



U.S. Citizenship
and Immigration
Services

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[Redacted]

FILE: [Redacted] Office: ATHENS, GREECE Date: NOV 21 2005

IN RE: [Redacted]

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:
[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

DISCUSSION: The Officer in Charge (OIC), Athens denied the waiver application. The matter is now before the Administrative Appeals Office (AAO) on appeal. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant, a native and citizen of Jordan, is 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 and seeking readmission within 10 years of his last departure from the United States. The applicant is married to a United States citizen and seeks a waiver of inadmissibility in order to reside in the United States with his wife and her child.

The OIC found that based on the evidence in the record, the applicant had failed to establish extreme hardship to his U.S. citizen spouse. The application was denied accordingly. *Decision of the OIC*, May 21, 2004.

It is noted that the appeal does not appear to have been received until August 2, 2004. Although this date appears untimely given that the decision is dated May 21, 2004; the applicant and his wife asserted through letter and affidavit respectively that the applicant did not receive the decision until he requested that the embassy fax it to him on July 7, 2004. The appeal is considered to be timely filed.

On appeal, counsel concedes that the applicant did accrue unlawful presence but asserts that the applicant did establish extreme hardship to his U.S. citizen spouse. The AAO also notes that, as counsel correctly states, section 212(a)(6)(A)(i), cited to by the OIC in his decision, does not pertain to this matter because the applicant is not in the United States.

In support of these assertions, counsel submitted a brief with the appeal. The entire record, including counsel's brief, an affidavit from the applicant's wife, a letter from a friend of the applicant's wife, prior decisions and applications all have been reviewed and considered in rendering 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.

....

(iii) Exceptions.

.....

(II) Asylees. No period of time in which an alien has a bona fide application for asylum pending under section 208 [1158] shall be taken into account in determining the period of unlawful presence in the United States under clause (i) unless the alien during such period was employed without authorization in the United States.

(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 on December 8, 2000 and was arrested in St. John, United States Virgin Islands, on December 9, 2000. The District Court of the Virgin Islands found the applicant guilty of violating 8 U.S.C. 1325(a) *Entry Without Inspection* on December 13, 2000. Charges were also filed in Immigration Court and the applicant conceded that he was present in the United States without having been admitted or paroled and conceded removability in a Motion to Change Venue to Chicago filed on January 31, 1991. According to his wife's affidavit, the applicant worked illegally while in the United States. See *Affidavit of Michelle Ghorley*, August 11, 2004. The applicant was granted voluntary departure on June 14, 2002. He left the United States in July 2002. He was therefore unlawfully present in the United States for nineteen months. He married his U.S. citizen wife in Jordan on July 31, 2002. She filed an I-130 petition on September 4, 2002. The applicant is inadmissible as he was unlawfully present in the United States for more than one year, and through his application for an immigrant visa is seeking admission within ten years of the date of his departure from the United States.

A section 212(a)(9)(B)(v) waiver of inadmissibility 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. The applicant does not have a U.S. citizen or resident parent, therefore he must show that his inadmissibility imposes extreme hardship on his U.S. citizen wife. 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 Bureau 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.

Counsel asserts that the applicant's wife faces extreme hardship because to be with her husband in Jordan, she would have to leave the United States to live in a country to which she has no ties, no family or friends other than her husband, and no language proficiency. She would also have to raise her daughter in an unfamiliar culture away from family and friends. If she chooses to stay in the United States she would be separated from the husband that she loves, to whom she became engaged in December 2001, and with whom she has been unable to live since they were married in July 2002. She suffers from extreme anxiety as a result of this separation. She relied heavily upon her husband to care for her daughter and for financial support during the time he was in the United States and has found things more difficult since he has been gone. There are no claimed health issues.

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 would endure continued 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. She is attending school and plans on securing work once her schooling is complete. She has no health problems. She has family and friends who support her. She has already been living in the United States without her husband since August 2002. There is no medical or psychological evidence indicating that she needs her husband to carry out her daily activities. While the record indicates that being separated from her husband is difficult for the applicant's wife, it does not indicate that her situation is more difficult than is typical. Since the applicant lived with his wife for less than a year, and since they have lived apart during the entire length of the marriage, the separation is a less significant change in circumstances than would be experienced by many families when a family member is removed.

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. The applicant has not met that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.