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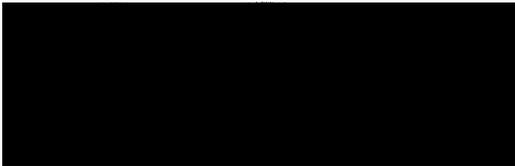


U.S. Citizenship  
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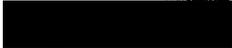
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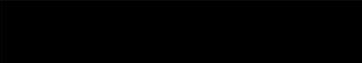
FILE:



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 Lebanon who was determined 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 married to a citizen of the United States and 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 wife and children.

The officer in charge concluded that the applicant's disregard of immigration laws, his unauthorized employment and his illegal stay in the United States demonstrate a consistent lack of respect for the immigration laws of this country. The officer in charge further determined that the discretionary factors pertaining to the hardships of the applicant's spouse do not outweigh the seriousness of the applicant's lack of respect for the law. *Decision of the Officer in Charge*, dated May 20, 2004.

On appeal, the applicant's spouse states that she is suffering true hardship in the absence of the applicant. The applicant's spouse indicates that her income does not exceed \$10,500 per year. *Form I-290B*, dated June 17, 2004.

In support of these assertions, the applicant's spouse submits a brief, dated June 16, 2004; a copy of a passport page including a Form I-94 Departure Record reflecting the name of the applicant; a copy of the naturalization certificate of the applicant's spouse; copies of the United States certifications of birth for the applicant's children and a copy of the certificate of marriage registration for 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-

....

(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 application, the record indicates that the applicant entered the United States with a visitor visa on or about February 8, 1989. On April 27, 2000, the applicant filed an Application to Register Permanent Residence or Adjust Status (Form I-485). The applicant departed from the United States during June 2001.

The proper filing of an affirmative application for adjustment of status has been designated by the Attorney General [Secretary] as a period of stay for purposes of determining bars to admission under section 212(a)(9)(B)(i)(I) and (II) of the Act. *See Memorandum by Johnny N. Williams, Executive Associate Commissioner, Office of Field Operations dated June 12, 2002.* The applicant accrued unlawful presence from April 1, 1997, the date of enactment of unlawful presence provisions under the Act, until April 27, 2000, the date of his proper filing of the Form I-485. 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 one year or more. Pursuant to section 212(a)(9)(B)(i)(II), the applicant was barred from again seeking admission within ten years of the date of his departure.

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 deportation is irrelevant to section 212(a)(9)(B)(v) waiver proceedings. 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.

The applicant's spouse states that she and the applicant want to raise their family together. She asserts that it is difficult for her "to make ends meet" in the absence of the applicant. She indicates that the applicant can provide physical and economic security for his family. *Brief to be Submitted with Appeal*, dated June 16, 2004. The AAO notes that the applicant fails to make any assertions regarding hardship imposed on his spouse based on the factors identified in *Matter of Cervantes-Gonzalez*. The record does not evidence hardship imposed on the applicant's spouse by relocation to Lebanon in order to remain with the applicant. Although the applicant's spouse states that she suffers financially in the absence of the applicant, the record

does not contain documentation to substantiate this claim. In the absence of substantiating evidence, the AAO is unable to make a determination of extreme hardship.

U.S. court decisions have repeatedly held that the common results of deportation or exclusion are insufficient to prove extreme hardship. *See Hassan v. INS*, 927 F.2d 465, 468 (9th Cir. 1991). For example, *Matter of Pilch*, 21 I&N Dec. 627 (BIA 1996), 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. Moreover, the AAO notes that the U.S. Supreme 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. The AAO recognizes that the applicant's wife endures hardship as a result of separation from the applicant. However, her situation, based on the record, is typical to individuals separated as a result of deportation or exclusion and does not rise to the level of extreme hardship.

A review of the documentation in the record fails to establish the existence of extreme hardship to the applicant's spouse caused by the applicant's inadmissibility to 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) 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.