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U.S. Department of Homeland Security
20 Mass. Ave., N.W., Rm. A3042
Washington, DC 20529

U.S. Citizenship and Immigration Services

[redacted]

H2

FILE: [redacted] Office: ATHENS, GREECE Date: DEC 23 2004

IN RE: [redacted]

APPLICATION: Application for Waiver of Grounds of Inadmissibility under § 212(a)(9)(B) of the Immigration and Nationality Act, 8 U.S.C. § 1182(a)(9)(B)

ON BEHALF OF PETITIONER:

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, and the matter is now before the Administrative Appeals Office (AAO) on appeal. The Officer in Charge's decision will be withdrawn and the matter remanded for entry of a new decision.

The applicant is a native and citizen of Egypt who was found to be inadmissible to the United States pursuant to § 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. He was also found inadmissible pursuant to § 212(a)(9)(A)(ii) of the Act, 8 U.S.C. § 1182(a)(9)(A)(ii), regarding aliens who were previously removed and seek readmission within ten years of the date of departure. The applicant is married to a citizen of the United States and seeks a waiver of inadmissibility in order to reside in the United States with his wife and child. The applicant filed both a Form I-601 Application for Waiver of Grounds of Excludability and a Form I-212 Application for Permission to Reapply for Admission into the United States after Deportation or Removal. These are two distinct applications which must be adjudicated, decided, and appealed separately.

The Officer in Charge rendered a decision on August 17, 2004. The decision focuses primarily on the weighing of equities, as required by the I-212 adjudication, and the director found that the applicant did not merit a discretionary waiver of the grounds of inadmissibility described at § 212(a)(9)(A)(ii) of the Act. The cover sheet of the decision indicates that the Form I-601 Waiver of Grounds of Excludability was denied, yet in the body of the decision, the Officer in Charge wrote that the Form I-601 would not be considered, but instead would be returned to the consular section for a refund of the waiver fee. Notwithstanding the statement to the effect that the I-601 waiver would not be considered, the Officer in Charge briefly analyzed the issue of extreme hardship, as required by the Form I-601 adjudication, and determined that the applicant had not established that his wife would experience extreme hardship due to his inadmissibility.

The AAO is unable to adjudicate the instant appeal, as the decision appears to blend two separate proceedings. The record is remanded to the Officer in Charge, in order for the Officer in Charge to render a new decision based on the evidence of record as it relates to the Form I-212 application only. As always, the burden of proving eligibility for the benefit sought remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361.

ORDER: The Officer in Charge's August 17, 2004 decision is withdrawn. The petition is remanded to the Officer in Charge for entry of a new decision based on the Form I-212 application, which if adverse to the petitioner, is to be certified to the AAO for review.