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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:



Office: ROME, ITALY
(LONDON, UK)

Date: JAN 04 2011

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:

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.

Thank you,

Tariq Syed

for
Perry Rhew

Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the District Director, Rome, Italy. A subsequent appeal was dismissed by the Administrative Appeals Office (AAO). The matter is now before the AAO on a motion to reopen. The motion will be granted. The previous decision of the AAO will be withdrawn. The waiver application will be approved.

The applicant is a native and citizen of Iceland who was found to be inadmissible 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. *Decision of the District Director*, dated November 10, 2009. The District Director also found that the applicant failed to establish that extreme hardship would be imposed on her qualifying relative. *Id.* On December 8, 2009, the applicant filed an appeal of the District Director's decision with the AAO. On April 2, 2010, the AAO dismissed the applicant's appeal. The applicant subsequently filed a motion to reopen the AAO's decision.¹

In its April 2, 2010 decision, the AAO found that the applicant had failed to demonstrate extreme hardship to a qualifying relative under section 212(a)(9)(B)(v) of the Act, 8 U.S.C. § 1182(a)(9)(B)(v). Although the AAO noted that the applicant had established that her United States citizen husband would experience extreme hardship if he relocated to Iceland, it also observed that she had failed to establish extreme hardship if he remained in the United States without the applicant. On motion, the applicant asserts that her husband is suffering extreme hardship by being apart from her and their son, and submits evidence in support of her claim.

The record in support of the applicant's motion includes, but is not limited to, statements from the applicant's husband; letters from licensed marriage and family therapist [REDACTED] regarding the applicant's husband's mental health; a 2009 federal income tax return for the applicant's husband; a payment sheet, mortgage documents, and evidence of 2008 income for the applicant's mother; and articles on unemployment in Iceland and the volcanic activity in Iceland. The entire record was reviewed and all relevant evidence considered in rendering this decision.

In a statement dated April 22, 2010, the applicant's husband states he misses the applicant and his son. He states that he is worried that they are not getting everything they need in Iceland, and he is also afraid for their safety after the volcanic eruptions in Iceland. In a statement dated April 15, 2010, licensed marriage and family therapist [REDACTED] diagnosed the applicant's husband with adjustment disorder with mixed anxiety and depressed mood. [REDACTED] reports that the applicant's husband has "a heightened sense of fear, anxiety, hopelessness and depression;" and his symptoms include "not sleeping at night," "poor eating

¹ The AAO notes that the applicant is also inadmissible pursuant to section 212(a)(6)(C)(i) of the Act, 8 U.S.C. § 1182(a)(6)(C)(i), for attempting to seek admission into the United States through fraud or the willful misrepresentation of a material fact. The record establishes that on or about January 8, 2009, the applicant stated to an immigration officer that the purpose of her visit was to visit her uncle and his family for ten days. However, it then was determined that she was actually returning to her residence in the United States. The AAO notes that a waiver under section 212(a)(9)(B)(v) of the Act will also satisfy the requirements for a 212(i) waiver for a misrepresentation.

habits," fear, and he is working overtime to support himself and family in Iceland. [REDACTED] claims that if the separation continues, the applicant's husband "will develop a more sever[e] mood disorder which could manifest itself through deeper depression, and more intense physical behaviors." The AAO notes the applicant's husband's mental health issues.

The applicant's husband states because of his disability he has "very limited work ability." The AAO notes that the record establishes that on June 13, 2001, the applicant had back surgery for a "slip-and-fall accident" that occurred in January 1997. Additionally, the AAO notes that the applicant's husband has been approved for a disabled person placard for his vehicle. The applicant's husband states that the applicant cannot get a job in Iceland because she has to care for their son, she "does not qualify for any of the financial benefits" in Iceland, and he "having a hard time providing for [his] family in Iceland." The AAO notes that the applicant's husband claimed \$39,937 in income for 2009 and the applicant's mother claimed 2,965,134 kronur in income in 2008.² In a statement dated November 8, 2010, the applicant's husband states he has struggled emotionally, physically, and financially with "taking costly trips to spend time with [his] family every 2-3 months," supporting himself and his family in Iceland, and "covering the cost of filing paperwork." The AAO notes the financial concerns of the applicant's husband.

The applicant's husband states the applicant and his son joined him in the United States in July 2010 on a six-month nonimmigrant visa, and since he has been with his son they have "formed a very close father/son relationship." Additionally, the applicant's husband states the applicant is his "best friend and [he] [does] not want to live without her." In a statement dated November 9, 2010, [REDACTED] states that after the applicant and their son joined the applicant's husband in July 2010, the applicant's husband's "symptoms associated with the Adjustment Disorder have been alleviated," "[h]is eating habits had become healthier and his overall mood was positive." [REDACTED] reports that the applicant's son was irritated and less secure in Iceland, but the family "seems to be functioning very well" and the applicant's son is "attached to both parents." [REDACTED] claims that if the applicant's son and his father are separated, he may develop an attachment disorder. While the applicant's son is not a qualifying relative for the purposes of a section 212(a)(9)(B)(v) waiver proceeding, the AAO notes the impact on the applicant's son of being separated from his father.

The AAO finds that when the applicant's husband's emotional, financial and medical issues are considered in combination with the normal hardships of separation from a spouse and child, the applicant has established that her husband would experience extreme hardship if her waiver request were to be denied and he remained in the United States without the applicant. Accordingly, the applicant has established extreme hardship to a qualifying relative under section 212(a)(9)(B)(v) of the Act.

The AAO additionally finds that the applicant merits a waiver of inadmissibility as a matter of discretion. In discretionary matters, the alien bears the burden of proving eligibility in terms of equities in the United States which are not outweighed by adverse factors. *See Matter of T-S-Y*, 7 I&N Dec. 582 (BIA 1957).

² The AAO notes that 2,965,134 ISK is currently \$25,781.53.

The adverse factors in the present case are the applicant's misrepresentation, and periods of unauthorized employment and unlawful presence. The favorable and mitigating factors are the applicant's United States citizen husband and son, the extreme hardship to her husband if she were refused admission, and letters of support.

The AAO finds that, although the immigration violations committed by the applicant are serious and cannot be condoned, when taken together, the favorable factors in the present case outweigh the adverse factors, such that a favorable exercise of discretion is warranted. Accordingly, the appeal will be sustained.

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 met that burden. Accordingly, the AAO will withdraw its prior decision and the waiver application will be approved.

ORDER: The prior decision of the AAO is withdrawn. The waiver application is approved.