPY

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



U.S. Citizenship
and Immigration
Services

H6

FILE:

Office: VERMONT SERVICE CENTER

Date:

MAY 27 2010

IN RE:

APPLICATION:

Application for Waiver of Grounds of Inadmissibility under section 212(a)(9)(B)(v) and 212(i) of the Immigration and Nationality Act, 8 U.S.C. §§ 1182(a)(9)(B)(v), 1182(i)

ON BEHALF OF APPLICANT:

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 Center Director, Vermont Service Center. 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 Canada 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 for more than one year and seeking readmission within 10 years of her last departure. The applicant was also found inadmissible under section 212(a)(6)(C)(i) of the Act, 8 U.S.C. § 1182(a)(6)(C)(i), for seeking to procure a visa, other documentation, or admission into the United States or other benefit provided under the Act by fraud or willful misrepresentation. The applicant seeks a waiver of inadmissibility in order to reside in the United States with her U.S. citizen husband.

The center director found that the applicant failed to establish extreme hardship to her U.S. citizen husband and denied the Form I-601 application for a waiver accordingly. *Decision of the Center Director*, dated June 19, 2007.

On appeal, counsel for the applicant asserts that the applicant's husband will suffer extreme hardship if the applicant is prohibited from residing in the United States. *Brief from Counsel*, dated August 16, 2007.

The record contains a brief from counsel; medical documentation for the applicant's husband; statements from the applicant, the applicant's husband, a Delaware State Senator, a Delaware State Representative, and friends and family members of the applicant and her husband; documentation regarding the applicant's husband's ownership of real property; documentation regarding the applicant's husband's travel to Canada; copies of bills and tax records for the applicant and her husband; documentation relating to the applicant's husband's retirement; documentation regarding the applicant's husband's medical insurance; documentation regarding the applicant's employment in the United States; a copy of the applicant's marriage certificate, and; copies of birth records for the applicant and her husband. The entire record was reviewed and considered in rendering this decision.

Section 212(a)(9) 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 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.

Section 212(a)(6)(C)(i) of the Act provides, in pertinent part, that:

Any alien who, by fraud or willfully misrepresenting a material fact, seeks to procure (or has sought to procure or has procured) a visa, other documentation, or admission into the United States or other benefit provided under this Act is inadmissible.

Section 212(i) of the Act provides, in pertinent part, that:

- (1) The Attorney General [now the Secretary of Homeland Security (Secretary)] may, in the discretion of the Attorney General [Secretary], waive the application of clause (i) of subsection (a)(6)(C) in the case of an immigrant who is the spouse, 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 the United States of such immigrant alien would result in extreme hardship to the citizen or lawfully resident spouse or parent of such an alien[.]

The applicant testified that she entered the United States in B-1 (temporary business visitor) nonimmigrant status, yet she remained in the United States after the expiration of her authorized stay for approximately four years in order to engage in employment. *Record of Sworn Statement in Proceedings under Section 235(b)(1) of the Act*, dated April 10, 2005. She subsequently departed the United States, and she now seeks reentry. She was deemed inadmissible to the United States under section 212(a)(9)(B)(i)(II) of the Act for having been unlawfully present for more than one year and seeking readmission within 10 years of her last departure.

On April 10, 2005, the applicant attempted to reenter the United States at the Calais, Maine port of entry by foot. She initially represented to immigration officers that she intended to enter the United States for a temporary period in order to visit her boyfriend in Delaware for two weeks. *Record of Sworn Statement in Proceedings under Section 235(b)(1) of the Act* at 2. Upon further inspection, the applicant admitted that she worked and resided in the United States, and that she intended to enter in order to marry, continue working, and remain for an indefinite period. *Id.* The applicant

was found inadmissible under section 212(a)(6)(C)(i) of the Act for seeking to procure admission into the United States by fraud or willful misrepresentation.

The applicant does not contest her inadmissibility under sections 212(a)(6)(C)(i) and 212(a)(9)(B)(i)(II) of the Act. Accordingly, the applicant requires waivers of inadmissibility under sections 212(a)(9)(B)(v) and 212(i) of the Act.

Waivers under sections 212(a)(9)(B)(v) and 212(i) of the Act are dependent first upon a showing that a bar to admission imposes an extreme hardship to the U.S. citizen or lawfully resident spouse or parent of the applicant. Hardship the applicant experiences upon being found inadmissible is not a basis for a waiver under section 212(a)(9)(B)(v) or 212(i) of the Act. 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).

Matter of Cervantes-Gonzalez, 22 I&N Dec. 560 (BIA 1999) provides a list of factors the Board of Immigration Appeals deems relevant in determining whether an alien has established extreme hardship to a qualifying relative. These 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.

On appeal, counsel asserts that the applicant's husband will suffer extreme hardship if the applicant is prohibited from residing in the United States. *Brief from Counsel* at 2-7. Counsel explains that the applicant's husband has serious health problems, including a heart condition and recent heart attack, severe depression, reflux disease, and folliculitis. *Id.* at 2. Counsel contends that the applicant's husband's health problems are contributing to his extreme medical, emotional, and financial hardship. *Id.*

Counsel asserts that the applicant's husband had a heart attack on July 3, 2007, he required an emergency angioplasty procedure, and he must undergo a strenuous aftercare program for long-term rehabilitation and recovery. *Id.* Counsel states that the applicant's husband requires the applicant's presence in the United States to care for him. *Id.* Counsel contends that relocating to Canada is not an option for the applicant's husband, as he requires continued monitoring and care from his cardiologist in the United States. *Id.* at 3. Counsel indicates that the stress of separation from the applicant is having a detrimental impact on the applicant's husband. *Id.* at 4. Counsel contends that the applicant's husband's other conditions are caused or exacerbated by the stress of family separation. *Id.*

The applicant provides a letter from her husband's primary cardiologist, [REDACTED] who states that the applicant's husband suffered "an acute myocardial infarction in July 2007, which was treated with an emergency angioplasty procedure." *Letter from [REDACTED]*, dated August 13, 2007. [REDACTED] indicates that the applicant's husband requires future care including a number of

medications for heart disease, participation in cardiac rehabilitation, as well as follow-up medical supervision from doctors. *Id.* at 1. [REDACTED] posited that the applicant's presence would be of assistance in maintaining her husband's health. *Id.* The applicant provides other medical documentation to support that her husband suffered a heart attack including discharge documentation and evidence of his prescription medication.

The applicant submits a letter from another physician, [REDACTED] who states that her husband was diagnosed with "severe depression from being separated from [the applicant]." *Letter from [REDACTED]* dated February 28, 2006. The applicant provides a letter from a dermatologist who attests that her husband is being treated for folliculitis, which involves chronic inflammation of the hair follicles and can be exacerbated by stress. *Letter from [REDACTED]* dated February 28, 2006.

The applicant's husband indicates that he is close with the applicant and they wished for her to return to the United States so they could marry. *Statement from the Applicant's Husband*, dated July 2007. He explains that her immigration difficulties have created financial hardship for him, and he has had to engage in consulting work and forego other financial plans to fund legal and application fees. *Id.* at 1. He states that he has been very stressed and depressed regarding the applicant's situation, and he has endured emotional and physical health problems including a heart attack. *Id.* at 2. The applicant's husband previously stated that the applicant's absence is causing economic hardship for him due to the expense of traveling to Canada, supporting the applicant abroad, and the financial impact of joining the applicant in Canada should he do so. *Prior Statement from the Applicant's Husband*, dated May 24, 2006.

Upon review, the applicant has not established that her husband will endure extreme hardship should she be prohibited from residing in the United States. The applicant has not established that her husband will endure extreme hardship should he join her in Canada. The record shows that the applicant's husband has serious health problems, and that he is under the care of physicians in the United States due to a prior heart attack and heart disease. The AAO acknowledges that potentially life-threatening illness such as a heart attack creates significant emotional hardship. However, the applicant has not shown that her husband would lack access to expedient and quality health care should he reside in Canada as the spouse of a Canadian citizen. The applicant has not submitted any documentation or information that suggests that Canada lacks medical professionals who are capable of addressing the needs of individuals with heart disease or post-heart attack needs, reflux disease, or folliculitis.

It is noted that information from the government of Canada, Citizenship and Immigration Canada, provides that permanent residents of Canada receive "most social benefits that Canadian citizens receive, including health care coverage." *About Being a Permanent Resident of Canada*, Citizenship and Immigration Canada, <<http://www.cic.gc.ca/english/newcomers/about-pr.asp>>, accessed on May 13, 2010. Citizenship and Immigration Canada further reports that visas for spouses were completed in Buffalo, New York at an expedient rate, with 30 percent of cases finalized within four months, and 80 percent of cases finalized with 10 months. *Statistical Information: Applications Processed at Canadian Visa Offices* (from January 1, 2009 to December 31, 2009), Citizenship and Immigration Canada, <<http://www.cic.gc.ca/english/information/times/international/05-fc-spouses.asp>>, accessed

on May 13, 2010. This information supports that the applicant's husband would be able to obtain government-provided health coverage in Canada, and that he could secure a legal status and access to such coverage within a reasonable time. Accordingly, the applicant has not shown that her husband's physical health would be compromised should he join her in Canada.

The applicant's husband expressed that he is experiencing emotional hardship due to the applicant's immigration difficulties. [REDACTED] states that the applicant's husband was diagnosed with severe depression due to being separated from the applicant. However, the applicant's husband would no longer endure family separation should he join the applicant in Canada. Further, [REDACTED] letter regarding the applicant's husband's diagnosis is brief and lacks details of her husband's symptoms, prognosis, or required or completed treatment. Thus, the letter is not sufficient to show that the applicant's husband is enduring emotional hardship that can be distinguished from that commonly experienced when a spouse must reside abroad due to inadmissibility. The letter does not establish that the applicant's husband will continue to suffer significant depression should he relocate to Canada to maintain family unity.

Should he relocate to Canada, the applicant's husband would face separation from his community and family members in the United States. However, this is a common consequence when an individual resides abroad due to the inadmissibility of a spouse. Federal court and administrative decisions have held that the common results of deportation or exclusion are insufficient to prove extreme hardship. *See Hassan v. INS*, 927 F.2d 465, 468 (9th Cir. 1991). For example, *Matter of Pilch*, 21 I&N Dec. 627 (BIA 1996), held that emotional hardship caused by severing family and community ties is a common result of deportation and does not constitute extreme hardship. 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. *Hassan v. INS*, *supra*, held further that the uprooting of family and separation from friends does not necessarily amount to extreme hardship but rather represents the type of inconvenience and hardship experienced by the families of most aliens being deported.

The applicant's husband indicated that he operates a small horse boarding business, and that he will be compelled to terminate it should he relocate to Canada. He expressed that his business is a manifestation of his personal goals and interest in buying, training, boarding, and selling Standardbred Racehorses, thus he will endure emotional consequences should he need to end his business. *Prior Statement from the Applicant's Husband* at 2. However, the applicant has not shown that her husband would be unable to continue his business and involvement with activities related to Standardbred Racehorses in Canada.

The applicant has not provided sufficient explanation or evidence to show that her husband will endure financial hardship should he reside in Canada. The applicant's husband retired and the record shows that he receives a gross monthly pension benefit of \$2139.22. The applicant has not asserted or shown that her husband would no longer receive this benefit should he reside in Canada. The applicant has not indicated her expenses in Canada or otherwise shown what economic circumstances her husband would face should he reside there. Nor has she shown that she and her husband are unable to work in Canada should they require additional income. The record lacks

information about any capital investment the applicant's husband has in his business activities, thus the applicant has not shown that her husband would incur loss due to the cessation of his business activities in the United States. Should he depart the United States, the applicant's husband will no longer be able to reside in the home that he owns in the United States. Yet, the applicant has not shown that her husband would be unable to rent or sell the home should he desire. Thus, the applicant has not shown that her husband will suffer significant financial challenges should he join her in Canada to maintain family unity.

The applicant's husband stated that he would endure emotional and financial consequences due to the inability to assist his mother in the United States. However, the applicant has not provided any documentation to support that her mother-in-law requires assistance, such as copies of her medical records or financial records, or an account of her expenses. Nor has the applicant shown that her husband would be unable to assist his mother from Canada.

All stated elements of hardship to the applicant's husband, should he reside in Canada, have been considered in aggregate. Based on the foregoing, the applicant has not shown by a preponderance of the evidence that her husband will suffer extreme hardship should he join her in Canada.

The applicant has shown that her husband will endure extreme hardship should he remain in the United States without her. The AAO acknowledges that facing separation from one's spouse during a period of serious illness constitutes unusual psychological hardship. [REDACTED] letter supports that the applicant's husband is enduring emotional difficulty due to separation from the applicant. It is evident that the applicant's husband's health status, particularly the fact that he suffered a heart attack and is undergoing treatment and evaluation, compounds his emotional challenges. The applicant's husband's health constitutes an unusual circumstance not commonly faced when spouses reside apart due to inadmissibility. Thus, the record shows by a preponderance of the evidence that the applicant's husband will suffer extreme hardship should he remain separated from the applicant for an indefinite period.

However, an applicant must establish extreme hardship to his or her qualifying relative should the qualifying relative choose to join the applicant abroad, and should the qualifying relative choose to remain in the United States and be separated from the applicant. To endure the hardship of separation when extreme hardship could be avoided by joining the applicant abroad, or to endure the hardship of relocation when extreme hardship could be avoided by remaining in the United States, is a matter of choice and not the result of removal or inadmissibility. *See Matter of Pilch*, 21 I&N Dec. 627, 632-33 (BIA 1996) (considering hardship upon both separation and relocation). As the applicant has not shown that her husband will suffer extreme hardship should he relocate to Canada, she has not shown that denial of the present waiver application "would result in extreme hardship" to her husband, as required for a waiver under sections 212(a)(9)(B)(v) and 212(i) of the Act.

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 regarding a waiver of grounds of inadmissibility 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.