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U.S. Department of Homeland Security

Bureau of Citizenship and Immigration Services

PUBLIC COPY

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

[redacted]

SEP 04 2003

FILE [redacted] Office: COPENHAGEN, DENMARK Date:

IN RE: Applicant: [redacted]

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

ON BEHALF OF APPLICANT: [redacted]

identifying data deleted to prevent clearly unwarranted invasion of personal privacy

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 Acting 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 and citizen of Sweden. The applicant 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 in the United States for more than one year. The applicant is married to a United States (U.S.) citizen and she is the beneficiary of an approved Petition for Alien Relative. The applicant seeks a waiver of inadmissibility in order to reside in the United States with her U.S. citizen husband.

The acting officer in charge found that based on the evidence in the record, the applicant had failed to establish extreme hardship to her U.S. citizen husband. The application was denied accordingly. *See Acting Officer in Charge Decision,* dated September 13, 2002.

On appeal, counsel asserts that the Immigration and Naturalization Service ("Service", now the Bureau of Citizenship and Immigration Services, "Bureau") abused its discretion by not considering or analyzing all of the hardship factors in the applicant's case. Counsel asserts that the applicant's U.S. citizen husband will move to Sweden if the applicant's waiver application is not granted, and that as a result, he would suffer extreme hardship due to separation from his family, the inability to continue or possibly pay for his education in dentistry and the inability to work as a dentist in Sweden.

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

> (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.

In *Matter of Cervantes-Gonzalez,* 22 I&N Dec. 560 (BIA 1999), the Board of Immigration Appeals (Board) provided a list of factors it deemed to be relevant in determining whether an alien had established extreme hardship for purposes of a waiver of inadmissibility. 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.

The BIA noted in *Cervantes-Gonzalez,* that the alien's wife knew that he was in deportation proceedings at the time they were married. The BIA stated that this factor went to the wife's expectations at the time they wed because she was aware she might have to face the decision of parting from her husband or following him to Mexico in the event he was ordered deported. The BIA found this to seriously undermine the alien's argument that his wife would suffer extreme hardship if he were deported. *Id.*

In the present case, the record indicates that the applicant was deported from the U.S. in 1992 for overstaying her visa. The record reflects further that the applicant was admitted into the U.S in 1997, and that she overstayed her authorized period of stay by 15 months. The applicant was subsequently found to be inadmissible to the U.S. after returning to Sweden in 1999.

The record clearly reflects that Mr [redacted] was aware of the applicant's inadmissibility status in the United States.

Mr. [redacted] states in the February 15, 2002, Application for Waiver of Ground of Excludability, that:

> [I] had a growing sense that her visa problems would become an obstacle. In spite of this concern, I asked [redacted] to marry me. She said no [redacted] We were living happily so we continued. [redacted] second visa violation was committed out of our love for each other, but no less a violation.
>
> After two years in Salt Lake City, [redacted] returned to Sweden and her family and friends. Subsequently, [redacted] has not been allowed reentry to the United States but our relationship continued to blossom, in spite of this obstacle, and finally evolved into a marriage.

The record reflects that Mr. [redacted] traveled to Sweden to marry the applicant in August 2001, because she was denied admission into the U.S. due to her past unlawful presence in this country. Mr. [redacted] claim of extreme hardship is thus significantly undermined by his prior knowledge of his wife's inadmissibility to United States.

Counsel asserts that Mr. [redacted] would suffer financial and professional hardship if the waiver is not granted because he expects to work in his father's dentistry practice once he completes his studies, and because he would be unable to complete his studies or possibly pay for them if he moved to Sweden.

It is noted that based on the evidence in the record, Mr. [redacted] began his four-year dentistry program in September 2000, more than a year after the applicant returned to Sweden and was found to be inadmissible to the United States. *See UCSF School of Dentistry Letter,* dated February 13, 2002. It is further noted that since September, 2000, the applicant has been continuously enrolled in the dentistry program. The AAO thus finds the assertion that Mr. [redacted] will not complete the dentistry program if the applicant's waiver is not granted, to be unconvincing. Moreover, the fact that Mr. [redacted] began the program and assumed education loan debts after he knew that the applicant was inadmissible to the U.S., significantly undermines Mr. [redacted] assertions of extreme hardship related to his ability to complete and pay for his education. Moreover, the assertion that Mr. [redacted] would suffer professional hardship in Sweden is unconvincing since he has not yet practiced or held a job as a dentist, and indeed, he has not yet completed the education required for practicing as a dentist.

The record contains no indication that Mr. [redacted] has any health concerns that would cause him hardship if the applicant's waiver application were not granted, and counsel has failed to demonstrate that the hardship Mr. [redacted] would face upon separation from his family constitutes beyond that normally suffered upon the deportation or exclusion of a family member.

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 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.

A review of the documentation in the record, when considered in its totality, reflects that the Bureau did not abuse its discretion and that the applicant has failed to show that her U.S. citizen spouse would suffer extreme hardship beyond that normally experienced upon exclusion or deportation, if her waiver of inadmissibility is not granted.

In proceedings for application for waiver of grounds of inadmissibility, 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.