

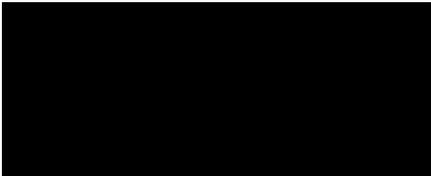
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U.S. Department of Homeland Security  
Citizenship and Immigration Services

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



FILE

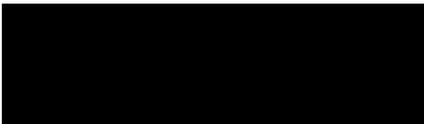
Office: ATHENS, GREECE

Date: **JAN 09 2004**

IN RE: Applicant:

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:



**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 Citizenship and Immigration Services (CIS) 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, Athens, Greece. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native and citizen of Egypt. The applicant was found by a consular officer to be inadmissible to the United States pursuant to section 212(a)(9)(B)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(9)(B)(i), for having been unlawfully present in the United States for more than 180 days. The applicant married a United States citizen on April 22, 1997 and is the beneficiary of an approved Petition for Alien Relative, Form I-130 (WAC-98-005-51748). The applicant seeks a waiver of inadmissibility in order to reside in the United States with his U.S. citizen wife.

The decision of the officer in charge (OIC) establishes that the OIC considered the Application for Waiver of Grounds of Excludability (Form I-601) and the Application for Permission to Reapply for Admission to the United States After Deportation or Removal (Form I-212) jointly. See *Decision of the OIC, Attachment I-292*, dated July 29, 2003. The decision of the OIC determined that the unfavorable factors outweighed the favorable factors in the applicant's case. The Form I-212 application for permission to reapply was denied accordingly. The decision does not indicate whether or not the OIC considered the applicant's Form I-601 waiver claim of extreme hardship to his U.S. citizen spouse. The record does not contain a separate decision adjudicating the waiver application.

On appeal, counsel asserts that the Immigration and Naturalization Service [now Citizenship and Immigration Services (CIS)] erred in its decision as the applicant was not ordered removed or deported from the United States and therefore does not require Form I-212 permission to reapply. Further, counsel contends that CIS did not discuss the merits of the applicant's Form I-601 waiver application, as the decision did not advance any reason for the waiver's denial. Counsel states that the applicant has demonstrated extreme hardship to his spouse owing to his inadmissibility to the United States.

In support of these assertions, counsel submits a declaration from the applicant; letters from the physician treating the applicant's spouse, dated August 20, 2003, January 10, 2002, and November 7, 2001; and copies of airline tickets and related documents verifying the applicant's departure from the United States on March 29, 2002. The record also contains an affidavit of the applicant's spouse, dated April 6, 2002; a copy of the U.S. naturalization certificate of the applicant's spouse; a copy of the license and certificate of marriage for the couple; and documentation evidencing the applicant's divorce from his prior spouse. The entire record was reviewed and considered in rendering a decision in this application.



Section 212(a)(9) of the Act, 8 U.S.C. § 1182(a)(9), states in pertinent part:

(9) Aliens Previously Removed.-

(A) Certain aliens previously removed.-

. . . . .

(ii) [A]ny alien . . . who-

(I) Has been ordered removed under section 240 or any other provision of law . . . is inadmissible.

. . . . .

(iii) Exception. -Clauses (i) and (ii) shall not apply to an alien seeking admission within a period if, prior to the date of the alien's reembarkation at a place outside the United States or attempt to be admitted from foreign contiguous territory, the Attorney General [now the Secretary of Homeland Security, (Secretary)] has consented to the alien's reapplying for admission.

(B) Aliens Unlawfully Present.-

(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 (whether or not pursuant to section 244(e)) prior to the commencement of proceedings under section 235(b)(1) or section 240, and again seeks admission within 3 years of the date of such alien's departure or removal, or

(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 the present application, the record indicates that the applicant entered the United States with a valid fiancé visa on or about March 27, 1992. The applicant remained in the United States even though he did not marry the petitioner of the fiancé visa as intended. On May 3, 1993, the applicant applied for political asylum. On October 26, 1995, the applicant's asylum claim was denied and he was placed in removal proceedings. On November 27, 1995, the applicant married [REDACTED]. Subsequently, the applicant unsuccessfully applied to adjust status based on his marriage to a U.S. citizen. The applicant and his first wife became divorced on March 18, 1996. On April 22, 1997, the applicant married his current spouse, [REDACTED]. On October 7, 1997, the applicant's spouse filed an Application for Alien Relative (Form I-130), which was subsequently approved on September 23, 1999. The applicant was placed in deportation proceedings and on August 24, 2001, he was granted voluntary departure until April 30, 2002 by an Immigration Judge. On March 29, 2002, the applicant departed from the United States. The applicant accrued unlawful presence in the United States from April 1, 1997, the date that unlawful presence provisions were enacted, until he departed the United States. The applicant was unlawfully present from April 1, 1997 until March 29, 2002, a period of more than one year, and is therefore subject to the 10-year bar to admission.

The applicant was granted voluntary departure by an Immigration Judge and the applicant complied with the terms of his voluntary departure. Therefore, the applicant does not require Form I-212 permission to reapply. To the extent that the decision of the OIC indicates that the applicant requires permission to reapply, it is in error.

A section 212(a)(9)(B)(v) waiver of the bar to admission resulting from section 212(a)(9)(B)(i) 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.

*Matter of Cervantes-Gonzalez*, 22 I&N Dec. 560 (BIA 1999) provides a list of factors the Bureau of Immigration Appeals (BIA) deems relevant in determining whether an alien has established extreme hardship pursuant to 212(a)(9)(B)(v) 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 suffers exceptional and unusually extreme hardship owing to the applicant's inadmissibility to the United States. See *Brief of Counsel*, dated August 24, 2003 at 13. In support of this assertion, the record contains letters from the physician treating the applicant's wife listing her illnesses as depression, insomnia, anxiety, obesity, osteoarthritis, hypertension, loss of appetite and diarrhea. See *Letters signed by Mark M. Youssef, MD*. The AAO notes that in the absence of further documentation, it is impossible to determine the extent to which these conditions are caused by the applicant's immigration situation. Further, the record does not establish whether or not the applicant's wife has been treated with any success for her symptoms.

The applicant's wife, who is a U.S. citizen of Jewish ethnicity, indicates that she is unable to join her husband in Egypt because she fears that she and her husband will be persecuted there. See *Affidavit of Nazli Yarhi Messiha*, dated April 6, 2002. The AAO notes that, as a U.S. citizen, the applicant's wife is not required to depart from the United States owing to the denial of the applicant's waiver.

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. The AAO recognizes that the applicant's wife will endure hardship as

a result of separation from her husband. However, her situation is typical to individuals separated as a result of deportation or exclusion and does not rise to the level of extreme hardship.

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.