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U.S. Department of Homeland Security
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U.S. Citizenship
and Immigration
Services

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[redacted]

FILE: [redacted] Office: ROME, ITALY Date: MAY 22 2008

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:

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, Chief
Administrative Appeals Office

DISCUSSION: The waiver application was denied by the District Director, Rome, Italy. 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 Jordan 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 ten years of his last departure from the United States. The applicant is married to a U.S. citizen spouse. He seeks a waiver of inadmissibility in order to reside in the United States with his spouse and his child.

The District Director found that, based on the evidence in the record, the applicant had failed to establish extreme hardship to his qualifying relative. The application was denied accordingly. *Decision of the District Director,* dated January 9, 2006.

On appeal, the applicant submits additional evidence to establish that his qualifying relative would suffer extreme hardship if his waiver application were to be denied.

The record now includes, but is not limited to, medical records for the applicant's spouse; a statement from the applicant's spouse; and statements from the applicant. 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 was admitted to the United States in August 1995 with a B-1/B-2 visa. *Consular Memorandum*, dated January 4, 2004. The applicant remained in the United States until January 5, 2001. *Id.; Form I-601, Application for Waiver of Ground of Excludability.* The applicant thus accrued unlawful presence from April 1, 1997, the date of the enactment of the unlawful presence provisions under the Act, until he departed the United States on January 5, 2001. In applying to adjust his status to that of Lawful Permanent Resident (LPR), the applicant is seeking admission within ten years of his January 5, 2001 departure from the United States. The applicant is, therefore, inadmissible to the United States under section 212(a)(9)(B)(i)(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 a violation of 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. The plain language of the statute indicates that hardship that the applicant or his child would experience if his waiver request were to be denied is not directly relevant to the determination of whether the applicant is eligible for a waiver under section 212(a)(9)(B)(v). The only relevant hardship in the present case is hardship suffered by the applicant's spouse if the applicant is found to be inadmissible. If 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 family ties to 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 AAO notes that extreme hardship to the applicant's spouse must be established in the event that she resides in Jordan or the United States, as she is not required to reside outside of the United States based on the denial of the applicant's waiver request. The AAO will consider the relevant factors in adjudication of this case.

The applicant's spouse was born in the United States. *Form I-130, Petition for Alien Relative.* The record makes no mention as to whether the applicant's spouse has any cultural or family ties in Jordan or whether she speaks Arabic. The applicant asserts that his spouse had to return to the United States due to an illness in her family. *Statement from the applicant*, received October 19, 2004 by the U.S. Embassy, Athens, Greece. The record does not include any statements from licensed health professionals documenting the family member's illness. Going on record without supporting documentary evidence will not meet the burden of proof of this proceeding. *See Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998)(citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)). Furthermore, the record does not address how the family member's illness would affect the applicant's spouse if she were to reside in Jordan. The AAO notes that the record also includes medical documentation showing the applicant's spouse was

hospitalized for one day at a Jordanian medical facility for an operation. *Medical records,* [redacted] *Hospital, Amman, Jordan,* dated June 5, 2002. The record does not specify a diagnosis for the applicant's spouse. While additional supporting documentation reveals treatment for a lumpectomy, the AAO notes that the patient's name is written in Arabic and there is no corresponding translation. *Medical records, Dr.* [redacted]*s, General Surgeon, Jordan Board.* The AAO notes there is not a sufficient amount of documentation in the record to determine whether the applicant's spouse suffers from a significant health condition and whether she would be able to receive adequate treatment in Jordan. Further, neither the applicant nor his spouse indicate that her health is a source of concern.

The applicant has a U.S. citizen child. *Statement from the applicant*, received by the American Embassy on November 8, 2004. The applicant states that he wants his child to have an opportunity to live in the United States, learn American culture from a young age, and study in the American schools. *Statement from the applicant*, dated March 3, 2006. While the AAO acknowledges the statements made by the applicant, it notes that the U.S. citizen child is not a qualifying relative in this case and no evidence in the record addresses how any hardship the child may endure would affect the applicant's spouse, the only qualifying relative in this case. When looking at the aforementioned factors, the AAO does not find that the applicant has demonstrated extreme hardship to his spouse if she were to reside in Jordan.

If the applicant's spouse resides in the United States, the applicant needs to establish that his spouse will suffer extreme hardship. While the record mentions that the applicant's spouse has family members in the United States (*Statement from the applicant*, received October 19, 2004 by the U.S. Embassy, Athens, Greece), the record does not specify what relationship these family members have to the applicant's spouse or where they reside. The applicant notes that he is trying to support his son alone in Jordan and he does not really earn enough money to cover his daily needs. *Statement from the applicant*, dated March 3, 2006. As previously noted, hardship to the applicant or the applicant's child will only be considered to the extent that it affects the qualifying relative. There is nothing in the record to demonstrate that the applicant's spouse is unable to work or to contribute to her family's expenses from the United States.

The applicant's spouse states she suffers pain from being away from the applicant. *Statement from the applicant's spouse*, dated February 25, 2006. While the AAO acknowledges this emotion, 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 will endure hardship as a result of separation from the applicant. However, the record does not distinguish her situation, if she remains in the United States, from that of other individuals separated as a result of deportation or exclusion. Accordingly, it does not establish that the hardship experienced by the applicant's spouse would rise to the level of extreme hardship. When looking at the aforementioned factors, the AAO

does not find that the applicant has demonstrated extreme hardship to his spouse if she were to reside in the United States.

A review of the documentation in the record fails to establish the existence of extreme hardship to the applicant's qualifying relative 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.