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U.S. Citizenship
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Services

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FILE:

Office: ATHENS, GREECE

Date: SEP 08 2006

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

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.

A handwritten signature in cursive script, appearing to read "James A. Wiemann" with a large flourish at the end.

for
Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Officer-in-Charge, Athens, Greece. The Administrative Appeals Office (AAO) dismissed a subsequent appeal. The matter is now before the AAO on a motion to reconsider. The motion is granted and the previous decision of the AAO is affirmed.

The applicant is a native and citizen of Egypt who was found 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 and seeking readmission within 10 years of his last departure from the United States. The applicant is the son of two U.S. citizen parents and seeks a waiver of inadmissibility in order to reside in the United States.

The officer-in-charge concluded that the applicant's disregard of immigration laws and his lack of credibility in dealings with immigration officials demonstrate a complete lack of respect for the immigration laws of the United States. 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. The application was denied accordingly. *Decision of the Officer-in-Charge*, dated August 18, 2003.

The AAO found that the applicant did not establish that his parents would suffer extreme hardship as a result of his inadmissibility. *Decision of the AAO*, dated February 15, 2005.

In the motion to reconsider the applicant's father states that he and the applicant's mother are disabled, upset and depressed. They take many medications but their health is gradually becoming worse. He asks for the applicant's case to be reconsidered. *Form I-290B*, dated February 28, 2005.

The record includes, but is not limited to, statements from the applicant's parents and medical records for the parents' various illnesses. The entire record was reviewed and considered in rendering a decision on the appeal.

In the present application, the record indicates that the applicant entered the United States with a visitor's visa on or about January 10, 1997. The applicant remained in the United States until September 7, 1999. Therefore, the applicant accrued unlawful presence from the date his visitor's visa expired in July 1998 until September 7, 1999, the date he departed the United States. In applying for an immigrant visa, the applicant is seeking admission before September 8, 2009 or within 10 years of his September 7, 1999 departure from the United States. Therefore, the applicant is 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.

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.

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 due to separation is irrelevant to section 212(a)(9)(B)(v) waiver proceedings unless it causes hardship to the applicant's parents. 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).

The AAO notes that extreme hardship to the applicant's parents must be established in the event that they reside in Egypt or in the event that they reside in the United States, as they are not required to reside outside of the United States based on the denial of the applicant's waiver request. The AAO will consider the relevant factors in adjudication of this case.

The first part of the analysis requires the applicant to establish extreme hardship to his parents in the event that they reside in Egypt. The applicant's parents are 67 years old and have many medical ailments. They submitted letters from their doctor, [REDACTED]. In his letter pertaining to the applicant's father, Dr. [REDACTED] states that the applicant's father is suffering from eight different ailments, including hypertension, Type 2 diabetes and partial renal failure. Dr. [REDACTED] states that the applicant's father's hypertension and diabetes are poorly controlled and he is suffering from anxiety and fear of death. Dr. [REDACTED] also states that the applicant's father has multiple risk factors to develop a heart attack, stroke or permanent renal failure. The AAO notes that Dr. [REDACTED] states that the applicant's father is seeing a psychiatrist for his fear and anxiety however no psychiatric evaluation was submitted with this application. Dr. [REDACTED] states that the applicant's mother is suffering from 5 different ailments, including colon cancer, hypertension and glaucoma. The AAO finds that due to the applicant's parents' ill health they would suffer extreme hardship as a result of relocating to Egypt.

The second part of the analysis requires the applicant to establish extreme hardship in the event that his parents remain in the United States. The applicant's parents state that they are very upset, depressed and ill as a result of not being able to see their son. The applicant's father states that he has become suicidal, however, no psychiatric records or evaluations were submitted to support this claim. The AAO notes that the applicant's uncle and brother reside in the United States and the record does not reflect that these family members are unable to help the applicant's parents with their daily needs. The AAO understands that the

applicant's parents are experiencing hardships in their lives with regards to health, but they have not established why the applicant's inadmissibility to the United States is causing them hardship that would rise to the level of extreme. The AAO recognizes that the applicant's parents will endure hardship as a result of separation from the applicant. However, the current record does not establish that the applicant's parents will suffer extreme hardship as a result of the applicant's inadmissibility.

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.

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 previous decision of the AAO is affirmed.

ORDER: The decision of the AAO is affirmed.