

identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

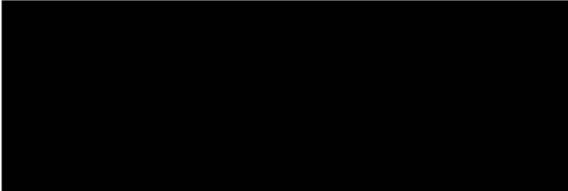
PUBLIC COPY

U.S. Department of Homeland Security
20 Massachusetts Avenue NW, Rm. 3000
Washington, DC 20529-2090



**U.S. Citizenship
and Immigration
Services**

43



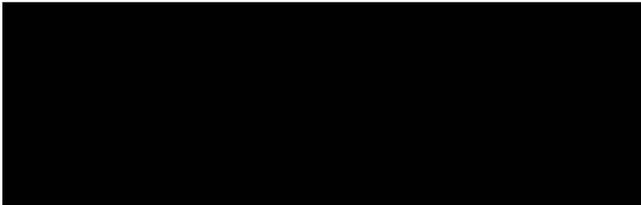
FILE: [REDACTED] Office: FRANKFURT, GERMANY

Date: NOV 04 2008

IN RE: Applicant: [REDACTED]

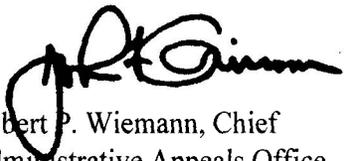
APPLICATION: Application for Waiver of Grounds of Inadmissibility under Section 212(a)(9)(B)(v) of the Immigration and Nationality Act, 8 U.S.C. § 1182(a)(9)(B)(v)

ON BEHALF OF APPLICANT:



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 (OIC), Frankfurt, Germany, and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained.

The record reflects that the applicant is a native of Kuwait and a citizen of Lebanon 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 record reflects that the applicant is the spouse of a naturalized United States citizen and that he is the beneficiary of an approved Petition for Alien Relative (Form I-130). 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), in order to reside in the United States with his United States citizen spouse and lawful permanent resident father.

The OIC found that the applicant failed to establish that extreme hardship would be imposed on his spouse and denied the Application for Waiver of Grounds of Excludability (Form I-601) accordingly. *Decision of the Officer-In-Charge*, dated August 9, 2006.

On appeal, the applicant, through counsel, asserts that the Service “erred in concluding that extreme hardship does not exist if the [applicant] is not allowed to return to [his wife] to resume their marital bliss.” *Form I-290B*.

The record includes, but is not limited to, counsel’s briefs, statements from the applicant, his wife, his father, and his sister, a letter from [REDACTED] regarding the applicant’s father’s health, a letter from Dr. [REDACTED] regarding the applicant’s wife’s psychological condition, and a psychological evaluation from [REDACTED]. The entire record was reviewed and considered in arriving at a decision on the appeal.

Section 212(a)(9)(B) of the Act provides, in pertinent part:

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 [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.

The record indicates that the applicant initially entered the United States without inspection on October 25, 2000. The applicant filed a Request for Asylum (Form I-586), which an immigration judge denied. The applicant filed an appeal of the immigration judge's decision with the Board of Immigration Appeals (BIA). On January 21, 2003, the applicant's naturalized United States citizen spouse filed a Form I-130 on behalf of the applicant. On October 5, 2004, the applicant's Form I-130 was approved. On July 7, 2005, the BIA dismissed the applicant's appeal and ordered the applicant to depart the United States by September 5, 2005. On August 25, 2005, the applicant departed the United States. On October 4, 2005, the applicant filed an Application for Permission to Reapply for Admission After Deportation or Removal (Form I-212) and a Form I-601. On August 9, 2006, the OIC denied the applicant's Form I-212 and Form I-601, finding the applicant accrued more than 365 days of unlawful presence and that he failed to establish the existence of extreme hardship to his spouse. The OIC stated the applicant accrued unlawful presence from October 25, 2000 until August 2005. The applicant is attempting to seek admission into the United States within 10 years of his departure from the United States. The applicant is, therefore, inadmissible to the United States under section 212(a)(9)(B)(i)(II) of the Act for being unlawfully present in the United States for a period of more than one year.

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 citizen or lawfully resident spouse or parent of the applicant. Hardship the applicant himself experiences upon removal is irrelevant to a section 212(a)(9)(B)(v) waiver proceeding. 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).

In *Matter of Cervantes-Gonzalez*, 22 I&N Dec. 560, 565-66 (BIA 1999), the BIA provided a list of factors it deemed relevant in determining whether an alien has established extreme hardship to a qualifying relative. 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.

Counsel claims that the applicant's wife and father are suffering extreme hardship by being separated from the applicant. Dr. [REDACTED] diagnosed the applicant's wife with "Adjustment Disorder of Adult Life with Anxiety and Depression." *Psychological Evaluation by [REDACTED]* page 8, dated July 15, 2004. Dr. [REDACTED] states that if the applicant's wife was permanently separated from the applicant, "she would experience Major Depressive [sic] Disorder-moderate." *Id.* The AAO notes that the applicant is not permanently barred from reentering the United States; however, he is barred from reentering the United States for ten (10) years from the date of his departure, unless a waiver is approved. Dr. [REDACTED] diagnosed the applicant's wife with depression. *See letter from [REDACTED]*

dated October 30, 2006. [REDACTED] states the only cause he could find for the applicant's wife's depression "was separation from [the applicant]." *Id.* [REDACTED] states the applicant's wife suffers from clinical depression and anxiety. *See letter from [REDACTED]* dated November 1, 2007. [REDACTED] claims that "[t]he cause of [the applicant's wife's] Chronic Depression is she has not seen her Husband for over two years, the separation and not being able to be close to him is affecting her to were [sic] [she is] concern[ed] that if [the applicant] does not return she may consider suicide." *Id.* The AAO notes that the record establishes that the applicant's wife actually visited the applicant in Lebanon in January 2006. *See Appeal Brief*, dated November 15, 2006. Counsel states that "the current country conditions in Lebanon pose a threat to the [applicant's wife] were she to consider relocating to that country to live with her husband." *Id.* The applicant's wife states that she "will not go to Lebanon to live with [the applicant] because [she is] concerned about the war going on there, crime, the poor economy and unhealthy environmental conditions." *Declaration of [REDACTED]*, dated November 9, 2007. The AAO notes that country conditions in Lebanon have deteriorated to the point where the U.S. Department of State issued a travel warning on September 10, 2008, warning that Americans should avoid all travel to Lebanon. Additionally, the AAO notes that counsel submitted photos of the applicant's apartment which was partially destroyed by the bombings in 2006. Counsel states that the applicant's wife has a "close emotional relationship to her 3 American-born daughters in the [United States]...[and] that if she moves to Lebanon, the move would separate her from her [daughters].... Without them to support her emotionally, she does not believe that she would be able to go on." *Supplemental Appeal Brief*, dated December 3, 2007; *see also declaration of [REDACTED]*, *supra*. The applicant's wife's daughter states her mother "now has severe depression to the extend [sic] that she does not want to leave the house, not attending to her business all she wants to do is sleep in order to think.... She is also suffering a financial hardship as she hardly works and is not making enough money to pay her bills and her home rent." *Letter from [REDACTED]* dated January 21, 2008. The applicant's wife states she does not believe she and the applicant "could earn sufficiently to provide for [themselves] in Lebanon." *Declaration of [REDACTED]* *supra*. The applicant has established that his wife is dependent upon him and would experience extreme hardship if she were to remain in the United States without him.

The applicant's father states that when the applicant was in the United States, he would see him "at least 3 times per week.... [He] depend[s] on [the applicant] for emotional support.... [The applicant] helps [him] in retrieving [his] medicines." *Declaration of [REDACTED]* dated July 28, 2005. The applicant's father states he cannot return to Lebanon because of the political situation. *Id.* [REDACTED] states the applicant's father "has a long history of multiple chronic diseases. These include Diabetes Mellitus Type 2 for 6-7 years, Coronary Artery Disease for 4-5 years (he had bypass surgery on 3 vessels of his heart), Dyslipidemia, Benign Prostatic Hyperplasia, and Arthritis." *Letter from [REDACTED]* dated August 8, 2005. [REDACTED] states that the applicant's father needs his family within close proximity for their emotional and financial support. *Id.* The AAO notes that the applicant's sister resides in California; however, she states that she is "unable to care for [her] father, regularly, as [she is] married with 3 sons, and [she has her] own family to care for." *Declaration of [REDACTED]*, dated July 18, 2005.

The AAO finds that the applicant meets the requirements for a waiver of his grounds of inadmissibility under section 212(a)(9)(B)(v) of the Act, in that the applicant's spouse is suffering extreme emotional and psychological hardship as a result of her separation from the applicant. The record establishes that the

applicant's spouse's mental and emotional problems have been exacerbated since the applicant departed the United States and they would be further exacerbated if she joins him in Lebanon, separated from her family and mental health resources. Combined with the increased financial and familial burdens that the applicant's spouse has faced since the applicant departed the United States, the cumulative hardship in this case is beyond that which is normally experienced in cases of removal. Accordingly, the AAO finds that the applicant has established that his United States citizen wife would suffer extreme hardship if his waiver of inadmissibility application were denied.

In discretionary matters, the applicant bears the full burden of proving his eligibility for discretionary relief. *See Matter of Ducret*, 15 I&N Dec. 620 (BIA 1976). Here, the applicant has now met that burden. Accordingly, the appeal will be sustained.

ORDER: The appeal is sustained and the application is approved.