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U.S. Department of Homeland Security
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Washington, DC 20529



U.S. Citizenship
and Immigration
Services

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PUBLIC COPY

[Redacted]

FILE:

[Redacted]

Office: SAN FRANCISCO, CA

Date: **JUL 11 2006**

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, Chief
Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Acting District Director, San Francisco, California. 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 Turkey who was determined to be inadmissible to the United States pursuant to section 212(a)(9)(B)(i)(I) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(9)(B)(i)(I), for having been unlawfully present in the United States for more than 180 days but less than one year. The applicant is the spouse of a citizen of the United States and 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 her spouse and child.

The acting district director 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 Acting District Director*, dated September 3, 2003.

On appeal, counsel contends that the decision of the acting district director fails to consider the emotional and non-emotional impacts to the applicant's spouse relating to language, culture and economics resulting from a separation or relocation to Turkey. *Form I-290B*, dated October 2, 2003. In support of these assertions, counsel submits a brief; two declarations of the applicant's spouse; a copy of the marriage certificate of the applicant and her spouse; copies of family photographs; one color photograph of the applicant, her spouse and their child; a copy of the United States birth certificate of the applicant's spouse; a copy of the United States birth certificate of the applicant's child; a psychological evaluation of the applicant's spouse; copies of financial documents for the applicant and her spouse; letters of support and copies of country condition reports and articles addressing human rights violations in Turkey. The entire record was reviewed and considered in rendering a decision on the applicant's appeal.

Counsel also requests oral argument. The regulation at 8 C.F.R. § 103.3(b) provides that the affected party must explain in writing why oral argument is necessary. CIS has the sole authority to grant or deny a request for oral argument and will grant such argument only in cases that involve unique factors or issues of law that cannot be adequately addressed in writing. In this case, no cause for oral argument is shown. Consequently, the request is denied.

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-

(I) was unlawfully present in the United States for a period of more than 180 days but less than 1 year, voluntarily departed the United States . . . prior to the commencement of proceedings under section 235(b)(1) or section 240, and again seeks admission

within 3 years of the date of such alien's departure or removal, or

(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 in November 1999 pursuant to a valid visitor visa. The applicant subsequently applied to extend her nonimmigrant status and her application was approved extending her lawful status as a visitor until November 17, 2000. The applicant failed to depart from the United States upon the expiration of her period of authorized stay. On February 5, 2002, the applicant filed an Application to Register Permanent Residence or Adjust Status (Form I-485). Also during 2002, the applicant obtained advance parole authorization and subsequently departed and re-entered the country on September 26, 2002.

The proper filing of an affirmative application for adjustment of status has been designated by the Attorney General [now Secretary of Homeland Security (Secretary)] as a period of stay for purposes of determining bars to admission under section 212 (a)(9)(B)(i)(I) and (II) of the Act. *See Memorandum by Johnny N. Williams, Executive Associate Commissioner, Office of Field Operations dated June 12, 2002.* The applicant therefore accrued unlawful presence from November 17, 2000, the date on which her authorized stay in the United States expired until February 5, 2002, the date of her proper filing of the Form I-485 application. 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. The decision of the acting district director erred in determining that the applicant was inadmissible under section 212(a)(9)(B)(I) of the Act for being unlawfully present in the United States for a period of more than 180 days but less than one year. Pursuant to section 212(a)(9)(B)(i)(II), the applicant was barred from again seeking admission within ten years of the date of her 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 herself experiences upon deportation is irrelevant to section 212(a)(9)(B)(v) waiver proceedings; the only relevant hardship in the present case is that suffered by the applicant's spouse. 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.

Counsel contends that the applicant's spouse would endure extreme hardship if he relocated to Turkey in order to reside with the applicant. Counsel states that the applicant's spouse has resided in the United States for his entire life and that his family members, including his parents, reside in the United States. *Notice of Appeal Request for Reconsideration*, dated October 2, 2003. Counsel submits a declaration from the applicant's spouse stating that the father of the applicant's spouse recently suffered a stroke and that the applicant's spouse does not want to reside away from his father at a time when his health is beginning to deteriorate. *Supplemental Declaration of [REDACTED] in Support of Appeal for Waiver of Inadmissibility for Spouse*, [REDACTED] dated October 2, 2003. Counsel indicates that the applicant's spouse does not have family ties in Turkey and that he does not believe he will be able to support himself in Turkey. *Notice of Appeal Request for Reconsideration* at 9; *see also Supplemental Declaration of [REDACTED] in Support of Appeal for Waiver of Inadmissibility for Spouse*, [REDACTED] at 11-12. Counsel submits numerous articles and country condition reports in support of the assertion that the economy in Turkey is depressed and therefore, the applicant's spouse would likely face difficulty obtaining employment in the applicant's home country. *See, e.g., Turkey: 43% of Turks Facing Poverty*, dated 2003. The applicant's spouse reports that he anticipates encountering language difficulties in Turkey because he does not speak Turkish and is concerned that he will face cultural and religious shock because he is not familiar with Islamic customs or beliefs. *Supplemental Declaration of [REDACTED] in Support of Appeal for Waiver of Inadmissibility for Spouse*, [REDACTED] at 9. The applicant's spouse expresses further concerns regarding the weather, availability of medical care and dietary customs in Turkey. *Id.* at 10-11 (stating that he has been diagnosed with anxiety disorder and does not believe he will be able to afford therapy in Turkey and asserting that "the combination of cold weather and primitive methods of heating homes would have a severe impact on my health").

While the record demonstrates that extreme hardship may be imposed on the applicant's spouse as a result of relocation to Turkey, the record fails to establish that the applicant's spouse would suffer extreme hardship if he remains in the United States in the absence of the applicant in order to maintain proximity to family members; access to adequate medical and psychological care and residence in a country in which he is comfortable with the language, culture and climate. Counsel contends that separation from the applicant would impose psychological hardship on the applicant's spouse because he suffers from generalized anxiety disorder and worries about the consequences of the applicant's immigration situation. *Notice of Appeal Request for Reconsideration* at 10. Counsel submits a psychological evaluation for the applicant's spouse in support of these assertions. *Psychological Evaluation by Roya Sakhai, PhD, MFT*, dated September 30, 2003.

Although the input of any mental health professional is respected and valuable, the AAO notes that the submitted letter is based on a single interview between the applicant's spouse and the psychologist. *Id.* The record fails to reflect an ongoing relationship between a mental health professional and the applicant's spouse or any history of treatment for the generalized anxiety disorder suffered by the applicant's spouse. Moreover, the conclusions reached in the submitted evaluation, being based on a single interview, do not reflect the insight and elaboration commensurate with an established relationship with a psychologist, thereby rendering the psychologist's findings speculative and diminishing the evaluation's value to a determination of extreme hardship. The AAO notes that the applicant's spouse indicates that he has plans to seek therapy, however the record does not establish that such therapy has been undertaken and it does not demonstrate the nature, findings or results of any mental health therapy undertaken by the applicant's spouse. *Second Supplemental Declaration of [REDACTED] in Support of Appeal for Waiver of Grounds of Inadmissibility for Spouse, [REDACTED]* dated December 8, 2004 ("I have contacted my health insurance and made an appointment with a psychologist for December 16, 2004."). The submitted evaluation, standing alone, does not establish that the applicant's spouse possesses a history of mental health issues or that he will experience difficulty above or beyond the usual difficulties associated with separation from a loved one as a result of the applicant's inadmissibility.

The AAO acknowledges counsel's assertion that the applicant's spouse would face hardship as a result of his daughter residing in Turkey with exposure to its cultural customs regarding women and virginity. *Second Supplemental Declaration of [REDACTED] in Support of Appeal for Waiver of Grounds of Inadmissibility for Spouse, [REDACTED]* at 2-3. The applicant's spouse also expresses concern that the couple's child will suffer as a result of the lack of adequate medical care that the applicant will be able to afford for the child in Turkey. *Id.* at 3. The record fails to establish that the applicant's spouse is unable to provide care for the couple's daughter in the United States in the absence of the applicant, thereby alleviating the expressed concerns associated with the child residing in Turkey.

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 spouse would endure hardship as a result of separation from the applicant. However, his situation, if he 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.

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 she 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.