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U.S. Citizenship
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HC

[REDACTED]

FILE: [REDACTED] Office: ATHENS, GREECE

Date: OCT 20 2005

IN RE:

[REDACTED]

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

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.

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Acting Officer in Charge, Athens, Greece, and the Administrative Appeals Office (AAO) originally rejected the appeal as untimely filed. Subsequent to the rejection, counsel for the applicant submitted a DHL tracking bill showing Citizenship and Immigration Services' (CIS) timely receipt of the the Form I-290B Notice of Appeal. The newly submitted evidence establishing the timely appeal warrants the reopening of this matter, pursuant to 8 C.F.R. § 103.5(a)(5)(ii). The application is thus again before the AAO on appeal. Upon consideration of the entire record, however, the AAO concurs with the acting officer in charge's finding that the applicant failed to establish extreme hardship to his U.S. citizen wife. The appeal will therefore be dismissed.

The applicant is a native and citizen of Greece who is married to a U.S. citizen and is the beneficiary of an approved petition for alien relative. The applicant was found to be inadmissible to the United States under: § 212(a)(6)(C)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(6)(C)(i), for having attempted to procure entry into the United States by presenting a fraudulently obtained Canadian birth certificate; § 212(a)(9)(A)(i), 8 U.S.C. § 1182(a)(9)(A)(i), for having been removed at a port of entry after a previous removal and seeking readmission within twenty years; § 212(a)(9)(B)(i)(II), 8 U.S.C. § 1182(a)(9)(B)(i)(II), for having been unlawfully present in the United States for over one year and seeking readmission within ten years of his last departure, and § 212(a)(9)(C), 8 U.S.C. § 1182(a)(9)(C), for having been unlawfully present in the United States after previous immigration violations. The applicant seeks a waiver of inadmissibility pursuant to §§ 212(i) and § 212(a)(9)(B)(v) of the Act, 8 U.S.C. §§ 1182(i) and 1182(a)(9)(B)(v), in order to return to the United States and reside with his wife in this country.

The acting officer in charge concluded that the applicant had failed to establish that extreme hardship would be imposed on his U.S. citizen wife and denied the Application for Waiver of Grounds of Excludability (Form I-601) accordingly. The acting officer in charge also denied the Application for Permission to Reapply for Admission into the United States after Deportation or Removal (Form I-212). The latter decision, however, is not before the AAO on appeal.

The sections of the Act under which the applicant was found to be inadmissible are as follows:

Section 212(a)(6)(C) of the Act provides, in pertinent part, that:

- (i) Any alien who, by fraud or willfully misrepresenting a material fact, seeks to procure (or has sought to procure or has procured) a visa, other documentation, or admission into the United States or other benefit provided under this Act is inadmissible.

The record reflects that the applicant attempted to enter the United States by claiming Canadian citizenship and presenting a fraudulent Canadian birth certificate. The law provides for a waiver of this ground for inadmissibility. Section 212(i) of the Act provides that:

- (1) The Attorney General [now the Secretary of Homeland Security (Secretary)] may, in the discretion of the Attorney General [Secretary], waive the application of clause (i) of subsection (a)(6)(C) in the case of an alien who is the spouse, 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 the United States of such immigrant alien would result in extreme hardship to the citizen or lawfully resident spouse or parent of such an alien.

Section 212(a)(9) ALIENS PREVIOUSLY Removed.-

(A) Certain aliens previously removed.-

(i) Arriving aliens.-Any alien who has been ordered removed under section 235(b)(1) or at the end of proceedings under section 240 initiated upon the alien's arrival in the United States and who again seeks admission within 5 years of the date of such removal (or within 20 years in the case of a second or subsequent removal or at any time in the case of an alien convicted of an aggravated felony) is inadmissible.

.....

The applicant was removed twice, and he seeks readmission within 20 years of his last departure in 2002. Hence he is inadmissible pursuant to the above section of law. The applicant is also inadmissible pursuant to § 212(a)(9)(B)(i)(II).

(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.

.....

The applicant was removed from the United States in 1997, and he subsequently entered the United States without inspection. He was removed a second time in 2002. The applicant was therefore unlawfully present in the United States for over one year. A waiver of this ground of inadmissibility is available, at § 212(a)(9)(B)(v), as follows:

(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.

(C) aliens unlawfully present after previous immigration violations.-

(i) In general.-Any alien who-

(I) has been unlawfully present in the United States for an aggregate period of more than 1 year, or

(II) has been ordered removed under section 235(b)(1), section 240, or any other provision of law, and who enters or attempts to reenter the United States without being admitted is inadmissible.

The Act does not provide for a waiver of the grounds for inadmissibility described in § 212(a)(9)(C). Even if the applicant were not statutorily ineligible for a waiver due to § 212(a)(9)(C), he does not qualify for a waiver under §§ 212(i) or 212(a)(9)(B)(v), as he has not demonstrated the potential extreme hardship to his wife. A waiver of the bars to admission resulting from violations of §§ 212(a)(6)(C) and 212(a)(9)(B)(i) of the Act depends upon an initial showing that the bars impose extreme hardship on the citizen or lawfully resident spouse or parent of the applicant. Hardship that the alien himself or his child experiences due to inadmissibility is not the subject of this analysis. In the instant case, only hardship suffered by the applicant's wife may be considered.

The bar to admission resulting from a willful misrepresentation is permanent, and the bar to admission of aliens unlawfully present for over one year lasts for ten years from the date of the alien's last departure. The standard of hardship that must be established in order to be considered "extreme" is the same in both types of waivers; hence the applicant's claim of hardship to his wife will be addressed in a single discussion under both waivers. The AAO notes that extreme hardship must be established prior to a discretionary weighing of positive and negative factors, extreme hardship being but one favorable factor in this determination. *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 (BIA) deems relevant in determining whether an alien has established extreme hardship pursuant to § 212(i) of the Act. 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.

Counsel contends that the applicant's spouse would suffer extreme hardship as a result of relocating to Greece to remain with the applicant, since she has a close relationship with her family, especially her mother and older daughter, in Massachusetts, and she has been in her job for many years. Counsel also asserts that the applicant's wife cannot adjust to life in Greece, because she does not speak Greek and would not flourish in a strange land. Counsel states further that if the applicant moves to Greece, she will no longer be able to assist her daughter with college tuition. The AAO finds that the applicant's concerns regarding a move to Greece are typical of individuals faced with the same situation. There is no evidence that the applicant's struggle with cultural adjustment and separation from family would go beyond the level normally seen in similar cases.

The record also does not establish extreme hardship to the applicant's wife if she remains in the United States. The record includes an undated psychological report prepared by [REDACTED] Ed.D. which the acting officer in charge previously considered. The AAO concurs that the psychological report does not lead to the conclusion that the applicant's wife is suffering extreme emotional hardship. [REDACTED] recounted information provided by the applicant's wife and diagnosed her with depression and anxiety. There is no indication that the applicant would become unable to care for herself or her younger daughter or would be unable to carry out her daily activities on account of a separation from the applicant. There is no evidence that the applicant's wife or daughter would suffer ill health due to the applicant's inadmissibility.

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 addition, *Perez v. INS*, 96 F.3d 390 (9th Cir. 1996), held that the common results of deportation are insufficient to prove extreme hardship and defined extreme hardship as hardship that was unusual or beyond that which would normally be expected upon deportation. *Hassan v. INS*, *supra*, held further that the uprooting of family and separation from friends does not necessarily amount to extreme hardship but rather represents the type of inconvenience and hardship experienced by the families of most aliens being deported. 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 fails to establish the existence of extreme hardship to the applicant's spouse caused by the applicant's inadmissibility to the United States. Having found the applicant statutorily ineligible for relief, no purpose would be served in discussing whether he merits a waiver as a matter of discretion.

In proceedings for application for waiver of grounds of inadmissibility under §§ 212(a)(6)(C) and 212(a)(9)(B) of the Act, the burden of proving eligibility remains entirely with the applicant. *See* § 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.