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FILE:

Office: ATHENS, GREECE

Date:

IN RE:

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 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 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 Jordan who was found by a consular officer 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 is married to a citizen of the United States and seeks a waiver of inadmissibility in order to manage his business and reside in the United States with his wife and children.

The officer in charge (OIC) concluded that the applicant had failed to establish that the discretionary factors pertaining to the hardships of the applicant's spouse outweigh the seriousness of the applicant's respect for the law and denied the application accordingly. *Decision of the Officer in Charge*, dated August 21, 2003. The AAO notes that the decision of the OIC cites section 212(a)(9)(A) of the Act regarding aliens previously removed, a section of law relevant to adjudication of an Application for Permission to Reapply for Admission into the United States after Deportation or Removal (Form I-212). *Id.* However, as the focus of the discussion and the final determination of the OIC contained in the opinion address the applicant's Application for Waiver of Grounds of Excludability (Form I-601), the AAO likewise focuses on the Form I-601 and arrives at a decision solely regarding appeal of the Form I-601.

On appeal, the applicant asserts that extreme hardship is imposed on his United States citizen spouse as a result of his inadmissibility. *Form I-290B*, dated November 6, 2003.

In support of this assertion, the applicant submits a letter from his spouse, dated September 14, 2003; a letter from a substance abuse counselor, dated September 12, 2003; a letter from the chief of police in Rocky Mount, North Carolina and a letter from the applicant's former spouse, dated September 21, 2003.

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.

In the present application, the record indicates that the applicant entered the United States on or about December 12, 1992 on a visitor visa. The applicant was authorized to remain in the United States until June 17, 1993. The applicant overstayed the period authorized by his visa and remained in the United States until October 2002. The applicant, therefore, accrued unlawful presence from April 1, 1997, the date of enactment of unlawful presence provisions under the Act, until he was departed from the United States during October 2002. 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 the alien himself experiences upon deportation is irrelevant to section 212(a)(9)(B)(v) waiver proceedings. 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).

Matter of Cervantes-Gonzalez, 22 I&N Dec. 560 (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 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.

The applicant's spouse states that the financial and emotional hardship associated with separation from the applicant have been "insurmountable." *Letter from Carmen Trinidad Qassm*, dated September 14, 2003. The applicant's spouse states that three of the applicant's children are in counseling due to separation from their father. *Id.* The record contains a letter from a substance abuse counselor verifying that two of the applicant's children receive services for substance abuse related issues. *Letter from Glenda P. Carpenter, BA, SAC II*, dated September 12, 2003. The AAO notes that the record fails to establish that the children of the applicant developed substance abuse problems as a result of separation from the applicant. The record does not demonstrate the extent or nature of the children's substance abuse and does not establish that the applicant's presence is needed for his children to successfully combat their respective conditions. The record contains a letter from the chief of police in Rocky Mount, North Carolina indicating that 24 calls for service have been made to the residence of the applicant's former spouse as a result of the conduct and behavior of the children. The letter indicates that the children are unsupervised in their home. The AAO notes that the record fails to establish that the presence of the applicant is necessary for successful supervision of his children. The record does not demonstrate that the applicant's current and former spouses are unable to cooperatively provide care for the applicant's children and the record fails to establish that a suitable caregiver cannot be obtained for periods during which the applicant's former and current spouses are unavailable to care for and supervise the

children. Further, the AAO notes that the applicant's children and former spouse are not qualifying relatives for purposes of waiver proceedings under section 212(a)(9)(B)(v) of the Act.

The applicant's spouse contends that she has been forced to obtain part-time employment in addition to her full-time job owing to the loss of the applicant's income. *Letter from Carmen Trinidad Qassm*. The record reflects that the applicant and his current spouse were married less than four months prior to his departure from the United States. The record fails to establish how the applicant's spouse became dependent on the income of the applicant in this abbreviated time span and does not demonstrate the additional expenses she incurs as a result of separation from the applicant. The record further fails to establish that the applicant is unable to financially provide for his spouse and children from a location outside of the United States. Moreover, the AAO notes that 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.

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 endures hardship as a result of separation from the applicant. However, her situation, based on the record, is typical to individuals separated as a result of deportation or exclusion and does not rise to the level 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 section 212(a)(9)(B) 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.