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U.S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
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U.S. Citizenship
and Immigration
Services

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FILE:

Office: NEW YORK, NEW YORK

Date:

NOV 27 2009

IN RE:

Applicant:

APPLICATION:

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

ON BEHALF OF APPLICANT:

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.

If you believe the law was inappropriately applied or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. Please refer to 8 C.F.R. § 103.5 for the specific requirements. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$585. Any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen, as required by 8 C.F.R. § 103.5(a)(1)(i).

Perry Rhew

Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the District Director, New York, New York, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The record reflects that 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 and seeking readmission within 10 years of his last departure from the United States. The record indicates that the applicant is married to a United States citizen and he is the beneficiary of an approved Petition for Alien Relative (Form I-130). 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 United States citizen wife and children.

The District Director found that the applicant failed to establish that extreme hardship would be imposed on the applicant's spouse and denied the Application for Waiver of Grounds of Excludability (Form I-601) accordingly. *Decision of the District Director*, dated July 12, 2007.

On appeal, the applicant, through counsel, asserts that the District Director erred in denying the applicant's waiver application. *See Form I-290B*, filed August 1, 2007. Counsel claims that the District Director ignored evidence that established that the applicant's wife will suffer extreme hardship if the applicant is removed from the United States. *Id.*

The record includes, but is not limited to, a statement from counsel, an affidavit from the applicant's wife, and a letter from [REDACTED] regarding the applicant's wife's medical condition. The entire record was reviewed and considered in arriving at 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 [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 AAO notes that the record contains references to the hardship that the applicant's children would suffer if the applicant were denied admission into the United States. Section 212(a)(9)(B)(i) of the Act provides that a waiver, under section 212(a)(9)(B)(v) of the Act, is applicable solely where the applicant establishes extreme hardship to his citizen or lawfully resident spouse or parent. Unlike a waiver under section 212(h) of the Act, Congress does not mention extreme hardship to United States citizen or lawful permanent resident children. In the present case, the applicant's wife is the only qualifying relative, and hardship to the applicant's children will not be considered, except as it may cause hardship to the applicant's spouse.

In the present application, the record indicates that the applicant initially entered the United States on December 26, 1999, on a C-1 nonimmigrant visa with authorization to remain until January 15, 2000. The applicant failed to depart the United States by the date his authorization expired. On February 6, 2001, the applicant married [REDACTED] a United States citizen, in New York. On February 21, 2001, the applicant's wife filed a Form I-130 on behalf of the applicant. On the same day, the applicant filed an Application to Register Permanent Resident or Adjust Status (Form I-485). On June 30, 2003, the Interim District Director denied the applicant's Form I-130 and Form I-485. On July 3, 2003, the applicant and [REDACTED] divorced. On June 28, 2006, the applicant married [REDACTED], a United States citizen, in Delaware. On October 13, 2006, the applicant's wife filed a Form I-130 on behalf of the applicant. On the same day, the applicant filed a Form I-485. On November 16, 2006, the applicant departed the United States pursuant to advance parole. On January 16, 2007, the applicant reentered the United States. On February 28, 2007, the applicant filed a Form I-601. On July 12, 2007, the applicant's Form I-130 was approved. On the same day, the District Director denied the applicant's Form I-485 and Form I-601, finding that the applicant accrued more than a year of unlawful presence and failed to demonstrate extreme hardship to his United States citizen spouse.

The applicant accrued unlawful presence from January 15, 2000, the date the applicant's authorization to remain in the United States expired, until February 6, 2001, the date the applicant filed a Form I-485. The applicant is attempting to seek admission into the United States within 10 years of his November 16, 2006 departure 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.

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 citizen or lawfully resident spouse or parent of the applicant. Hardship the applicant himself experiences upon removal is irrelevant to a section 212(a)(9)(B)(v) waiver proceeding. 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).

In *Matter of Cervantes-Gonzalez*, 22 I&N Dec. 560, 565-66 (BIA 1999), the Board of Immigration Appeals (Board) provided a list of factors it deemed relevant in determining whether an alien has established extreme hardship to a qualifying relative. The 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.

In a statement dated August 29, 2007, counsel states the applicant's wife is "afflicted with a serious, chronic and dangerous medical condition, that [the applicant's] physical presence, when possible, is critical." In a letter dated February 3, 2007, [REDACTED] states the applicant's wife suffers from a cardiac arrhythmia and she is on multiple medications. Counsel states the applicant's wife's life would "be endangered by a decision to relocate to Egypt, where the cost of the 'state-of-the-art' prescription medicines that she requires is prohibitive." The AAO notes that the applicant's wife's medications may be expensive; however, there was no documentation submitted establishing that she could not receive treatment for her medical condition in Egypt or that she has to remain in the United States to receive any medical treatments. Additionally, the AAO notes that the applicant's wife works as a babysitter, and it has not been established that she has no transferable skills that would aid her in obtaining a job in Egypt, which could help with the expense of her medication. [REDACTED] states the applicant's wife "needs [the applicant] to assist her to take the medication." In an affidavit dated February 20, 2007, the applicant's wife states she is "often disabled and helpless when an attack occurs and must rely upon [the applicant] to locate and administer the medications if [she] [is] unable to do so." Additionally, counsel states the applicant's stepdaughter's "safety and welfare would be jeopardized...because [the applicant's stepdaughter] would be endangered and helpless if [the applicant's wife] were to be suddenly immobilized by an arrhythmic attack." The AAO notes that if the applicant's wife joins the applicant in Egypt, then he could continue to assist her with taking her medication and the applicant's stepdaughter would not be left with the responsibility of caring for her mother if she has an attack. Additionally, the AAO notes that it has not been established that the applicant's wife does not speak Arabic or that she has no family ties in Egypt. In fact, the AAO notes that the applicant's wife's parents¹ are natives of Egypt and her mother currently resides in Egypt. The AAO finds that the applicant failed to establish that his wife would suffer extreme hardship if she joined him in Egypt.

In addition, counsel does not establish extreme hardship to the applicant's wife if she remains in the United States, with access to medical care. As a United States citizen, the applicant's wife is not required to reside outside of the United States as a result of denial of the applicant's waiver request. The AAO notes that the record fails to demonstrate that the applicant will be unable to contribute to his family's financial wellbeing from a location outside of the United States. Moreover, the United States Supreme Court has held that the mere showing of economic detriment to qualifying family members is insufficient to warrant a finding of extreme hardship. *INS v. Jong Ha Wang*, 450 U.S. 139 (1981).

¹ The AAO notes that applicant's wife's father is deceased.

United States 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, in *Matter of Pilch*, 21 I&N Dec. 627 (BIA 1996), the Board 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. In *Hassan, supra*, the Ninth Circuit Court of Appeals 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.

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.