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U.S. Department of Homeland Security

Bureau of Citizenship and Immigration Services

ADMINISTRATIVE APPEALS OFFICE
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Washington, D.C. 20536

identifying data deleted to prevent clearly unwarranted invasion of personal privacy

[redacted]

FILE: [redacted] Office: FRANKFURT, GERMANY Date: APR 29 2003

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

PUBLIC COPY

INSTRUCTIONS:

This is the decision 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 the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. § 103.5(a)(1)(i).

If you have new or additional information that you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Bureau of Citizenship and Immigration Services (Bureau) where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. *Id.*

Any motion must be filed with the office that originally decided your case along with a fee of $110 as required under 8 C.F.R. § 103.7.

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Officer in Charge, Frankfurt, Germany. The matter 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 Panama. The applicant was found to be inadmissible to the United States pursuant to section 212(a)(9)(B)(i)(I) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(9)(B)(i)(I), for having been unlawfully present in the United States. The record reflects that the applicant entered the United States (U.S.) as a nonimmigrant visitor on January 15, 2000, and that she was authorized to stay in the U.S. until July 15, 2000. The applicant voluntarily departed the United States on May 10, 2001. She was thus unlawfully present in the U.S. for a period of more than 180 days, but less than one year. The record reflects that the applicant married a U.S. citizen in Killeen, Texas on May 18, 2000, and that she is the beneficiary of an approved petition for alien relative. The applicant seeks a waiver in order to reside with her husband in the United States.

The Officer in Charge (OIC) found that based on the evidence in the record, the applicant had failed to establish extreme hardship to her U.S. citizen spouse (Mr. [redacted]. The application was denied accordingly. *See Officer in Charge Decision,* dated November 4, 2002.

On appeal, the applicant, through her husband, asserts that Mr [redacted] will suffer financial and emotional hardship if the applicant is not granted a waiver of inadmissibility. The applicant asserts that Mr. [redacted] is in the military and that, although he is currently stationed in Germany where they are able to live together, he will be re-stationed to the U.S. around January of 2004. The applicant asserts that a separation will cause a severe strain on their marriage, and that it will cause Mr. [redacted] financial hardship if he has to maintain two households. The applicant asserts further that Mr. [redacted] will suffer emotional hardship worrying about her welfare if a waiver is not granted.

Section 212(a)(9)(B) of the Act states in pertinent part:

> (B) Aliens unlawfully present.-
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> (i) In general. - Any alien (other than an alien lawfully admitted for permanent residence) who -
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> (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 [is inadmissible]
>
> . . . .
>
> (v) Waiver. - The Attorney General 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 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. No court shall have jurisdiction to review a decision or action by the Attorney General regarding a waiver under this clause.

In *Matter of Cervantes-Gonzalez,* 22 I&N Dec. 560, 568-69 (BIA 1999), the Board of Immigration Appeals (BIA) provided a list of factors it deemed to be relevant in determining whether an alien has established extreme hardship. These factors included 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. *See Cervantes-Gonzalez* at 565-566.

In this case, the applicant has asserted that Mr. [redacted] will suffer extreme hardship because a separation would put a strain on their marriage and cause him financial hardship. There are no health issues in this case. Moreover, it is noted from the evidence in the record that the applicant and Mr. [redacted] currently live together in Germany and will not be faced with the prospect of living separately until around January 2004. The evidence indicates further that if the applicant remains outside of the U.S. until May 2004, she will have met the 3-year bar provisions set forth in section 212(a)(9)(B)(i)(I) of the Act, and thus no longer be considered inadmissible pursuant to that section of the Act. It is thus feasible that the period of separation between the applicant and her spouse might be as little as 3-4 months.

U.S. court decisions have repeatedly 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 *Perez v. INS,* 96 F.3d 390 (9th Cir. 1996), the Ninth Circuit Court of Appeals defined "extreme hardship" as hardship that is unusual or beyond that which would normally be expected upon deportation. The Ninth Circuit stated further that the common results of deportation are insufficient to prove extreme hardship. Moreover, the U.S. Supreme Court held in *INS v. Jong Ha Wang,* 450 U.S. 139 (1981), that the mere showing of economic detriment to qualifying family members is insufficient to warrant a finding of extreme hardship.

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 spouse would suffer extreme hardship. 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.