U.S. Department of Homeland Security
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Washington, DC 20536

U.S. Citizenship and Immigration Services

PUBLIC COPY

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[redacted]

FILE: [redacted] Office: JACKSONVILLE, FL Date: FEB 02 2004

IN RE: [redacted]

PETITION: 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 PETITIONER: SELF-REPRESENTED

Identifying data deleted to prevent clearly unwarranted invasion of personal privacy

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 Acting District Director, Miami, Florida, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native and citizen of Israel 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 United States citizen and she is the beneficiary of an approved Petition for Alien Relative (SRC-97-032-52555). The applicant seeks a waiver of inadmissibility in order to reside in the United States with her U.S. citizen husband and children.

The acting district director found that based on the evidence in the record, the applicant had failed to establish extreme hardship to her U.S. citizen husband. The application was denied accordingly. *See District Director Decision, Attachment I-292*, dated August 2, 2002.

On appeal, the applicant's husband requests the Immigration and Naturalization Service [now Citizenship and Immigration Services (CIS)] to reconsider the decision. In support of the appeal, the applicant submits a letter from the applicant's husband, undated; letters of support from friends and the applicant's two sons and a letter from the physician treating the applicant's husband, dated August 21, 2002.

The record also contains a letter from the applicant's husband, dated March 20, 2002; copies of the U.S. birth certificates issued to the applicant's two sons and a copy of the naturalization certificate of the applicant's husband. 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 March 8, 1990 with authorization to remain in the country until September 7, 1990. However, the applicant remained in the United States beyond her authorized period of stay. On February 24, 1996, the applicant married a naturalized U.S. citizen. The applicant filed an Application to Register Permanent Residence or Adjust Status (Form I-485) on September 5, 2001. On September 12, 2001, the applicant was issued Authorization for Parole of an Alien into the United States (Form I-512) and subsequently used the advance parole authorization to depart and reenter the United States.

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 September 5, 2001, the date of her proper filing of the Form I-485. 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 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. It is noted that Congress specifically did not include hardship to an applicant's children as a factor to be considered in assessing extreme hardship under section 212(a)(9)(B)(v) of the Act. Hardship to the applicant's U.S. citizen children will therefore not be considered in this decision. 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, 565-566 (BIA 1999) provides a list of factors the Bureau of Immigration Appeals (BIA) deems relevant in determining whether an alien has established extreme hardship pursuant to section 212(a)(9)(B)(v) 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 husband contends that he requires the applicant's care to treat his Family Mediterranean Fever (FMF). The applicant's husband and children state that the applicant's husband suffers from FMF and the applicant's husband indicates that the fever requires him to consume special food and to receive care twenty-four hours a day. *See* Letter from Asaf Nof, undated. The record does not establish the nature of FMF and it does not demonstrate that the applicant is uniquely qualified to care for her husband's condition. The record does not establish, beyond the assertions of the applicant's husband, that FMF requires constant care. The record contains a letter from a physician treating the applicant's husband stating that he receives treatment for "irritable bowl syndrome, COPD, arthritis, and hemorrhoids." *See* Letter of A.R. Salman, MD, dated August 21, 2002. The letter does not mention FMF and it does not explain the extent to which the applicant's husband requires care from the applicant for the listed conditions.

The record also contains letters of support from family members and friends indicating that the applicant is an upstanding person who does not want to live in Israel. The AAO notes that hardship suffered by the applicant herself is not relevant to waiver proceedings under section 212(a)(9)(B)(v) of the Act. The AAO notes that the record does not establish hardship to the applicant's husband, the qualifying relative in this application, if he relocates to Israel to remain with the applicant. The record does not indicate whether or not the applicant's husband has family ties in Israel. Further, the applicant does not assert financial hardship to her spouse posed by her inadmissibility to the United States.

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 husband will endure hardship as a result of separation from his wife. However, his 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.

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.