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

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H23

FILE: [REDACTED] Office: ATHENS SUB OFFICE

Date: AUG 31 2005

IN RE: [REDACTED]

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

ON BEHALF OF APPLICANT:

SELF-REPRESENTED

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, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a citizen of Turkey who was found to be inadmissible under section 212(a)(9)(B)(i)(II) of the Act, 8 U.S.C. § 1182(a)(9)(B)(i)(II), for having been unlawfully present in the United States for one year or more. The applicant seeks a waiver of inadmissibility pursuant to section 212(a)(9)(B)(v) of the Act, 8 U.S.C. § 1182(a)(9)(B)(v), in order to enter the United States and reside with his U.S. citizen spouse.

The Officer in Charge concluded that the applicant had failed to establish that extreme hardship would be imposed on a qualifying relative and denied the Application for Waiver of Grounds of Excludability (Form I-601) accordingly. *Decision of the Officer in Charge*, dated May 20, 2004. The Officer in Charge further found that the applicant do not establish that his prior marriage was dissolved at the time he married his U.S. citizen spouse, and thus the marriage is not valid for immigration purposes. *Id.*

On appeal, the applicant contends that the Officer in Charge misinterpreted the dates of his divorce and marriage, and that his documentation reflects that his divorce was final at the time he entered into his current marriage. *Applicant's Statement in Support of Appeal*. The applicant further asserts that he entered the United States legally as a crewmember. *Id.*

The record contains a statement from the applicant in support of the appeal; a statement from the applicant in support of the original Form I-601, Application for a Waiver of Ground of Excludability; a statement from the applicant's spouse; copies of the applicant's spouse's passport and naturalization certificate; a copy of the applicant's prior divorce decree; a copy of the applicant's marriage certificate, and; an Identification Registry Sample from the Turkish Identity Director of the Public Registration Office of Nilufer that presents biographic information about the applicant including his divorce and marriage dates. 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 indicates that the applicant entered the United States as a crewman on or about July 29, 2000 and remained until December 29, 2001. The applicant states that he entered the United States legally as a crewmember and was authorized to remain for 29 days. *Applicant's Statement in Support of Appeal*. It is noted that crewman are permitted a maximum stay of 29 days in D status. See section 101(a)(15)(D) of the Act; 8 C.F.R. § 214.2(d); 9 FAM 41.41 N.2.3. As the applicant remained in the United States until December 29, 2001, he was unlawfully present for approximately one year and four months. As he was unlawfully present in the United States for one year or more, and he again seeks admission within 10 years of the date of his departure, he is inadmissible pursuant to section 212(a)(9)(B)(i)(II) of the Act. The applicant does not contest his inadmissibility on appeal.

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. 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.

On appeal, the applicant contends that the Officer in Charge misinterpreted the dates of his divorce and marriage, and that his documentation reflects that his divorce was final at the time he entered into his current marriage. *Applicant's Statement in Support of Appeal*. Thus, contrary to the finding of the Officer in Charge, the applicant asserts that he has a bona fide marriage to a U.S. citizen. *Id.* In a statement from the applicant provided with the Form I-601 application, he indicated that he and his spouse were married in Turkey, yet she returned to the United States due to her employment. *Statement from Applicant in Support of Form I-601*. In a letter from the applicant's spouse, she indicates that she is lonely without the applicant. *Statement from the Applicant's Spouse in Support of Form I-601*.

Upon review, the evidence of record reflects that the applicant has a qualifying relative, as he married his current wife after his prior divorce was final. The applicant's divorce decree states that his divorce was completed on February 15, 2002. The record contains a marriage certificate that shows that the applicant married his current wife on April 11, 2002, approximately two months after the divorce. It is noted that the Form I-130, Petition for Alien Relative, filed on behalf of the applicant stated incorrect dates for the applicant's divorce and current marriage. While the Officer in Charge observed that the divorce date was incorrectly presented on Form I-130, he did not note that the current marriage date was also erroneous, despite the fact that the application included a copy of a marriage certificate with a differing marriage date. In relying on the dates presented on the divorce decree and marriage certificate, it is evidence that the divorce was final prior to the current marriage. Accordingly, the applicant has shown that he is currently married to a United States citizen.

However, the applicant has failed to show that his spouse will suffer extreme hardship should he be prohibited from entering the United States. While the applicant's spouse states that she will endure emotional hardship as she will be lonely, such consequence is a common effect when a family member is deemed inadmissible. 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 the applicant. However, her situation, if she remains in the United States, is typical to individuals separated as a result of deportation or exclusion and does not rise to the level of extreme hardship.

The applicant and his spouse have identified no further reasons for which his spouse will suffer extreme hardship should he be prohibited from entering the United States. Thus, 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.