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U.S. Citizenship
and Immigration
Services

H4

[Redacted]

FILE:

Office: ATHENS, GREECE

Date: MAR 04 2008

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:

[Redacted]

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 cursive script, appearing to read "Robert P. Wiemann".

Robert P. Wiemann, Chief
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 sustained.

The applicant is a native and citizen of Egypt 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 ten years of his last departure from the United States. The applicant is married to a United States citizen and seeks 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 had failed to establish extreme hardship to his U.S. citizen spouse. **The application was denied accordingly.** *Decision of the Officer-in-Charge*, dated April 12, 2006.

On appeal, counsel contends that Citizenship and Immigration Services (CIS) erred as a matter of law in finding that the applicant failed to meet the burden of establishing extreme hardship to his qualifying relative if he were removed from the United States. *Form I-290B; Attorney's brief.* Counsel further asserts that the Department of State Consular Officer in Cairo, Egypt refused to accept, review, or consider supplemental evidence relevant to the Form I-601 waiver application and as a result, this evidence was not available to the CIS office in Athens, Greece. *Attorney's brief.*

In support of these assertions, counsel submits a brief. The record also includes, but is not limited to, statements from the applicant's spouse; a statement from the brother of the applicant's spouse; a statement from the sister of the applicant's spouse; statements from the parents of the applicant's spouse; statements from the son and daughter of the applicant's spouse; statements from friends of the applicant and his spouse; a police incident investigation report, dated May 8, 2007; statements from [REDACTED] Pastor of Zoar Baptist Church; a church petition on behalf of the applicant; medical letters from [REDACTED] for the applicant's spouse; medical records for the sister of the applicant's spouse; medical records for the son of the applicant's spouse; photographs of the applicant and his spouse; telephone bills for the applicant's spouse; and a psychological evaluation for the applicant's 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.

The record indicates that on February 2, 2001 the applicant arrived as a crewmember at the port of San Diego, California. *Immigration Inspector's Memorandum*, dated February 14, 2001. All crewmembers, including the applicant, were detained on board for not having valid, unexpired, nonimmigrant visas in their possession. *Id.* On February 7, 2001 the vessel carrying the applicant and the other crew members arrived at the port of Long Beach, California, and United States Immigration Inspectors re-inspected the detained crew on board. *Id.* On February 8, 2001, four crewmembers were found to be missing from the vessel. *Id.*; *See also memorandum from the vessel's master*, dated February 9, 2001. The applicant was one of the missing crewmembers. *Form I-409, Report of Deserting Crewman*. The applicant remained in the United States without valid legal status until he departed in October 2005. *Consular Memorandum*, dated November 6, 2005. The applicant accrued unlawful presence from February 8, 2001 until October 2005, when he departed the United States. In applying to adjust his status to that of Lawful Permanent Resident (LPR), the applicant is seeking admission within ten years of his October 2005 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 violation of 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. The plain language of the statute indicates that hardship that the applicant would experience upon removal is not directly relevant to the determination as to whether the applicant is eligible for a waiver under section 212(a)(9)(B)(v). The only relevant hardship in the present case is hardship suffered by the applicant's spouse if the applicant is removed. If 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 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.

The AAO notes that extreme hardship to the applicant's spouse must be established in the event that she resides in Egypt or the United States, as she is not required to reside outside of the United States based on the denial of the applicant's waiver request. The AAO will consider the relevant factors in adjudication of this case.

If the applicant's spouse travels with the applicant to Egypt, the applicant needs to establish that his spouse would suffer extreme hardship. The applicant's spouse was born in the United States and her parents, children, and sibling live in the United States. *See United States passport for the applicant's spouse; Form G-325A, Biographic Information sheet, for the applicant's spouse; statements from family members; and attorney's brief.* The applicant's spouse does not speak Arabic and believes this would hinder her ability to find a job in Egypt. *Statement from the applicant's spouse, dated December 5, 2007.*

The parents of the applicant's spouse are getting old and have health problems which cause them to increasingly rely upon the applicant's spouse. *Statement from the parents of the applicant's spouse, dated January 7, 2008.* The applicant's spouse lives close enough to her parents that she is able to regularly check on them. *Statement from the brother of the applicant's spouse, dated January 9, 2008.* This proximity allows her parents to continue living at home. *Id.* The applicant's spouse is the only child who lives close enough to care for her parents, as her brother lives in Atlanta, Georgia and his job as the Senior Emergency Response Coordinator for the United States Nuclear Regulatory Commission requires him to be on call for extended periods of time. *Id.* As asserted by her brother, without the applicant's spouse's presence and ability to assist their parents, there would be a great hardship imposed on their well-being as well as his life and the life of the applicant's spouse. *Id.*

The applicant's spouse also has a son who has Asperger's Disorder. *Medical records for the son of the applicant's spouse, [REDACTED] dated March 24, 2003.* According to [REDACTED] the son of the applicant's spouse is suffering from a pervasive developmental disorder, which manifested itself when he was around 12 years of age. Multiple efforts by psychiatrists to treat him for the past six to ten years with antidepressants and other measures have met with no success. *Id.* The doctor further states that the son of the applicant's spouse is not competent to manage his benefits, but his mother is quite competent to manage his benefits. *Id.* Although the son of the applicant's spouse was born in 1979 and is an adult, he still lives with his mother. *Id.; See also statement from the son of the applicant's spouse, dated May 8, 2006.* Due to his disorder, he rarely leaves the house or even his room. *Id.* He does not speak to anyone as a result of this disorder. *Id.* The applicant's spouse takes care of him by providing all of his meals, housing, and transportation. *Id.* He would be unable to live on his own, and does not want to be left in the care of strangers. *Id.* As noted by the applicant's spouse, her son's disorder is an ongoing responsibility, as he will never be able to live independently and will always need her care. *Statement from the applicant's spouse, dated January 17, 2008.* Although the son of the applicant's spouse is not a qualifying relative in this case, the AAO recognizes the impact that his significant health condition has upon the applicant's spouse. The applicant's spouse is currently being treated for depression and has a history of depression, having been previously treated for it from 2000 to 2003. *Statement from [REDACTED] Ph.D., Licensed Professional Counselor, dated June 29, 2005; Statements from [REDACTED], dated April 25, 2006*

and December 13, 2006. If the applicant's spouse left the United States to live in Egypt, she would have to leave behind her adult son who is on permanent disability due to Asperger's Disorder. *Statement from [REDACTED] Ph.D., Licensed Professional Counselor*, dated June 29, 2005. This separation has the potential to be devastating to the applicant's spouse. *Id.* She might also experience a high level of depression living in Egypt because she could not speak the language and thus, would be unlikely to find employment or establish friendships. *Id.* When looking at the aforementioned factors concerning the applicant's spouse, particularly the lack of cultural ties to Egypt, the language barrier she would face in Egypt, the fact that the applicant's spouse is the primary caregiver for her elderly parents as well as her adult son who has a significant health condition, and her history of depression, the AAO finds that the applicant has demonstrated extreme hardship to his spouse if she were to reside in Egypt.

If the applicant's spouse resides in the United States, the applicant needs to establish that his spouse would suffer extreme hardship. As previously noted, the applicant's spouse was born in the United States, and she continues to have several family members who live in this country. *See United States passport for the applicant's spouse; Form G-325A, Biographic Information sheet, for the applicant's spouse; statements from family members; and attorney's brief.* The applicant's spouse notes that since her appointment with the consular officer in Cairo, her health has deteriorated due to the stress and sorrow over this situation. *Statement from the applicant's spouse*, dated September 14, 2007. On April 25, 2006 [REDACTED] diagnosed the applicant's spouse as having situational anxiety and underlying major depression. *Statement from [REDACTED]*, dated April 25, 2006. He stated that the applicant's spouse was unable to sleep and unable to cope. *Id.* He also noted that her sister was dying of advanced metastatic breast cancer, and that the applicant's spouse was having a hard time dealing with everything. *Id.*; *See Also medical records for the sister of the applicant's spouse*, dated April 25, 2006. The applicant's spouse was previously taking the medications Lexapro and trazodone, and the doctor continued to prescribe these medications to the applicant's spouse along with the medication clonazepam. *Statement from [REDACTED]*, dated April 25, 2006. [REDACTED] Pastor at Zoar Baptist Church, has known the applicant's spouse for 11 years and has counseled her on many occasions to help her deal with the extreme stress and depression that she has suffered since being separated from her husband. *Statement from [REDACTED]*, dated May 3, 2006. He states that he has noticed a sharp decline in the mind of the applicant's spouse since she returned from Egypt without the applicant. *Id.* He also notes that she has an extraordinary amount of family responsibilities and stressors that have exacerbated her depression. *Id.* In June 2006, the sister of the applicant's spouse died from breast cancer. *Statement from [REDACTED]*, M.D., dated December 13, 2006. As of December 2006, [REDACTED] observed that the applicant's spouse has almost totally withdrawn. *Id.* He noted that she goes to work, returns home to her small apartment, and does not want to see anyone. *Id.* She wants to sleep all of the time, mainly to avoid the reality of the situation. *Id.* He notes that her health is suffering severely from the depression, and he prescribed to her Z-Pak and Cymbalta. *Id.* Family and friends of the applicant's spouse have observed that she is frequently ill, suffers from depression, anxiety, and other health problems. *Statement from the parents of the applicant's spouse*, dated April 22, 2007; *Statement from [REDACTED]*, dated April 23, 2007. They fear that separation from her husband will only further this decline in her health. *Id.*

On May 8, 2007 a man attempted to break into the applicant spouse's apartment while she was home. *Police incident investigation report*, dated May 8, 2007. According to the friends of the applicant's spouse, this break-in to her apartment has added more stress to her already stressful life. *Statement from [REDACTED]*

dated August 22, 2007; *Statement from* dated August 22, 2007. The applicant's spouse states that this man has not been caught and that she lives in constant fear that he will return. *Statement from the applicant's spouse*, dated September 14, 2007.

The applicant's spouse states that she and her family continue to grieve the death of her sister. *Statement from the applicant's spouse*, dated January 17, 2008. She notes that the loss of a family member is hard enough under any circumstance, but that it has been especially difficult considering all of things she has been through with not being able to be with her husband. *Id.* She states that she is deeply depressed and although she is on medication, she is barely able to function. *Statement from the applicant's spouse*, dated September 14, 2007. Some days she cannot get out of bed and she believes that her job is suffering because of so much absenteeism. *Id.* She states that she is also suffering financially due to increased medical bills and prescriptions, and that she is barely able to make ends meet. *Id.*

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). 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. While the AAO acknowledges these cases, it notes that the situation of the applicant's spouse is not typical due to the significant deterioration in her mental health. The AAO also notes that the applicant's spouse has had to cope with the death of her sister, the break-in of her apartment, and the caretaking responsibilities of her son with Asperger's disorder as well as her elderly parents without the physical and emotional support of the applicant. As she notes, her husband has been her emotional rock, but it is hard for him to be a real help being thousands of miles away. *Statement from the applicant's spouse*, dated December 5, 2007. Based on all of the aforementioned factors, the AAO finds that the applicant has demonstrated extreme hardship to his spouse if she were to reside in the United States.

The AAO additionally finds that the applicant merits a waiver of inadmissibility as a matter of discretion. In discretionary matters, the alien bears the burden of proving eligibility in terms of equities in the United States which are not outweighed by adverse factors. *See Matter of T-S-Y-*, 7 I&N Dec. 582 (BIA 1957).

The adverse factors in the present case are the applicant's prior unlawful presence for which he now seeks a waiver. The favorable and mitigating factors are the extreme hardship to his spouse if he were refused admission, his supportive relationship with his spouse, and his lack of a criminal record.

The AAO finds that, although the immigration violations committed by the applicant were serious and cannot be condoned, when taken together, the favorable factors in the present case outweigh the adverse factors, such that a favorable exercise of discretion is warranted. Accordingly, the appeal will be sustained.

ORDER: The appeal is sustained.