PUBLIC COPY

identifying data deleted to prevent clearly unwarranted invasion of personal privacy

H4

U.S. Department of Homeland Security
20 Mass, Rm. A3042, 425 I Street, N.W.
Washington, DC 20536

U.S. Citizenship and Immigration Services

[redacted]

FILE: [redacted] Office: ATHENS, GREECE Date: MAR 12 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

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 Turkey who was found by a consular officer 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 citizen of the United States and seeks a waiver of inadmissibility in order to reside in the United States with his wife.

The officer in charge (OIC) found that based on the evidence in the record, the applicant had failed to establish extreme hardship to his U.S. citizen wife. The application was denied accordingly. *See* Decision of the Officer in Charge, dated May 27, 2003.

On appeal, counsel asserts that the material and documentation submitted with the Application for Waiver of Grounds of Excludability (Form I-601) were inadequate because the parties had no knowledge when filing of the requirements. Counsel therefore provides a written brief and supporting documentation to delineate the extreme hardship to the United States citizen spouse. *See* Attachment to I-290, dated June 27, 2003.

In support of these assertions, counsel submits a brief, dated July 29, 2003; a report from a Marriage and Family Therapist treating the applicant's spouse; a declaration of the applicant's spouse; color copies of photographs of the applicant and his spouse; copies of email correspondence between the applicant and his spouse; copies of telephone bills; a copy of the U.S. birth certificate of the applicant's spouse; a copy of the German birth certificate of the applicant and a copy and translation of the Turkish marriage certificate of the couple. 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 on a visitor visa on or about October 20, 1995. The applicant overstayed the period of stay authorized by his visitor visa by remaining in the United States for over three years. The applicant accrued unlawful presence from April 1, 1997, the date of enactment of unlawful presence provisions under the Act, until November 28, 1998, the date he departed from the country. 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.

Counsel correctly points out that the decision of the OIC erroneously stated that the applicant was found inadmissible pursuant to section 212(a)(9)(A) of the Act. Section 212(a)(9)(A) pertains to aliens previously removed from the United States. The record does not reflect that the applicant was removed from the United States. Instead, the record indicates that the applicant accrued unlawful presence in the United States and is inadmissible for a period of 10 years as a result pursuant to 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. 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 Bureau 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 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 asserts that the applicant's wife would face extreme hardship if she relocated to Turkey in order to remain with the applicant. Counsel indicates that the applicant's wife has lived her whole life in the United States and that her entire family resides in California. *See* Brief in Support of the Appeal of Denial of Application for Waiver of Inadmissibility under INA § 212(a)(9)(B)(v), dated July 29, 2003. Counsel states that the applicant's wife is close to her family, speaking with them and/or seeing them daily. *Id.* at 7. Counsel states that the applicant's wife has no family in Turkey. *Id.* at 10. Counsel further indicates that the applicant's wife would experience difficulty finding comparable employment in Turkey as she cannot speak Turkish and working at a car dealership may not be considered acceptable for a woman in Turkish culture.

Id. at 11-12. Finally, counsel asserts that the applicant's wife requires emotional support from her family and would suffer the loss of her therapist if she were to relocate to Turkey. *Id.*

Counsel does not establish extreme hardship to the applicant's wife if she remains in the United States in order to maintain her close familial relationships, access to her therapist and gainful employment. 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. Counsel states that the applicant's wife will experience financial hardship as a result of separation from the applicant. *See* Declaration of Maria Lopez-Hosgor, dated July 29, 2003 ("If my husband is not allowed to return to the United States, I shall not be able to meet my living expenses.") The record does not demonstrate that the applicant's wife cannot support herself financially and does not offer support for her assertion that the applicant's absence causes her financial strain. The record demonstrates that the applicant and his spouse have never resided together as a couple further weakening the claim of financial hardship by his spouse. Moreover, the AAO notes that the U.S. Supreme Court held in *INS v. Jong Ha Wang,* 450 U.S. 139 (1981), that the mere showing of economic detriment to qualifying family members is insufficient to warrant a finding of extreme hardship.

Counsel submits a letter from a Marriage and Family Therapist (MFT) acquainted with the applicant's spouse. *See* Letter from Azize Coskun, dated July 11, 2003. The record is inconclusive as to whether the MFT is treating the applicant's spouse or is merely an acquaintance. The letter states, "It is our worldly duty to support and embrace this couple's will to stay together and to assist them in accomplishing this by whatever means necessary." *Id.* While emotionally compelling, the demands of the MFT add little value to a finding of extreme hardship in the application. The AAO notes that the submitted letter does not factually attest to a level of psychological impact demonstrated by the applicant's wife warranting a 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 wife endures hardship as a result of separation from the applicant. 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.

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.