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U.S. Citizenship  
and Immigration  
Services

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**PUBLIC COPY**

[Redacted]

FILE:

[Redacted]

Office: ATHENS, GREECE

Date:

**MAY 30 2008**

IN RE:

[Redacted]

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).

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

The applicant is a native and citizen of Syria who was found 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. It is noted that the applicant sought a waiver of inadmissibility for having committed a crime of moral turpitude. The OIC found the applicant is not inadmissible for having committed a crime of moral turpitude, but is inadmissible for unlawful presence in the United States.<sup>1</sup> The OIC considered the applicant's waiver application under section 212(a)(9)(B)(v) of the Act, 8 U.S.C. § 1182(a)(9)(B)(v), and concluded it failed to establish hardship to a qualifying relative. *Decision of the OIC, dated April 25, 2006.* The applicant submitted a timely appeal.

The AAO will first address the finding of inadmissibility pursuant to section 212(a)(9)(B)(i)(II) of the Act, 8 U.S.C. § 1182(a)(9)(B)(i)(II).

Section 212(a)(9)(B)(i)(II) of the Act provides that any alien (other than an alien lawfully admitted for permanent residence) who has been unlawfully present in the United States for one year or more, and again seeks admission within 10 years of the date of such alien's departure or removal, is inadmissible.

Unlawful presence accrues when an alien is present in the United States after the expiration of the period of stay authorized by the Attorney General or is present in the United States without being admitted or paroled. Section 212(a)(9)(B)(ii) of the Act, 8 U.S.C. § 1182(a)(9)(B)(ii). The periods of unlawful presence under sections 212(a)(9)(B)(i)(I) and (II) are not counted in the aggregate.<sup>2</sup> For purposes of section 212(a)(9)(B) of the Act, time in unlawful presence begins to accrue on April 1, 1997.<sup>3</sup>

The three- and ten-year bars of sections 212(a)(9)(B)(i)(I) and (II) of the Act, 8 U.S.C. § 1182(a)(9)(B)(i)(I) and (II), are triggered by a departure from the United States following accrual of the specified period of unlawful presence. If someone accrues the requisite period of unlawful presence but does not subsequently depart the United States, then sections 212(a)(9)(B)(i)(I) and (II) of the Act, 8 U.S.C. § 1182(a)(9)(B)(i)(I) and (II), would not apply. *See* DOS Cable, note 1. *See also Matter of Rodarte*, 23 I&N Dec. 905 (BIA 2006)(departure triggers bar because purpose of bar is to punish recidivists).

The record reflects that the applicant entered the United States in 1988 on a tourist visa, and filed an asylum application, which was denied in 1994. In 1996, an immigration judge ordered that the applicant be

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<sup>1</sup> The applicant was convicted of Grand Theft under California Penal Code section 487. The maximum penalty for that crime is not to exceed one year. The applicant was sentenced to four months. As this was his only conviction of a crime involving moral turpitude, he is eligible for the petty offense exception found in section 212(a)(2)(A)(ii)(II) of the Act.

<sup>2</sup> Memo, Virtue, Acting Assoc. Comm. INS, Grounds of Inadmissibility, Unlawful Presence, June 17, 1997 INS Memo on Grounds of Inadmissibility, Unlawful Presence (96Act.043); and Cable, DOS, No. 98-State-060539 (April 4, 1998).

<sup>3</sup> *See* DOS Cable, note 1; and IIRIRA Wire #26, HQIRT 50/5.12

deported *in absentia*. The applicant filed motions to reopen, requests for stay of deportation, and appeals with the Board of Immigration Appeals (BIA) and the Ninth Circuit, which were denied. The record contains the Notice of Approval of Relative Immigrant Visa Petition, which was approved on May 20, 2001. The record reflects that the applicant was removed from the United States on December 2, 2003.

For purposes of calculating unlawful presence under section 212(a)(9)(B) of the Act, the applicant began to accrue time in unlawful presence on April 1, 1997. The period of time during which the applicant filed motions to reopen, requests for stay of deportation, and appeals is not considered to be a period of stay authorized by the Attorney General. *Memorandum, Johnny N. Williams, Executive Associate Commissioner, Office of Field Operations, Unlawful Presence, June 12, 2002, HQADN 70/21.1.24-P*. From April 1, 1997 to December 2, 2003, the applicant accrued six years of unlawful presence, and when he was removed from the United States the ten-year-bar was triggered. Consequently, the finding of inadmissibility under section 212(a)(9)(B)(i)(II) of the Act, 8 U.S.C. § 1101(a)(9)(B)(i)(II), is correct.

The AAO will now address the finding that a waiver of inadmissibility is not warranted.

Section 212(a)(9)(B) of the Act provides that:

- (v) Waiver. – The Attorney General [now Secretary, 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 waiver of inadmissibility under section 212(a)(9)(B)(v) is dependent upon a showing that the bar to admission imposes an extreme hardship on a qualifying relative, *i.e.*, the U.S. citizen or lawfully resident spouse or parent of the applicant. Hardship to an applicant and to his or her child are not a consideration under the statute, and unlike section 212(h) of the Act where a child is included as a qualifying relative, they are not included under section 212(a)(9)(B)(v) of the Act. Thus, hardship to the applicant and to his U.S. citizen stepdaughter and child will be considered only to the extent that it results in hardship to a qualifying relative, who in this case is the applicant’s U.S. citizen spouse. If extreme hardship to the qualifying relative is established, the Secretary then assesses whether an exercise of discretion is warranted. *See Matter of Mendez-Morales*, 21 I&N Dec. 296 (BIA 1996).

On appeal, counsel states that the applicant and his wife married in 1999. He states that the applicant’s stepdaughter was diagnosed with multiple sclerosis in June 2002 and relies on her mother for support. He states that the applicant’s mother-in-law relies on the applicant’s wife for support. Counsel states that the applicant and his wife operate a limousine business and the applicant’s wife lost one of the limousines following the applicant’s removal and is experiencing financial difficulty due to the loss of income that was generated by the applicant. Counsel discusses extreme hardship factors and asserts that the OIC failed to properly consider the loss of the limousine and the applicant’s marketing skills to the business and how this impacts the applicant’s wife economically and her ability to support her daughter and mother. Counsel indicates that *Tukhowinich v. INS*, 64 F.3d 460 (9th Cir. 1995), indicates that the personal hardships that flow from

economic detriment may be a relevant factor in considering extreme hardship. Counsel states that the OIC failed to explain why family separation did not constitute “extreme hardship” given the applicant’s step-daughter’s medical condition and the death of his father-in-law. Counsel states that as the condition of the applicant’s step-daughter progresses, she will need more assistance from her mother.

“Extreme hardship” is not a definable term of “fixed and inflexible meaning”; establishing extreme hardship is “dependent upon the facts and circumstances of each case.” *Matter of Cervantes-Gonzalez*, 22 I&N Dec. 560, 565 (BIA 1999). The Board of Immigration Appeals (BIA) in *Matter of Cervantes-Gonzalez* lists the factors it considers relevant in determining whether an applicant has established extreme hardship pursuant to section 212(i) of the Act. The 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. *Id.* at 565-566. The BIA indicated that these factors relate to the applicant’s “qualifying relative.” *Id.* at 565-566.

In *Matter of O-J-O*, 21 I&N Dec. 381, 383 (BIA 1996), the BIA stated that the factors to consider in determining whether extreme hardship exists “provide a framework for analysis,” and that the “[r]elevant factors, though not extreme in themselves, must be considered in the aggregate in determining whether extreme hardship exists.” It further stated that “the trier of fact must consider the entire range of factors concerning hardship in their totality” and then “determine whether the combination of hardships takes the case beyond those hardships ordinarily associated with deportation.” (citing *Matter of Ige*, 20 I&N Dec. 880, 882 (BIA 1994)).

Applying the *Cervantes-Gonzalez* here, extreme hardship to the applicant’s wife must be established in the event that she joins the applicant; and in the alternative, that she remains in the United States. A qualifying relative is not required to reside outside of the United States based on the denial of the applicant’s waiver request.

The record fails to establish that the applicant’s wife would endure extreme hardship if she remains in the United States without the applicant.

Counsel asserts that the applicant’s step-daughter has multiple sclerosis and is supported financially by her mother. The record, however, does not contain medical records or any other documentation to substantiate the claim that the applicant’s step-daughter has multiple sclerosis. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *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 letter in the record dated August 16, 2006 by J. [REDACTED], M.D., of The Cosmetic and Reconstructive Surgery Center, conveys that the applicant’s wife will eventually need surgery to replace breast implants and remove scar tissue. [REDACTED] indicates that the applicant’s wife will require one

month to recover from the procedure and will not be able to do any strenuous activity such as bending, lifting, or twisting.

The AAO finds that the letter by \_\_\_\_\_ is not sufficient in itself to establish extreme hardship to the applicant's wife as she has not demonstrated why she would experience extreme hardship if she required a one-month recovery period.

Counsel claims that the applicant's wife is experiencing extreme financial hardship because her business lost the income that had been generated by a limousine. The AAO finds that no documentation has been presented of the applicant's wife's income and of her monthly household expenses. Without this documentation the AAO cannot determine whether the applicant's wife requires financial assistance from her husband, whom counsel claims also managed the limousine business. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, supra.

Furthermore, the record reflects that the applicant's wife had been employed for many years as a legal secretary. The income tax record and W-2 Form for 1999 reflect that she had income of \$58,295.54 employed as a legal secretary, and the tax records show the applicant as earning \$29,010 in gross income and net income of \$3,695 as a limousine driver. There is no indication that the applicant's wife would be unable to return to her prior profession in order to provide for her family.

It is noted that there is no documentation in the record to substantiate the claim that the applicant's mother-in-law requires financial assistance from her daughter.

Courts in the United States have stated that "the most important single hardship factor may be the separation of the alien from family living in the United States," and also, "[w]hen the BIA fails to give considerable, if not predominant, weight to the hardship that will result from family separation, it has abused its discretion." *Salcido-Salcido v. INS*, 138 F.3d 1292, 1293 (9th Cir. 1998) (citations omitted); *Cerrillo-Perez v. INS*, 809 F.2d 1419, 1424 (9th Cir. 1987) (remanding to BIA) ("We have stated in a series of cases that the hardship to the alien resulting from his separation from family members may, in itself, constitute extreme hardship.") (citations omitted).

However, in *Hassan v. INS*, 927 F.2d 465, 468 (9<sup>th</sup> Cir. 1991), the Ninth Circuit upheld the BIA's finding that deporting the applicant and separating him from his wife and child was not conclusive of extreme hardship as it "was not of such a nature which is unusual or beyond that which would normally be expected from the respondent's bar to admission." (citing *Patel v. INS*, 638 F.2d 1199, 1206 (9th Cir.1980) (severance of ties does not constitute extreme hardship). In *Shooshtary v. INS*, 39 F.3d 1049 (9<sup>th</sup> Cir. 1994), the court upheld the finding of no extreme hardship if Shooshtary's lawful permanent resident wife and two U.S. citizen children are separated from him. As stated in *Perez v. INS*, 96 F.3d 390 (9th Cir. 1996), "[e]xtreme hardship" is hardship that is "unusual or beyond that which would normally be expected" upon deportation and "[t]he common results of deportation or exclusion are insufficient to prove extreme hardship." (citing *Hassan v. INS*, 927 F.2d 465, 468 (9th Cir.1991)). In *Sullivan v. INS*, 772 F.2d 609, 611 (9<sup>th</sup> Cir. 1985), the Ninth Circuit stated that deportation is not without personal distress and emotional hurt; and that courts have upheld orders of the BIA that resulted in the separation of aliens from members of their families.

The record conveys that the applicant's wife is very concerned about separation from her husband. The AAO is mindful of and sympathetic to the emotional hardship that is undoubtedly endured as a result of separation from a loved one. After a careful and thoughtful consideration of the record, however, the AAO finds that the situation of the applicant's wife, if she remains in the United States, is typical to individuals separated as a result of removal and does not rise to the level of extreme hardship as required by the Act. The record before the AAO is insufficient to show that the emotional hardship experienced by the applicant's wife is unusual or beyond that which is normally to be expected upon removal. *See Hassan, Shooshtary, Perez, and Sullivan, supra.*

The present record is insufficient to establish that the applicant's wife would endure extreme hardship if she joined the applicant in Syria.

The applicant did not make any claim of extreme hardship to his wife if she were to join him to live in Syria.

In considering the hardship factors raised here, the AAO examines each of the factors, both individually and cumulatively, to determine whether extreme hardship has been established. It considers whether the cumulative effect of claims of economic and emotional hardship would be extreme, even if, when considered separately, none of them would be. It considers the entire range of factors concerning hardship in their totality and then determines whether the combination of hardships takes the case beyond those hardships ordinarily associated with removal.

The record fails to support a finding of significant hardships over and above the normal economic and social disruptions involved in removal so as to warrant a finding of extreme hardship. Having carefully considered each of the hardship factors raised, both individually and in the aggregate, it is concluded that these factors do not in this case constitute extreme hardship to a qualifying family member for purposes of relief under 212(a)(9)(B)(v) of the Act, 8 U.S.C. § 1182(a)(9)(B)(v).

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)(v) 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.