U.S. Department of Homeland Security
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Washington, DC 20529

U.S. Citizenship and Immigration Services

#3

[redacted]

FILE: [redacted] Office: ATHENS, GREECE Date: AUG 3 1 2004

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.

Robert P. Wiemann, Director
Administrative Appeals Office

identifying data deleted to prevent clearly unwarranted

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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 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. The applicant is married to a naturalized citizen of the United States and is the son of two naturalized United States citizens. The applicant 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 spouse and parents.

The officer in charge (OIC) found that the burden on the applicant's spouse is outweighed by the applicant's long-term egregious behavior flouting immigration law over a period of 11 years. The application was denied accordingly. *Decision of the Officer in Charge,* dated May 25, 2003.

On appeal, counsel asserts that Citizenship and Immigration Services (CIS) erred by neglecting to acknowledge that the applicant maintained a legal stay until the end of 1998. Counsel states that the CIS categorization of the applicant's efforts as a relaxed attempt to resolve his immigration situation is inaccurate. *Form I-290B*, dated June 3, 2003.

In support of these assertions, counsel submits a letter from the applicant, dated May 29, 2003; copies of documents received from the Immigration and Naturalization Service [now CIS] evidencing the applicant's filings; a letter from a physician treating the applicant's spouse; copies of medical records regarding the applicant's spouse; a letter from a clinical social worker, dated June 5, 2003; copies of health benefit statements; a letter from a priest at the applicant's church; copies of checks written by the applicant to his parents; letters from a physician regarding the condition of the applicant's parents and several letters from 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.

In the present application, the record indicates that the applicant entered the United States on a visitor visa during October 1991. The applicant subsequently extended his visa until October 1992 and then filed for political asylum during 1992. The applicant's request for asylum was denied in 1996. The applicant filed an appeal which was denied by the Board of Immigration Appeals (BIA) in 1997. The applicant appealed the BIA decision to the Ninth Circuit Court of Appeals. His appeal was denied in December 1998. The applicant married a naturalized citizen of the United States during September 2000. The applicant accrued unlawful presence from December 1998, the date upon which his appeal was denied by the Ninth Circuit Court of Appeals, until July 2002, the date upon which he departed 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. The AAO notes that the decision of the OIC fails to acknowledge the applicant's attempts to legalize his status in the United States between 1992 and 1998. Despite the assertions of counsel, however, these attempts do not eradicate the grounds of inadmissibility applicable to the applicant under section 212(a)(9)(B)(II) 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 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; the only relevant hardship in the present case is that suffered by the applicant's spouse. 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 BIA 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.

Counsel makes no assertions regarding the ability of the applicant's spouse to relocate to Egypt, her native country, in order to remain with the applicant. The record fails to establish whether or not the applicant's spouse has family ties in the United States.

Counsel establishes extreme hardship to the applicant's spouse if she remains in the United States in the absence of the applicant. The AAO notes that, as a U.S. citizen, the applicant's spouse is not required to reside outside of the United States as a result of denial of the applicant's waiver request. The applicant's spouse states that as a result of the denial of the applicant's waiver request, she was not able to continue her job. *Letter from Fiby Abdelmalik*, dated October 25, 2003. She indicates that she no longer has an income or health insurance. The health insurer of the applicant's spouse denied her coverage based on the high costs of her medical treatment, according to the applicant's spouse. *Id.* The record establishes that the applicant's spouse requires medical treatment for microprolactinoma, a tumor in the pituitary gland, involving appointments approximately every three months. *Letter from Amy Lutz Teresi*, MD, dated June 6, 2003. In addition, the applicant's spouse suffers from adjustment disorder with mixed anxiety and depressed mood. *Letter from Nabila S. Salib*, dated June 5, 2003. The applicant's spouse also reports that she is pregnant and therefore, requires additional medical care. *Letter from Fiby Abdelmali.* The record further evidences that, while in the United States, the applicant provided financial support to his U.S. citizen parents who also suffer from medical conditions including liver disease and prostate disease suffered by the applicant's father and heart disease, arthritis and severe depression suffered by the applicant's mother. *Letters from Suzanne Rizalla, MD*, undated. The AAO notes that the record fails to establish that the applicant's parents suffer extreme hardship in the absence of financial assistance from the applicant because the record does not establish the financial situation of the applicant's parents.

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 and parents endure hardship as a result of separation from the applicant. However, the record fails to establish that the applicant's spouse and parents would suffer extreme hardship as a result of relocation to Egypt in order to remain with the applicant.

A review of the documentation in the record fails to establish the existence of extreme hardship to the applicant's spouse and parents 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.