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

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FILE:

[REDACTED]

Office: ATHENS, GREECE

Date: SEP 02 2005

IN RE:

[REDACTED]

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.

A handwritten signature in black ink, appearing to read "Robert P. Wiemann".

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 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 applicant's spouse is a U.S. citizen and the applicant is seeking a waiver of inadmissibility in order to reside in the United States with his spouse.

The officer in charge found that based on the evidence in the record, the applicant established extreme hardship to his U.S. citizen spouse, but was not entitled to a waiver as a matter of discretion. The Form I-601, Application for Waiver of Grounds of Excludability, was denied accordingly. *Decision of the Officer in Charge*, dated May 4, 2004.

On appeal, the applicant asserts that he violated his immigration status in order to care for his wife and father-in-law, that he used a power of attorney to handle his prior divorce and that a language barrier caused his alleged misrepresentation. *See Letter in Support of Appeal*, dated May 23, 2004.

The record includes the aforementioned letter, power of attorney letter, certificate of divorce, family support letters, doctor's letter for the applicant's father-in-law and numerous letters from the applicant and his spouse. The entire record was reviewed and considered in rendering a decision on the appeal.

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 in lawful B1-B2 status on August 3, 1996 and overstayed his initial I-94 expiration date. The applicant fell out of status upon the I-94 expiration date and left the United States by December 28, 2001 pursuant to an order of voluntary departure. Therefore, the applicant accrued unlawful presence from April 1, 1997, the date of enactment of unlawful presence provisions under the Act, until August 30, 2001, the date that voluntary departure was granted. The 10-year bar was triggered by the applicant's departure from the United States. Therefore, the applicant is 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.

The AAO notes that the officer in charge erroneously states that section 212(a)(9)(B)(v) of the Act provides for a waiver under section 212(i) of the Act. *See Decision of the Officer in Charge*, at 2. However, section 212(a)(9)(B)(v) of the Act itself provides for a waiver of the inadmissibility provisions of section 212(a)(9)(B)(i) of the Act.

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 spouse of the applicant. Hardship the alien himself experiences due to separation 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 are also relevant in section 212(a)(9)(B)(v) waiver proceedings. These factors include the presence of lawful permanent resident or U.S. citizen family ties to 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.

An analysis under the factors of *Matter of Cervantes-Gonzalez* is appropriate in this case. The record indicates that the father of the applicant's spouse is a U.S. citizen and that the applicant's spouse has a sister in the United States, although her legal status is not mentioned. The record does not indicate if the applicant's spouse has any family ties outside of the United States besides the applicant. The record does not mention the extent, if any, of the applicant's spouse's ties to Jordan.

The applicant's spouse is the sole caretaker of her father who has a variety of serious medical problems including bladder cancer. *Letter from Applicant's Spouse*, undated. The record includes a doctor's letter stating that the father of the applicant's spouse is in extremely serious condition. *Doctor's Letter*, dated June 17, 2003. The record includes fax copies of medical records, however, they are illegible and therefore of no

value to the application. Furthermore, the AAO notes that the father of the applicant's spouse is not a qualifying relative for extreme hardship analysis. The father's medical problems are considered inasmuch as they contribute to extreme hardship to the applicant's spouse in the event that she relocates to Jordan or remains in the United States without the applicant. The applicant's spouse states that she needs the applicant to assist with her father and take care of the properties. *Letter from Applicant and Applicant's Spouse*, undated.

In regard to the financial impact of departure, the applicant's spouse asserts that her father has moved into her home and she is managing his medical and financial needs, maintaining three homes and working full-time. *Letter from Applicant's Spouse*. No documentation has been submitted to verify these assertions. Furthermore, there is no evidence that the applicant cannot find employment in Jordan to help support his spouse financially.

The record does not mention significant conditions of health for the applicant's spouse, particularly when tied to an unavailability of suitable medical care in Jordan.

The record includes assertions regarding some of the factors outlined in *Matter of Cervantes-Gonzalez*, however, the record is significantly lacking in evidence required to prove extreme hardship. Therefore, the AAO disagrees with the officer-in-charge's finding 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.

The AAO recognizes that the applicant's spouse will endure hardship as a result of separation from the applicant and is sympathetic to her situation. However, her situation, if she remains in the United States, 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. The AAO notes that the applicant's immigration history is relevant to the discretionary phase of the waiver, therefore, the applicant's contentions on this matter will not be addressed.

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.