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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

H3

[REDACTED]

FILE:

[REDACTED]

Office: ATHENS, GREECE

Date: **MAY 01 2009**

IN RE:

[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]

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.

John F. Grissom

Acting Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Acting Officer-in-Charge, Athens, Greece and was before the Administrative Appeals Office (AAO) on appeal. On November 30, 2006 the AAO dismissed the appeal. Counsel for the applicant has filed a Motion to Reopen and Reconsider. The Motion to Reopen and Reconsider will be granted. The previous decision will be withdrawn and the appeal will be sustained.

The applicant is a native and citizen of Lebanon who 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 and seeking readmission within ten years of his last departure from the United States. The applicant is married to a United States citizen and seeks a waiver of inadmissibility in order to reside in the United States with his spouse.

While the AAO concluded that the applicant had established that his spouse would suffer extreme hardship if she were to reside in Lebanon, it did not find that the applicant had also established that extreme hardship would be imposed upon his spouse if she remained in the United States. As such, the AAO denied the Application for Waiver of Grounds of Excludability (Form I-601) accordingly. *Decision of the AAO*, dated November 30, 2006.

In the Motion to Reopen and Reconsider, counsel for the applicant contends that United States Citizenship and Immigration Services (USCIS) erred in finding that the applicant had failed to establish extreme hardship to his qualifying relative, as necessary for a waiver under section 212(a)(9)(B)(v) of the Act. *Motion to Reopen and Reconsider*, dated December 27, 2006.

In support of the motion, counsel submits a brief. The record also includes, but is not limited to, psychological evaluations for the applicant's spouse; a United States Department of State Travel Warning for Lebanon; statements from family members of the applicant's spouse; a statement from the applicant's spouse; and a statement from the applicant's child. The entire record was reviewed and considered in rendering this decision.

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

(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.

The record reflects that the applicant entered the United States on a visitor visa on November 16, 1993 and applied for asylum on May 23, 1994. The applicant's asylum case was denied, he was placed in deportation proceedings, his asylum case was denied by the immigration judge and he was granted voluntary departure on August 29, 1995. The applicant's appeal was denied by the Board of Immigration Appeals on July 21, 1997. The applicant's grant of voluntary departure was extended until October 21, 1997, but he failed to depart the United States pursuant to the grant of voluntary departure. The applicant was again granted voluntary departure on March 29, 2002 and he departed the United States on April 29, 2002. The applicant accrued unlawful presence from October 21, 1997, the date his grant of voluntary departure expired, until March 29, 2002, the date he was again granted voluntary departure. As the applicant is seeking admission to the United States within ten years of his 2002 departure from the United States, he is inadmissible to the United States under section 212(a)(9)(B)(i)(II) of the Act for being unlawfully present in the United States for a period of more than one year.

A section 212(a)(9)(B)(v) waiver of the bar to admission resulting from violation of section 212(a)(9)(B)(i)(II) of the Act is dependent first upon a showing that the bar imposes an extreme hardship to the citizen or lawfully resident spouse or parent of the applicant. The plain language of the statute indicates that hardship that the applicant or his child would experience if his waiver request is denied is not directly relevant to the determination as to whether he is eligible for a waiver under section 212(a)(9)(B)(v). The only relevant hardship in the present case is the hardship suffered by the applicant's spouse if the applicant is removed. If extreme hardship is established, it is but one favorable factor to be considered in the determination of whether the Secretary should exercise discretion. *See Matter of Mendez*, 21 I&N Dec. 296 (BIA 1996).

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 pursuant to section 212(i) of the Act. These factors include the presence of a lawful permanent resident or United States citizen family ties to 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 AAO notes that extreme hardship to the applicant's spouse must be established whether she resides in Lebanon or the United States, as she is not required to reside outside of the United States based on the denial of the applicant's waiver request. The AAO will consider the relevant factors in adjudication of this case.

On November 30, 2006 the AAO found that the applicant's spouse would face extreme hardship in the event of relocation to Lebanon. *Decision of the AAO*, dated November 30, 2006. The AAO affirms this finding for the reasons set forth in its previous decision.

If the applicant's spouse resides in the United States, the applicant needs to establish that his spouse will suffer extreme hardship. In support of the Motion to Reopen and Reconsider, counsel submits a second psychological evaluation of the applicant's spouse, performed by the same psychologist. This re-evaluation was completed to determine whether the applicant's spouse continued to demonstrate the same psychiatric symptomatology that was observed and recorded during her initial evaluation on June 20, 2006. *Statement from [REDACTED] Licensed Psychologist*, dated December 20, 2006. As part of his re-evaluation of the applicant's spouse, the psychologist administered two additional standardized tests used in the diagnosis of depression: the Center Epidemiologic Studies Depression Scale and Anxiety Stress Scales. Based on this second interview, the psychologist found that the time and distance between the applicant's spouse and the applicant continue to take a toll on her psychological well-being. *Id.* She remains frightened and depressed as she continues to face the prospect of not being reunited with the applicant. *Id.* Her sleep remains erratic and she often wakes up in the middle of the night. *Id.* She has now lost a significant amount of weight, in the range of thirty-five pounds. *Id.* She has difficulty concentrating and is now more irritable than she was before, finding herself getting easily upset at others for the most minor of things. *Id.* The profile generated from the applicant's spouse's responses to psychological testing in June 2006 indicated a severe depression and the applicant's spouse remains depressed. *Id.* Her symptoms have become exacerbated due to various events and her ability to effectively deal with them remains compromised. *Id.* Therefore, the convergence of the test data and clinical impressions reached in the June 2006 and December 2006 evaluations of the applicant's spouse lend further credence to the diagnosis of a depressive disorder. *Id.* In addition to her mental health issues, the applicant's spouse notes that it has been difficult to be a single mother and afford house payments. *Statement from the applicant's spouse*, dated December 15, 2006. She has had to sell the house she and the applicant owned. *Id.* As a result, she has been living with her sister rent-free because she can barely make ends meet. *Id.* When looking at the aforementioned factors, particularly the continuing mental health condition of the applicant's spouse, as documented by a licensed healthcare professional, and the difficulties she has encountered in being a single parent, the AAO finds that the applicant has demonstrated extreme hardship to his spouse if she were to reside in the United States.

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).

The adverse factors in the present case are the applicant's prior unlawful presence for which he now seeks a waiver. The favorable and mitigating factors are his U.S. citizen spouse and child, the extreme hardship to his spouse if he were refused admission, and the absence of a criminal record.

The AAO finds that, although the immigration violations committed by the applicant were 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 previous decision of the AAO shall be withdrawn and the appeal shall be sustained.

ORDER: The previous decision is withdrawn and the appeal is sustained.