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U.S. Department of Homeland Security

Bureau of Citizenship and Immigration Services

ADMINISTRATIVE APPEALS OFFICE
425 Eye Street N.W.
BCIS, AAO, 20 Mass, 3/F
Washington, D.C. 20536

[redacted]

FILE: [redacted] Office: COPENHAGEN, DENMARK Date: MAY 28 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:

[redacted]

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, Copenhagen, Denmark. 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 of Gambia and a citizen of Sweden. 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 for a period of more than 180 days, but less than one year. The record reflects that the applicant entered the United States (U.S.) pursuant to the visa waiver program on February 13, 2000, and that he was authorized to stay until May 12, 2000. Instead, the applicant departed the U.S. on April 30, 2001. The record reflects that the applicant married a U.S. citizen in Dearborn, Michigan, on October 7, 2000, and that he is the beneficiary of an approved petition for alien relative. The applicant seeks a waiver of inadmissibility in order to reside with his wife 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 his U.S. citizen spouse. The application was denied accordingly. *See Officer in Charge Decision,* dated October 22, 2002.

On appeal, the applicant, through his U.S. citizen wife, asserts that his wife (Mrs. [redacted] will suffer physical and emotional hardship if he is not granted a waiver of inadmissibility.[1] The applicant asserts that his wife needs surgery on both of her feet, and that she needs him to care for her while she recuperates. The applicant asserts further that his wife suffers from depression and anxiety as a result of his inability to reside with her. In support of his appeal, the applicant submitted a letter from Mrs. [redacted] foot doctor and a letter from her family medicine practitioner.

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

> (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 [is inadmissible]

[1] It is noted that an attorney filed the applicant's initial I-601 Waiver of Inadmissibility application in Copenhagen, Denmark. The present appeal, however, was prepared and filed by the applicant's wife.

. . . . ,

> (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.

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). *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 did 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 was unusual or beyond that which would normally be expected upon deportation. The court then reemphasized 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.

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 to be relevant in determining whether an alien has established extreme hardship. 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.

In this case, the applicant failed to establish that his wife would suffer extreme hardship.

The one paragraph foot doctor's letter fails to establish that Mrs. [redacted] suffers from a serious medical condition. Based on the information in the letter, Mrs. [redacted] will suffer

only a temporary 2-3 month disability. Moreover, no date was set for Mrs. [redacted] surgery, and the letter does not discuss her medical history with the doctor or her need for a caretaker.

In addition, the two-sentence doctor's letter stating that Mrs. [redacted] is being treated for moderate to severe depression with anxiety/depression disorder, lacks probative value. The letter is vague and contains no medical history or evidence to support the doctor's diagnosis regarding Mrs. [redacted] mental state. The letter additionally contains no information about medical methods used by the doctor in reaching his conclusions and it does not discuss ongoing visits or treatment plans. Furthermore, the letter contains no information regarding the doctor's credentials or background, and it fails to establish that the doctor is qualified to assess Mrs. [redacted] mental state.

Based on the evidence in the record, the applicant and his wife were married and lived together for only 6 months prior to the applicant's voluntary departure from the United States. The evidence indicates further that the applicant departed the U.S. the same day that his wife filed a petition for alien relative on his behalf. The evidence also indicates that Mrs. [redacted] is gainfully employed and that despite her claim that she will suffer hardship raising her child alone, she in fact raised her child alone for 3 years prior to her marriage to the applicant. It is additionally noted that the evidence in the record indicates that if the applicant remains outside of the U.S. until April 30, 2004, he will have met the 3-year bar provisions set forth in section 212(a)(9)(B)(i)(I) of the Act, and thus will 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 could be as little as 1 year.

A review of the documentation in the record, when considered in its totality, reflects that the applicant has failed to show that his wife would suffer extreme hardship if his waiver application is not granted. 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. *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.