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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]

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

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 APPLICANT:

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. 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 is married to a U.S. citizen and is the beneficiary of an approved petition for alien relative. The applicant 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 her last departure from the United States. She seeks a waiver of inadmissibility in order to reside in the United States with her husband and child.

The officer in charge found that based on the evidence in the record, the applicant had failed to establish extreme hardship to her U.S. citizen spouse. The application was denied accordingly. On appeal, the applicant asserts that her spouse is disabled; consequently, her absence causes him extreme hardship. In support of this assertion, the applicant submits a letter from a congressional representative, a letter from her mother to the congressional representative, and statements from a social worker and a psychiatrist. 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 instant record indicates that on June 29, 1998, the applicant married a U.S. citizen in Turkey. On August 12, 1998, the applicant entered the United States on a visitor visa and was authorized to remain until January

11, 1999. On February 3, 2000, she filed an Application to Register Permanent Residence or Adjust Status (Form I-485). Due to a family emergency, the applicant departed the United States in March 2001.

The proper filing of an affirmative application for adjustment of status has been designated by the Attorney General [Secretary] as an authorized 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 January 11, 1999, the date her status expired, until February 3, 2000, the date of her proper filing of the Form I-485. In applying to adjust her status to that of Lawful Permanent Resident (LPR), the applicant is seeking admission within 10 years of her March 2001 departure from the United States. The applicant is, therefore, inadmissible to the United States under § 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 § 212(a)(9)(B)(v) waiver of the bar to admission resulting from § 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 herself or her child experiences upon deportation is irrelevant to § 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 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 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 asserts that her spouse is experiencing extreme hardship due to her inadmisibility. On appeal, the applicant submits a letter written on January 15, 2004 by [redacted] a psychiatrist who indicates that the applicant's husband is his patient. [redacted]rites that the applicant's husband suffers from paranoid schizophrenia, and, although he takes appropriate medications, the applicant's husband is cognitively disabled and is impaired by his mental and emotional difficulties. [redacted] also states that the applicant's husband requires much assistance from his parents in order to care for his daughter.

The applicant submits, in addition, a letter from [redacted]M.S.W., a social worker who meets with the applicant's daughter on a weekly basis. [redacted]rites that the applicant's husband is unable to care for his daughter by himself, due to his disability. In a letter dated January 7, 2004, the applicant's mother-in-law points out that the applicant's husband has been disabled since childhood, and that she and her husband have assumed the responsibility of caring for the applicant's daughter. It appears that the applicant's husband is unable to work.

The evidence submitted on appeal appears to indicate that the applicant's husband has been incapacitated to some extent since well before he met and married the applicant. The documentation also indicates that the applicant's daughter has suffered due to her absence, although this, in and of itself, is not a consideration in the § 212(i) waiver analysis. Importantly, the evidence does not contain detailed information regarding the hardship the applicant's absence is causing her husband. The evidence does not indicate, for example, whether her inadmissibility has caused his condition to worsen in some way, or whether the applicant's proximity is necessary for her husband to function at an acceptable level. The applicant also does not assert that suitable treatment for her husband would be unavailable in Turkey, should her husband choose to relocate to that country to remain with her. In sum, the record lacks detail regarding the effect of the applicant's inadmissibility on her husband's mental, emotional, and/or physical condition.

The AAO acknowledges that in any similar situation involving the inadmissibility of close family members, the affected individuals suffer some type of hardship. However, U.S. court decisions have repeatedly held that the common results of removal or inadmissibility 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 documentation on the record fails to establish that the applicant's inadmissibility to the United States is causing or will cause her husband to suffer beyond that which is, unfortunately, normal in such circumstances. In the absence of evidence of extreme hardship to her spouse, the applicant is statutorily ineligible for relief, and no purpose would be served in discussing whether she merits a waiver as a matter of discretion.

In proceedings for application for waiver of grounds of inadmissibility under § 212(a)(9)(B) of the Act, the burden of proving eligibility remains entirely with the applicant. *See* § 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.