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U.S. Department of Homeland Security
20 Mass. Rm. A3042, 425 I Street, N.W.
Washington, DC 20536



U.S. Citizenship
and Immigration
Services

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APR 05 2004



FILE:



Office: ATHENS, GREECE

Date:

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, Director
Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Officer in Charge, Athens, Greece. 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 Jordan who was found by a consular officer 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. The applicant is the parent of a naturalized citizen of the United States and seeks a waiver of inadmissibility in order to reside in the United States with his child and grandchildren.

The officer in charge (OIC) found that based on the evidence in the record, the applicant had failed to establish extreme hardship to his U.S. citizen son. The application was denied accordingly. *See* Decision of the Officer in Charge, dated June 6, 2003.

On appeal, the applicant states that he overstayed his visitor visa because he did not understand the regulations. He asserts that he worked with the U.S. military from 1964 to 1991 as a supply officer. *See* Letter from [REDACTED] dated June 28, 2003.

The record contains several letters of appreciation from U.S. military personnel addressed to the applicant; certificates of training completed by the applicant; a copy of the naturalization certificate of the applicant's son; a copy and translation of the Jordanian birth certificate of the applicant's son and a copy and translation of the marriage certificate of the applicant and his spouse. The entire record was reviewed and considered in rendering a decision.

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-

(I) was unlawfully present in the United States for a period of more than 180 days but less than 1 year, voluntarily departed the United States . . . prior to the commencement of proceedings under section 235(b)(1) or section 240, and again seeks admission within 3 years of the date of such alien's departure or removal, . . . 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 application, the record indicates that the applicant attempted to enter the United States with a visitor visa on September 22, 1997. The applicant was denied admission when immigration officials determined that the applicant had resided in the United States previously, overstaying the period of authorized stay on prior issued visitor visas and working illegally in the United States. The applicant subsequently entered the United States without inspection. The applicant accrued unlawful presence from September 1997 until June 2000, the month of his departure from the United States. The applicant is, therefore, inadmissible to the United States under section 212(a)(9)(B)(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 U.S. citizen or lawfully resident spouse or parent of the applicant*.

The record demonstrates that the applicant is the parent of a naturalized United States citizen. The record seeks to demonstrate extreme hardship imposed on the U.S. citizen son of the applicant. The U.S. citizen son of the applicant is not a qualifying relative for purposes of section 212(a)(9)(B)(v) waiver proceedings. In his interview with a consular officer, the applicant indicated that his spouse was applying to become a legal permanent resident of the United States. The record is inconclusive regarding the immigration status of the applicant's spouse. Therefore, the AAO finds that the applicant has not established a relationship with a qualifying relative as required by the Act. Based on the record, the applicant is ineligible for a waiver of his inadmissibility to the United States.

The AAO notes that the decision of the OIC was erroneously based on the applicant's failure to establish extreme hardship. The question of extreme hardship is not reached in an application in which a qualifying relative is not presented. This error, however, is harmless as the OIC reaches a result denying the waiver application.

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. Here, the applicant has not met that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.