



U.S. Citizenship
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Services

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FILE:



Office: ATHENS, GREECE

Date:

FEB 10 2008

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: SELF-REPRESENTED

PUBLIC COPY

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 Egypt who was determined 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. On October 18, 2000, the applicant was removed from the United States after he attempted to obtain admission as a visitor. The applicant is the son of two naturalized citizens of the United States and is the beneficiary of an approved Petition for Alien Relative (EAC-96-023-52606). He 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 reside in the United States with his parents.

The officer in charge concluded that the applicant's disregard of immigration laws and his lack of credibility in his dealings with immigration officials demonstrate a consistent lack of respect for the immigration laws of this country. The officer in charge further determined that the discretionary factors pertaining to the hardships of the applicant's mother do not outweigh the seriousness of the applicant's lack of respect for the law. *Decision of the Officer in Charge*, dated August 18, 2003.

On appeal, the applicant's mother states that she knows the applicant made a mistake by illegally remaining in the United States. She states that she is worried that her son will not be able to visit his parents in the United States. She requests that Citizenship and Immigration Services approve the applicant's waiver application so that he can take care of her and her husband. *Form I-290B*, dated September 3, 2003.

In support of these assertions, the applicant's mother submits a letter; three letters from a physician treating the applicant's parents; a certification of marriage for the applicant's parents and copies of the naturalization certificates and United States passports issued to the applicant's parents. The entire record was reviewed and considered in arriving at a decision on the appeal.

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 with a visitor visa on or about January 10, 1997. The applicant accrued unlawful presence from the date on which his lawful status as a visitor expired until September 7, 1999, the date on which he departed from the United States. The applicant is, therefore, inadmissible to the United States under section 212(a)(9)(B)(i)(II) of the Act for being unlawfully present in the United States for a period of one year or more. Pursuant to section 212(a)(9)(B)(i)(II), the applicant was barred from again seeking admission within ten years of the date of his departure.

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 mother states that she is sick and her husband is disabled. *Letter from Berlant Abdel Messih*, dated September 3, 2003. She contends, "[W]e cannot bear to live without our son for the rest of our life [sic]". *Id.* The applicant's mother submits letters from a physician indicating that the applicant's mother suffers from colon cancer, diabetes and visual problems as well as arthritis. The physician states that the applicant's father also suffers from diabetes and visual problems among other ailments. *Letter from A. Nissbaum, MD*, dated September 2, 2003. *See also Letters from A. Nissbaum*, dated February 3, 2003. While the medical problems suffered by the applicant's parents are unfortunate, the record fails to reflect that the presence of the applicant is necessary for the care of his parents. The physician treating the applicant's father states that he suffers from an anxiety disorder as a result of the applicant's inadmissibility, however the record does not contain evidence of a relationship or consultation with a mental health professional. In the absence of substantiating documentation, the record fails to establish extreme hardship imposed on the applicant's parents.

The record fails to address the other factors identified in *Matter of Cervantes-Gonzalez* as relevant to a determination 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. 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. The AAO recognizes that the applicant's parents endure hardship as a result of separation from the applicant. However, their 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 parents 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.