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U.S. Department of Homeland Security
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U.S. Citizenship
and Immigration
Services

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FILE:



Office: VIENNA, AUSTRIA

Date: APR 29 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

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 Officer in Charge, Vienna. 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 Macedonia 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 seeks a waiver of inadmissibility in order to enter the United States and reside with his U.S. citizen father.

The officer in charge found that, based on the evidence in the record, the applicant failed to establish that his U.S. citizen father would experience extreme hardship if the present waiver application is denied. The application was denied accordingly. *Decision of the Officer in Charge*, dated February 1, 2007.

On appeal, the applicant's father asserts that he will suffer emotional and economic hardship should the applicant be prohibited from entering the United States. *Statement from the Applicant's Father on Appeal*, dated February 15, 2007.

The record contains statements from the applicant's father; documentation regarding the applicant's father's social security benefits; a copy of the applicant's father's naturalization certificate; copies of tax documents for the applicant; a copy of the birth certificate for the applicant and his son; letters verifying the applicant's prior employment in the United States; copies of medical documents for the applicant's father; a mortgage statement for the applicant and his father; a copy of a statement for the applicant's father's checking account; a copy of the applicant's son's passport; a copy of the permanent resident card for the applicant's sister, and; a copy of the marriage certificate for the applicant's father. The entire record was 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.

(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 matter, the record indicates that the applicant entered the United States on July 27, 1993. He was granted voluntary departure until December 17, 1998. However, he did not depart the United States until April 2004. The record does not reflect that he held a lawful immigration status after his voluntary departure period expired on December 17, 1998. The applicant now seeks permanent residence in the United States. Accordingly, the applicant was deemed inadmissible to the United States under section 212(a)(9)(B)(II) of the Act for having been unlawfully present for more than one year and seeking readmission within 10 years of his last departure from the United States. The applicant does not contest his inadmissibility on appeal.

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 being found inadmissible is not a direct concern in waiver proceedings under section 212(a)(9)(B)(v) of the Act. 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.

On appeal, the applicant's father asserts that he is disabled and requires the applicant's assistance. *Statement from the Applicant's Father on Appeal* at 1. He explained that he can't work, and thus he has relied on the applicant for financial support. *Id.* The applicant's father indicated that his wife has poor health and that she is unable to assist him. *Id.* He explained that his wife has little income, and that it is hard for them to maintain their household or keep their two homes without the applicant's help. *Id.* In a separate statement, the applicant's father provided that his wife does not work. *Statement from Applicant's Father*, dated August 22, 2006.

The applicant's father further described hardship that would be experienced by the applicant's son and sister should the applicant be prohibited from entering the United States. *Statement from the Applicant's Father on Appeal* at 1.

The record contains medical documentation to show that the applicant's father has suffered from multiple somatic and mental syndromes for years, he is unable to work, he requires regular therapy, and he can benefit

significantly from the applicant's assistance. *Letter from* [REDACTED], M.D., P.C., dated February 13, 2007.

The record contains a mortgage statement that shows that the applicant and his father are jointly responsible for a \$1,157.42 monthly payment. The record contains documentation to show that the applicant worked in the United States at a salary of \$42,101.06. The applicant submitted copies of his federal tax filings, which reflect that he has not claimed his father as a dependent.

Upon review, the applicant has not established that his father will suffer extreme hardship if he is prohibited from entering the United States. The applicant's father claims that he relies on the applicant for financial support. However, the record lacks sufficient information to show that he cannot meet his economic needs in the applicant's absence. The applicant has not provided an accounting of his father's regular expenses, or his father's economic resources. The applicant's father stated that he owns two homes, yet the record only contains mortgage information on one. The applicant has not provided the value of the second home, or explained whether it may be sold or rented to provide his father with financial resources. The applicant submitted a bank statement for his father dated October 24, 2002, yet he has not provided recent documentation of his father's resources, or a complete accounting of his father's assets or income. The applicant's father made reference to his wife's income, yet the record contains no documentation to show the amount or source of such income. Nor has the applicant submitted information or documentation to reflect whether he is currently working abroad, or whether he is able to help his father financially from outside the United States if desired.

It is noted that the applicant has not provided any evidence that he has given funds to his father, and the applicant's federal tax filings do not reflect that he has claimed his father as a dependent.

The applicant's father stated that the applicant's sister and her family reside in the United States, yet he did not indicate whether she is able to provide financial assistance if needed. Nor did the applicant explain how his father currently meets his needs while the applicant is outside the United States.

Accordingly, the applicant has not provided adequate documentation to show that his father in fact depends on his financial support, or that the applicant is unable to meet any need his father may have from outside the United States.

The applicant's father asserts that he requires the applicant's assistance due to his disability. Yet, the applicant has not explained whether his father obtains assistance from other family members, such as his father's wife or the applicant's sister. The applicant's father explained that his wife has poor health, but the record does not contain any records to show her current condition, or capacity to assist him. The applicant has not explained how his father is currently meeting his needs in the applicant's absence.

The applicant's father expressed that he will suffer emotional hardship should he continue to be separated from the applicant. It is understood that the applicant's father would like to maintain family unity. Yet, while the record reflects that he suffers from mental health problems, the record lacks any documentation from a medical professional to show that, due to his mental health conditions, the applicant's father would suffer greater emotional hardship than would ordinarily be expected of the family members of those prohibited from

entered the United States. In *Matter of Pilch*, 21 I&N Dec. 627 (BIA 1996), the Board of Immigration Appeals 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 father will endure hardship as a result of separation from the applicant. However, the applicant has not shown that his hardship will rise to the level of extreme hardship.

It is noted that the applicant has not asserted that his father would experience hardship should he relocate abroad with the applicant.

The applicant's father stated that the applicant's son and sister will experience hardship as a result of the applicant's absence from the United States. The AAO acknowledges that the applicant's inadmissibility has significant consequences for his son and will create emotional consequences for his sister. However, hardship experienced by the applicant's child or sibling is not a direct concern in waiver proceedings under section 212(a)(9)(B)(v) of the Act.

Based on the foregoing, the applicant has not shown that the instances of hardship that will be experienced by his father, should the applicant be prohibited from entering the United States, considered in aggregate, rise to the level of extreme hardship. 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.