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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Service
Office of Administrative Appeals MS 2090
Washington, DC 20529-2090

U.S. Citizenship and Immigration Services

PUBLIC COPY

[redacted]

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FILE: [redacted] Office: ATHENS, GREECE Date: APR 13 2009

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.

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, as required by 8 C.F.R. 103.5(a)(1)(i).

Michael Grissom

John F. Grissom, Acting Chief
Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Officer-in-Charge (OIC), 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 Greece 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 applicant is married to a U.S. citizen and seeks a waiver of inadmissibility in order to reside in the United States.

The OIC found that the applicant failed to establish that his qualifying relative would suffer extreme hardship as a result of his inadmissibility to the United States. The application was denied accordingly. *Decision of the Officer-in-Charge*, dated November 30, 2006.

On appeal, counsel disputes the OIC's finding that the applicant's spouse would not suffer extreme hardship as a result of the applicant's inadmissibility and submits additional documentation regarding the applicant's claims of hardship. *Counsel's Brief*, January 31, 2007.[1]

In the present application, the record indicates that the applicant entered the United States without inspection on June 5, 1996. The applicant remained in the United States until 2006. Therefore, the applicant accrued unlawful presence from April 1, 1997, the date the unlawful presence provisions were enacted under the Act, until 2006, when he departed the United States. In applying for an immigrant visa, the applicant is seeking admission within 10 years of his 2006 departure from the United States. Therefore, the applicant is 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.

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-
> >
> > . . . .

[1] The AAO notes that the applicant appears to be represented; however the Form G-28, Notice of Entry of Appearance as Attorney or Representative does not indicate that the representative is an attorney in good standing or an accredited representative recognized by the Executive Office of Immigration Review. Therefore, all representations will be considered, but the decision will be furnished only to the applicant.

> (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.

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 and/or parent of the applicant. Hardship the applicant experiences due to separation is not considered in section 212(a)(9)(B)(v) waiver proceedings unless it causes hardship to the applicant's U.S. citizen or lawfully permanent resident spouse and/or parent.

The concept of extreme hardship to a qualifying relative "is not . . . fixed and inflexible," and whether extreme hardship has been established is determined based on an examination of the facts of each individual case. *Matter of Cervantes-Gonzalez,* 22 I&N Dec. 560, 565 (BIA 1999). In *Matter of Cervantes-Gonzalez*, the Board of Immigration Appeals set forth a list of non-exclusive factors relevant to determining whether an applicant has established extreme hardship to a qualifying relative pursuant to section 212(i) of the Act. These factors include, with respect to the qualifying relative, the presence of family ties to U.S. citizens or lawful permanent residents in the United States, family ties outside the United States, country conditions where the qualifying relative would relocate and family ties in that country, the financial impact of departure, and significant health conditions, particularly where there is diminished availability of medical care in the country to which the qualifying relative would relocate. *Id.* at 566.

> Relevant factors, though not extreme in themselves, must be considered in the aggregate in determining whether extreme hardship exists. In each case, the trier of fact must consider the entire range of factors concerning hardship in their totality and determine whether the combination of hardships takes the case beyond those hardships ordinarily associated with deportation.

Matter of O-J-O-, 21 I&N Dec. 381, 383 (BIA 1996) (citations omitted). 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).

The AAO notes that extreme hardship to the applicant's spouse must be established in the event that she resides in Greece and in the event that she resides in 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.

Through counsel, in a joint statement, the applicant and his spouse state that the applicant's spouse has lived in the United States since 1988 and has enjoyed stable employment with [redacted] since 1989. *Joint Statement*, dated December 29, 2006. They state that in 1991 after a divorce settlement the applicant's spouse's former husband illegally took the applicant's spouse's eight-year-old daughter to Greece. They state that because of issues in the Greek court system the applicant's spouse was forced to return to Chicago without her daughter. The statement asserts that the applicant's spouse's daughter is now in college and if the applicant's spouse relocated to Greece she would suffer financial problems in not being able to earn enough money to support herself and her daughter.

In addition, the applicant and his spouse state that the applicant's spouse suffers medical problems. They state that on September 27, 2003 the applicant's spouse, who was pregnant at the time with the applicant's child, miscarried. The statement asserts that on October 10, 2006 the applicant's spouse went to see a [redacted] because of symptoms she was having and was diagnosed with clinical depression. On December 18, 2006, the applicant went to the emergency room complaining of numbness in her feet, hands, tongue, difficulty sleeping, and tightness and pain in her chest. Her diagnosis was depression with anxiety and she was prescribed medication. Counsel states that the applicant's spouse's condition, due to the loss of her baby and now the loss of her husband have brought her, "over the edge and at a very dangerous point." Counsel states that on December 29, 2006, the date of the statement, the applicant was scheduled for an appointment with Outpatient Psychiatry at Lutheran General Hospital. The AAO notes that the record contains various medical records in support of the assertions made by counsel and the applicant's spouse. Counsel also states that these medical problems have led the applicant's spouse to not be able to get out of bed and she has called the social security administration to enquire about applying for disability. Counsel states that the applicant's spouse is being monitored by excellent doctors and needs to continue to see them. Counsel states that the applicant's spouse is at the point where she has no outlet and no hope, she was not able to see her daughter grow up and then she lost her pregnancy. The applicant's spouse states that with the applicant she was finally happy and the applicant is a very caring and kind man. *Id.*

The record also contains two statements from the applicant's spouse. The applicant's spouse states that she is currently seeing [redacted] for her severe depression as a result of being separated from the applicant. *Spouse's Statement*, dated October 16, 2006. She states that she is suffering financially and that they have been forced to sell the home that they purchased together. The AAO notes that the record includes a copy of an agreement to use Baird & Warner Residential Sales in the sale of their

home in Cook County Chicago. The applicant's spouse also submits a letter from the applicant's employer in the United States stating that the applicant will lose his job on October 27, 2006 if he does not return to the United States. *Id.*

The AAO finds that the record establishes that the applicant's spouse is experiencing extreme emotional and financial hardship as a result of being separated from the applicant. However, she has not shown that relocating to Greece would cause her extreme hardship. The record contains no country conditions information to support the claims made about the applicant's spouse's ability to find employment in Greece. In addition, the record is not clear as to the applicant's spouse's current family ties to the United States. The AAO recognizes that the applicant's spouse is undergoing medical treatment in the United States; however, no documentation has been submitted to show that she would not have access to similar care in Greece. Therefore, the AAO cannot find that the applicant has established extreme hardship to his U.S. citizen spouse as a result of his 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.

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.