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

PUBLIC COPY

ADMINISTRATIVE APPEALS OFFICE

425 Eye Street N.W.
ULLB, 3rd Floor
Washington, D.C. 20536



APR 16 2003

File: [Redacted] Office: PHILADELPHIA, PA Date:

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:



Identifying data deleted to prevent clearly unwarranted invasion of personal privacy

INSTRUCTIONS:

This is the decision in your case. All documents have been returned to the office which originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. § 103.5(a)(1)(i).

If you have new or additional information which you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Bureau of Citizenship and Immigration Services (Bureau) where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. *Id.*

Any motion must be filed with the office which originally decided your case along with a fee of \$110 as required under 8 C.F.R. § 103.7.

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The waiver application was denied by the District Director, Philadelphia, Pennsylvania, and a subsequent appeal was dismissed by the Administrative Appeals Office (AAO). The matter is now before the AAO on a motion to reconsider. The motion will be granted and the order dismissing the appeal will be affirmed. The application will be denied.

The applicant is a native and citizen of Egypt who was found to be inadmissible to the United States under 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. The applicant is married to a United States citizen and is the beneficiary of an approved petition for alien relative. He seeks the above waiver in order to remain in the United States and reside with his spouse.

The district director concluded that the applicant had failed to establish that extreme hardship would be imposed on a qualifying relative and denied the application accordingly. The AAO affirmed that decision on appeal.

On appeal, counsel asserted that the district director improperly denied the applicant's request and that the decision should be reversed. Counsel also asserted that the evidence presented established that the applicant's spouse would suffer extreme hardship if the applicant were removed from the United States.

On motion, counsel submits a brief asserting that the decision to deny the applicant's waiver request improperly applied the law and that the analysis used in reaching the decision was inconsistent with the information provided and with precedent decisions.

The record reflects that the applicant was initially admitted to the United States as a visitor for pleasure on November 5, 1995 with permission to remain for six months. He remained longer than authorized and on December 1, 1998 filed an application for adjustment of status. The applicant subsequently departed the United States on or about June 8, 1999 and returned in parole status on August 29, 1999. He was unlawfully present in the United States from April 1, 1997, the date the calculation for unlawful presence begins, until December 1, 1998 when he filed his adjustment of status application.

On motion, counsel states that the applicant would not have travelled outside of the United States had he realized that it would trigger a bar of inadmissibility. Counsel's contention that the Bureau failed to properly warn the applicant about the possible consequences of his departing the United States when applying for advance parole is unsupported by the record. The advance parole authorization issued to the applicant advised that it would allow him to resume his application for adjustment of status upon return, not that the application would be approved. It also specifically



contained a warning that when resuming his application for adjustment of status, he may be found inadmissible to the United States for unlawful presence and may need to qualify for a waiver of inadmissibility in order for his adjustment application to be approved.

Section 212(a) of the Act states:

CLASSES OF ALIENS INELIGIBLE FOR VISAS OR ADMISSION.-
Except as otherwise provided in this Act, aliens who are inadmissible under the following paragraphs are ineligible to receive visas and ineligible to be admitted to the United States:

* * *

(9) ALIENS PREVIOUSLY REMOVED.-

* * *

(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 from the United States, is inadmissible.

* * *

(v) WAIVER.-The Attorney General 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 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. No court shall have jurisdiction to review a decision or action by the Attorney General regarding a waiver under this clause.

Section 212(a)(9)(B) of the Act was amended by the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA). After reviewing the IIRIRA amendments to the Act relating to fraud, misrepresentation and unlawful presence in the United States, and after noting the increased penalties Congress has placed on such activities, including the narrowing of the parameters for eligibility, the re-inclusion of the perpetual bar in some instances, eliminating children as a consideration in determining the presence of extreme hardship, and providing a ground of inadmissibility for unlawful presence after April 1, 1997, it is concluded that Congress has placed a high priority on reducing and/or stopping fraud, misrepresentation and unlawful presence of aliens in the United States.

The Board has held that extreme hardship is not a definable term of fixed and inflexible meaning, and that the elements to establish extreme hardship are dependent upon the facts and circumstances of each case. These factors should be viewed in light of the Board's statement that a restrictive view of extreme hardship is not mandated either by the Supreme Court or by its own case law. See *Matter of L-O-G-*, 21 I&N Dec. 413 (BIA 1996).

It is noted that the requirements to establish extreme hardship in the present waiver proceedings under section 212(a)(9)(B)(v) of the Act do not include a showing of hardship to the alien as did former cases involving suspension of deportation. Present waiver proceedings require a showing of extreme hardship to the citizen or lawfully resident spouse or parent of such alien. This requirement is identical to the extreme hardship requirement stipulated in the amended fraud waiver proceedings under section 212(i) of the Act, 8 U.S.C. § 1182(i).

In *Matter of Cervantes-Gonzalez*, 22 I&N Dec. 560 (BIA 1999), the Board stipulated that the factors deemed relevant in determining whether an alien has established "extreme hardship" in waiver proceedings under section 212(i) of the Act include, but are not limited to, the following: (1) the presence of a lawful permanent resident or United States citizen spouse or parent in this country; (2) the qualifying relative's family ties outside the United States; (3) 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; (4) the financial impact of departure from this country; (5) and finally, 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, counsel submitted an affidavit from the applicant's spouse, employment and medical information concerning the spouse, letters from the spouse's sister and niece, evidence of the death of the spouse's mother, and a certificate showing that the spouse has declared herself a Muslim. The spouse stated that the applicant

is the only stable factor in her life; her relationship with her first husband led to a nervous breakdown and psychiatric counseling; her mother, who used to take care of her, died five years ago; she is unable to sustain steady employment; and the fact that she is unable to have children causes her stress. She stated that the applicant takes care of her, pays all of the couple's bills, manages the affairs in her life, and that without him she would have no way to support herself and would likely suffer psychologically.

On motion, counsel states that the applicant's spouse was born in the United States, has lived in the United States her entire life, and has no family ties outside of the United States. If the applicant were forced to return to his home country of Egypt, the applicant's spouse has indicated that she would be unwilling to travel to accompany him because she may face a threat or physical harm, does not speak Arabic, and would find it extremely difficult to assimilate to life in an Arab country. Counsel also reiterates that the applicant's spouse is psychologically unstable, has had difficulty in holding any one job for an extended period of time, and would be unable to financially support herself and would suffer emotional trauma without the applicant's presence in the United States.

While the deterioration of the applicant's prior marital relationship, resulting counseling, and inability to sustain steady employment are unfortunate, the record does not contain sufficient documentary evidence to establish that she has a significant condition of health for which treatment is unavailable in Egypt.

It is further noted that there are no laws that require the applicant's spouse to depart the United States and live abroad. In *Perez v. INS*, 96 F.3d 390 (9th Cir. 1996), the court stated that "extreme hardship" is hardship that is unusual or beyond that which would normally be expected upon deportation. Further, the common results of deportation are insufficient to prove extreme hardship. See *Hassan v. INS*, 927 F.2d 465 (9th Cir. 1991). 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. See *Shooshtary v. INS*, 39 F.3d 1049 (9th Cir. 1994). In *Silverman v. Rogers*, 437 F.2d 102 (1st Cir. 1970), the court stated that, "even assuming that the Federal Government had no right either to prevent a marriage or destroy it, we believe that here it has done nothing more than to say that the residence of one of the marriage partners may not be in the United States."

The court held in *INS v. Jong Ha Wang*, 450 U.S. 139 (1981), that the mere showing of economic detriment to qualifying family members is insufficient to warrant a finding of extreme hardship.



A review of the documentation in the record, when considered in its totality, fails to establish the existence of hardship to the applicant's spouse (the only qualifying relative) caused by separation that reaches the level of extreme as envisioned by Congress if the applicant is not allowed to remain in 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)(v) of the Act, the burden of proving eligibility remains entirely with the applicant. See *Matter of T--S--Y--*, 7 I&N Dec. 582 (BIA 1957). Here, the applicant has not met that burden. Accordingly, the order dismissing the appeal will be affirmed. The application will be denied.

ORDER: The order of the AAO dated August 21, 2001 dismissing the appeal is affirmed. The application is denied.