



U.S. Citizenship
and Immigration
Services

KB

[REDACTED]

FILE:

[REDACTED]

Office: ATHENS

Date:

NOV 01 2004

IN RE:

[REDACTED]

APPLICATION:

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

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

Identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

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DISCUSSION: The waiver application was denied by the Officer-in-Charge, Athens. 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 the Egypt. The applicant was found inadmissible to the United States pursuant to section 212(a)(9)(B)(i)(II) of the Immigration and Nationality Act (INA, the Act), 8 U.S.C. § 1182(a)(9)(B)(i)(II). The record reflects that the applicant is the spouse of a U.S. citizen. He seeks a waiver of inadmissibility in order to return to the United States to reside with his wife.

The district director found that the applicant had failed to establish extreme hardship to his U.S. citizen spouse and denied the application accordingly.

On appeal, counsel first alleges that the applicant and his wife never received the decision of the officer-in-charge denying the waiver of inadmissibility, and only learned of the denial after writing to President George W. Bush, and receiving a response from the Department of State. *See Letter of Director, U.S. Dep't of State Office of Public and Diplomatic Liaison* (August 27, 2003). The AAO notes that the appeal was filed more than 30 days after the denial and is therefore untimely under 8 C.F.R. § 103.3(a)(2)(i). The AAO also notes that the address to which it appears the officer-in-charge mailed the denial lacks the apartment number that was provided to CIS by the applicant. Therefore, it appears that the denial was not properly served on the applicant and the untimely appeal is excused.

Counsel also contends that the applicant has established that extreme hardship to his spouse would result if he is refused admission. The entire record was reviewed and considered in rendering a decision on the appeal.

Section 212(a)(9)(B)(v) 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 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 U.S. citizen or of an alien lawfully admitted for permanent residence, if it is established to the satisfaction of the [Secretary] that the refusal of admission to such

immigrant would result in extreme hardship to the citizen or lawfully resident spouse or parent of such alien.

(ii) Construction of unlawful presence.—For purposes of this paragraph, an alien is deemed to be unlawfully present in the United States if the alien is present in the United States after the expiration of the period of stay authorized by the Attorney General or is present in the United States without being admitted or paroled.

8 U.S.C. § 1182(a)(9)(B).

In the present application, the record indicates that the applicant was admitted to the United States on or about November 28, 1997, as a visitor, pursuant to INA § 101(a)(15)(B), 8 U.S.C. § 1101(a)(15)(B) and, after being approved for an extension of stay, was authorized to remain until November 27, 1998. He remained in the United States after the expiration of his authorized period of stay until his departure in December 2000. The applicant therefore accrued unlawful presence in the United States from November 28, 1998, until his departure from the United States in December 2000, or a period of over two years. The applicant is seeking admission to the United States within 10 years of his 2000 departure from the United States. The applicant is, therefore, inadmissible to the United States under section 212(a)(9)(B)(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 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 U.S. citizen or lawfully resident spouse or parent of the applicant. Hardship to the alien himself is not a permissible consideration under the statute. The qualifying relative in this case is the applicant's spouse.

The concept of extreme hardship to a qualifying relative "is not . . . fixed and inflexible," and whether extreme hardship has been established is determined based on an examination of the facts of each individual case. *Matter of Cervantes-Gonzalez*, 22 I&N Dec. 560, 565 (BIA 1999). In *Matter of Cervantes-Gonzalez*, the Board of Immigration Appeals set forth a list of non-exclusive factors relevant to determining whether an alien has established extreme hardship to a qualifying relative. These factors include, with respect to the qualifying relative, the presence of family ties to U.S. citizens or lawful permanent residents in the United States, family ties outside the United States, country conditions where the qualifying relative would relocate and family ties in that country, the financial impact of departure, and significant health conditions, particularly where there is diminished availability of medical care in the country to which the qualifying relative would relocate. *Id.* at 566. The BIA has held:

Relevant factors, though not extreme in themselves, must be considered in the aggregate in determining whether extreme hardship exists. In each case, the trier of fact must consider the entire range of factors concerning hardship in their totality and determine whether the combination of hardships takes the case beyond those hardships ordinarily associated with deportation.

Matter of O-J-O, 21 I&N Dec. 381, 383 (BIA 1996). (Citations omitted). Once 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).

Counsel asserts that the applicant's spouse (Ms. [REDACTED]) has no family or other ties to Egypt, other than the applicant. Her two adult U.S. citizen daughters and one U.S. citizen grandchild reside in the United States. She also has two U.S. citizen brother in the United States. Information regarding where her extended and immediate family members live, her relationship with them, and proof of their citizenship are not found in the record. Counsel asserts that the impact of separation from her husband or, in the event of relocation to Egypt, from her U.S. citizen family members, will be great, due in part to the high cost of airfare and telephone calls and the 15-16 hour flight to Egypt and 9-hour time difference. The record does not contain supporting evidence of these assertions or the current related costs currently being expended by the applicant. The record contains evidence that Ms. [REDACTED] is employed as a Nutrition Program Assistant at a salary of approximately \$28,000. Counsel also adds that the cultural adjustment to Ms. Ziedan, a naturalized citizen born in Nicaragua, will be a "terrible ordeal." *Letter of Counsel to Los Angeles District Office* (May 26, 2003). Counsel also expresses concerns that country conditions in Egypt reflect "appalling social, economic, and political conditions," lack of protection of women from domestic violence, hatred for Americans, and systemic discrimination against women and non-Muslims. Finally, counsel contends that Ms. [REDACTED] would face substantial financial loss upon relocation to Egypt to avoid separation due to selling her home and projected poor chances of employment due to inability to speak the local language and discrimination against women. The record contains a copy of a report from Amnesty International which states, "[c]ivil society institutions such as political parties, non-governmental organizations, professional associations and trade unions, and the news media continued to face legal restrictions and government control. . . . People continued to be at risk of detention, trial and imprisonment in violation of their right to freedom of religion. . . . Torture continued to be widespread in detention centres throughout the country. . . . Torture victims came from all walks of life and included political activists and people arrested in criminal investigations. . . . In January the Committee on the Elimination of Discrimination against Women expressed concerns regarding insufficient measures for the 'prevention and elimination of violence against women, including domestic violence, marital rape, violence against women in detention centres and crimes committed in the name of honour.'" *Amnesty International Report 2002, Arab Republic of Egypt*.

The record, reviewed in its entirety and in light of the *Cervantes-Gonzalez* factors, cited *supra*, does not support a finding that the applicant's spouse faces extreme hardship if the applicant is refused admission and she remains in the United States. Rather, the record demonstrates that she will face no greater hardship than the unfortunate, but commonly expected, disruptions, inconveniences, and difficulties arising from separation from one's spouse. The record reflects the emotional effect of separation from her husband. However, U.S. court decisions have repeatedly held that the common results of removal, such as typical emotional hardship and financial loss, 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).

Congress provided for a waiver of inadmissibility, but under limited circumstances. In limiting the availability of the waiver to cases of "extreme hardship," Congress did not intend that a waiver be granted in every case where a qualifying relationship exists. "[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 record does not contain evidence that the applicant's wife will experience hardship rising to the level of "extreme" as contemplated by statute and case law.

The AAO therefore finds that the applicant failed to establish extreme hardship to his U.S. citizen spouse as required under INA § 212(a)(9)(B)(v), 8 U.S.C. § 1186(a)(9)(B)(v).

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 rests with the applicant. INA § 291, 8 U.S.C. § 1361. Here, the applicant has not met that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.