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FILE:

Office: ATHENS, GREECE

Date: NOV 20 2007

IN RE:



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) and under section 212(i) of the Immigration and Nationality Act, 8 U.S.C. § 1182(i)

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 black ink, appearing to read "Robert P. Wiemann".

Robert P. Wiemann, Chief
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 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 a period of one year or more and pursuant to section 212(a)(6)(C)(i) of the Act, 8 U.S.C. § 1182(a)(6)(C)(i), for procuring and seeking to procure admission into the United States by fraud or willful misrepresentation. The applicant is the spouse of a U.S. citizen. 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) and section 212(i) of the Act, 8 U.S.C. § 1182(i), in order to reside in the United States with his spouse and stepchild.

The officer-in-charge concluded that the applicant had failed to establish that extreme hardship would be imposed on his spouse and denied the Application for Waiver of Grounds of Inadmissibility. *Decision of Officer-in-Charge*, dated January 9, 2006.

On appeal, the applicant details the hardship that his spouse would encounter. *Letter in Support of Appeal*, undated.

The record includes, but is not limited to, the applicant's letter, the applicant's statements, information on Egypt, financial documents for the applicant's spouse, a physician's letter for the applicant's spouse and letters of support for the applicant and his spouse. The entire record was reviewed and considered in arriving at a decision on the appeal.

The record reflects that the applicant entered the United States with a fraudulent Dutch passport on June 14, 1995 and departed the United States on December 31, 1998. At a K-1 fiancé visa interview on January 25, 1999, the applicant stated that he had never been to the United States and he also submitted fraudulent birth and military service certificates. The applicant subsequently attempted to enter the United States with a fraudulent Dutch passport on March 1, 1999 and was expeditiously removed.¹

Therefore, the applicant accrued unlawful presence from April 1, 1997, the date of enactment of unlawful presence provisions under the Act, until his departure from the United States on December 31, 1998. As a result of the unlawful presence and the misrepresentations (false statement and submission of fraudulent documents at the K-1 fiancé visa interview and procured and attempted to procure admission with a fraudulent Dutch passport), the applicant is inadmissible to the United States.

¹ The applicant re-entered the United States with a visitor visa on May 19, 1999, the record indicates a six-month authorized period of stay was granted, he filed an application to adjust status on May 30, 2000, his prior removal order was reinstated on June 13, 2000, and he was removed on February 21, 2001. Therefore, the applicant also accrued unlawful presence from November 19, 1999, the date his visitor status expired, until May 30, 2000, the date he filed his application to adjust status. This period of unlawful presence would subject the applicant to the three-year bar to admission under Section 212(a)(9)(B) of the Act, however, three years have already passed since the February 21, 2001 departure.

Section 212(a)(6)(C) of the Act provides, in pertinent part, that:

- (i) Any alien who, by fraud or willfully misrepresenting a material fact, seeks to procure (or has sought to procure or has procured) a visa, other documentation, or admission into the United States or other benefit provided under this Act is inadmissible.

Section 212(i) of the Act provides that:

- (1) The Attorney General [now the Secretary of Homeland Security (Secretary)] may, in the discretion of the Attorney General [Secretary], waive the application of clause (i) of subsection (a)(6)(C) in the case of an alien who is the spouse, 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 the United States of such immigrant alien would result in extreme hardship to the citizen or lawfully resident spouse or parent of such an alien.

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.

Therefore, the applicant requires waivers under sections 212(i) and 212(a)(9)(B)(v) of the Act.

These waivers are 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 to non-qualifying relatives, such as the

applicant or the applicant's child, is not a permissible consideration except to the extent that such hardship may affect the qualifying relative. 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 are relevant in section 212(a)(9)(B)(v) waivers as well since the same standard of extreme hardship is applied. These factors include the presence of lawful permanent resident or United States citizen family ties to 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.

Therefore, an analysis under *Matter of Cervantes-Gonzalez* is appropriate in this case. The AAO notes that extreme hardship to the applicant's spouse must be established in the event that she relocates to Egypt or in the event that she remains in the United States, as she is not required to reside outside of the United States based on the denial of the applicant's waiver request.

The first part of the analysis requires the applicant to establish extreme hardship to his spouse in the event that she relocates to Egypt. The applicant states that life in Egypt is extremely difficult, the water is not clean, traffic is a nightmare, and it will be impossible for him and his spouse to get a job. *Applicant's Initial Statement*, at 3-4, undated. The applicant states that the average income in Egypt is less than one dollar a day, there are no job opportunities, he has not had a job since 2002, he resides with his mother in a small apartment and his spouse will face poverty. *Applicant's Statement*, at 5-6, undated. The applicant also states that he is a university graduate, CPA, translator and speaks three languages. *Id.* at 6. The applicant has not provided sufficient substantiating evidence to support his claim that he cannot find employment in Egypt in order to support his family. Although the applicant has provided documentation establishing that more than 25 percent of the Egyptian population is poor, he has not demonstrated that he is among this segment of the population. The AAO notes that going on record without supporting documentation will not meet the applicant's burden of proof in this proceeding. *See Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)).

The record includes country conditions information which reflects the generally poor human rights practices in Egypt. *U.S. Department of State Country Reports on Human Rights Practices in Egypt*, dated February 25, 2004. The Department of State indicates that U.S. citizens are to maintain a high level of vigilance in the Middle East, to take appropriate steps to increase their security awareness and there is a possibility for violent actions against U.S. citizens and interests in the region. *U.S. Department of State Public Announcement on the Middle East and North Africa*, at 1, dated December 15, 2005. The record does not indicate if the applicant's spouse would reside in a dangerous part of the country. In addition, the AAO notes that the applicant has characterized the Department of State public announcement as a travel warning, but it is not a travel warning or travel advisory. Egypt is not on the list of countries for which travel advisories have been issued by the Department of State.

The AAO also notes that other than financial issues and country conditions, the applicant has not addressed (and provided substantiating evidence of) the *Matter of Cervantes-Gonzalez* factors or any other relevant hardship factors. The record reflects that the applicant's spouse may encounter difficulties in Egypt, however, the record does not establish extreme hardship if she relocates to Egypt.

The second part of the analysis requires the applicant to establish extreme hardship in the event that his spouse remains in the United States. The applicant states that after being removed, his spouse used alcohol to in order to sleep and to reduce stress, she is in a suicidal mood and he cannot support his spouse and child from Egypt. *Applicant's Statement*, at 3. A friend of the applicant's spouse's states that it is difficult for the applicant's spouse to make ends meet, she is under a great deal of stress trying to take care of herself and her son, she drinks all the time and never goes out, she is taking a lot of medication due to stress and she needs the applicant to come home. *Letter from [REDACTED]*, undated. The applicant's spouse's physician states that the applicant's spouse is being treated with medication, she has been receiving counseling and her mental health issues are exacerbated by the absence of the applicant. *Letter from [REDACTED] M.D.*, dated August 29, 2002.

The record includes evidence of past due balances for rent, credit cards, car payments, phone bills and evidence of the applicant's spouse's bank account being overdrawn and her debt management program being terminated due to missed payments. Based on the documentation of the medical, emotional and financial issues faced by the applicant's spouse, the AAO finds that extreme hardship has been established in the event that the applicant's spouse remains in the United States.

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 notes that a review of the documentation in the record fails to establish the existence of extreme hardship should the applicant's spouse relocate to Egypt. 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 sections 212(a)(9)(B)(v) and 212(i) 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.

The AAO notes that, as part of the decision, the officer-in-charge also denied the applicant's Form I-212, Application for Permission to Reapply for Admission into the United States after Deportation or Removal. The Form I-212 was properly denied as there would be no purpose in granting permission to reapply since the applicant is otherwise inadmissible.

ORDER: The appeal is dismissed.