

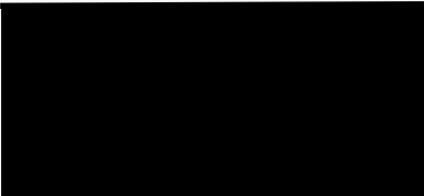
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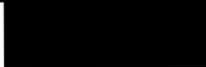
U.S. Citizenship
and Immigration
Services

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FILE:



Office:

ATHENS, GREECE

Date:

JAN 15 2009

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:

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).

John F. Grissom, Acting Chief
Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Officer in Charge, Athens, Greece and appealed to Administrative Appeals Office (AAO). The appeal will be dismissed.

The record reflects that the applicant, a citizen of Egypt, entered the United States as a visitor in April 1998, presumably with permission to remain for a six month period. The applicant remained in the United States beyond his period of authorized stay. He subsequently departed the United States in June 2003. The applicant was thus 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 seeks a waiver of inadmissibility in order to return to the United States to reside with his U.S. citizen spouse.

The officer in charge concluded that the applicant had failed to establish that extreme hardship would be imposed on a qualifying relative and denied the Application for Waiver of Grounds of Excludability (Form I-601) accordingly. *Decision of the Officer in Charge*, dated September 29, 2006.

In support of the appeal, the applicant submitted Form I-290B, Notice of Appeal (Form I-290B), dated October 23, 2006, and an affidavit from the applicant's U.S. citizen spouse, dated October 29, 2006. In addition, on December 6, 2006, the officer in charge received a letter and medical documentation from the applicant's spouse. The entire record was reviewed and considered in rendering this decision.

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

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...

Matter of Cervantes-Gonzalez, 22 I&N Dec. 560, 565-566 (BIA 1999) provides a list of factors the Board of Immigration Appeals deems 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.

Section 212(a)(9)(B)(v) of the Act provides that a waiver under section 212(a)(9)(B)(i)(II) of the Act is applicable solely where the applicant establishes extreme hardship to his or her citizen or lawfully resident spouse or parent. In the present case, the applicant's U.S. citizen spouse is the only qualifying relative, and hardship to the applicant and/or the applicant's spouse's child, presumably from her first marriage, cannot be considered, except as it may affect the applicant's spouse.

The applicant's U.S. citizen spouse asserts that she is suffering emotional and physical hardship due to the applicant's inadmissibility. As stated by the applicant's spouse,

I would like you to help me by letting my husband [the applicant] come back with me to the United States, the country that I love and where I lived for many years and now I want to unite my family and I don't want to be apart from my husband any longer because I can't do it on my own without him.... [H]e takes care of me because I have some kidney disease and I get some pain from time to time...

Letter from [REDACTED]

In support of the physical hardship referenced by the applicant's spouse, two letters have been provided, dated approximately two weeks apart, establishing that the applicant's spouse needs physical support due to numerous medical ailments, including bony pain and fleeting polyarthritis. The AAO notes, however, that the letters fail to outline in detail the applicant's spouse's current medical condition(s), the gravity of the situation, the short and long-term treatment plan, what type of assistance the applicant's spouse needs from the applicant specifically and what hardships she faces due to the applicant's continued physical absence. As such, the letters provided fail to establish that the applicant's spouse's continued medical care and survival directly correlate to the applicant's physical presence in the United States.

As for the emotional hardship referenced, it has not been established that the applicant's spouse's emotional hardship due to her husband's physical absence from the United States is extreme. The

applicant has also failed to establish that his spouse is unable to continue traveling to Egypt on a regular basis to visit with the applicant. Finally, the AAO notes that the applicant and her spouse have never resided together in the United States, as they married after the applicant had returned to Egypt; as such, the applicant's spouse's emotional hardship does not appear to be extreme, as she has been able to support herself in the United States without having the applicant's physical presence on a day to day basis.

Although the depth of concern and anxiety over the applicant's inadmissibility is neither doubted or minimized, the fact remains that Congress provided for a waiver of inadmissibility only under limited circumstances. In nearly every qualifying relationship, whether between husband and wife or parent and child, there is a deep level of affection and a certain amount of emotional and social interdependence. While, in common parlance, the prospect of separation or involuntary relocation nearly always results in considerable hardship to individuals and families, in specifically limiting the availability of a waiver of inadmissibility to cases of "extreme hardship," Congress did not intend that a waiver be granted in every case where a qualifying relationship, and thus the familial and emotional bonds, exist. The current state of the law, viewed from a legislative, administrative, or judicial point of view, requires that the hardship be above and beyond the normal, expected hardship involved in such cases. U.S. court decisions have repeatedly held that the common results of removal are insufficient to prove extreme hardship. *See Hassan v. INS*, 927 F.2d 465, 468 (9th Cir. 1991), *Perez v. INS*, 96 F.3d 390 (9th Cir. 1996); *Matter of Pilch*, 21 I&N Dec. 627 (BIA 1996) (holding that emotional hardship caused by severing family and community ties is a common result of deportation and does not constitute extreme hardship); *Matter of Shaughnessy*, 12 I&N Dec. 810 (BIA 1968) (holding that separation of family members and financial difficulties alone do not establish extreme hardship). "[O]nly in cases of great actual or prospective injury . . . will the bar be removed." *Matter of Ngai*, 19 I&N Dec. 245, 246 (BIA 1984).

The applicant's spouse further contends that she is suffering financial hardship due to the applicant's absence. As stated by the applicant's spouse,

I am not...financially stable. I need my husbands [the applicant's] support.... When my husband lives with me in American he can help me....

Affidavit from [REDACTED], dated October 29, 2006.

Courts considering the impact of financial detriment on a finding of extreme hardship have repeatedly held that, while it must be considered in the overall determination, "[e]conomic disadvantage alone does not constitute "extreme hardship." *Ramirez-Durazo v. INS*, 794 F.2d 491, 497 (9th Cir. 1986) (holding that "lower standard of living in Mexico and the difficulties of readjustment to that culture and environment . . . simply are not sufficient.").

In this case, no financial documentation has been provided to establish the applicant's and his spouse's current economic situation, including detailed information about their income and

expenses, to corroborate that the applicant's spouse is unable to support herself in the United States, thereby causing her to suffer extreme financial hardship due to the applicant's inadmissibility. Nor has it been objectively established that the applicant is unable to assist with the U.S. household expenses by obtaining employment in his home country. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)). While the applicant's spouse may need to make adjustments with respect to the family's financial situation while the applicant resides abroad due to his inadmissibility, it has not been shown that such adjustments would cause the applicant's spouse extreme hardship.

The AAO recognizes that the applicant's spouse will endure hardship as a result of separation from the applicant. However, her situation, if she remains in the United States, is typical to individuals separated as a result of removal and does not rise to the level of extreme hardship based on the record. The AAO concludes that based on the evidence provided, it has not been established that the applicant's spouse is suffering extreme emotional, physical and/or financial hardship due to the applicant's absence.

The AAO notes that extreme hardship to a qualifying relative must also be established in the event that he or she relocates abroad based on the denial of the applicant's waiver request. The record indicates that the applicant's spouse has resided with the applicant in Egypt in the past and no evidence has been provided that establishes that she suffered extreme hardship while living there. The applicant has not asserted any specific reasons why his spouse is unable to relocate to Egypt to reside with the applicant on a permanent basis due to his inadmissibility.

As such, a review of the documentation in the record, when considered in its totality, reflects that the applicant has failed to show that his U.S. citizen spouse would suffer extreme hardship if he were not permitted to return to the United States, and moreover, the applicant has failed to show that his U.S. citizen spouse would suffer extreme hardship were she to relocate to Egypt to accompany the applicant. The record demonstrates that the applicant's spouse faces no greater hardship than the unfortunate, but expected, disruptions, inconveniences, and difficulties arising whenever a spouse is removed from the United States or refused admission. 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. The waiver application is denied.