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

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FILE:

Office: ROME, ITALY

Date: JUL 07 2009

IN RE:

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

John F. Grissom

Acting 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 United States citizen. He seeks a waiver of inadmissibility in order to reside in the United States with his spouse.

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 September 26, 2006.

On appeal, the applicant's spouse describes the hardship she is suffering in the applicant's absence. *Form I-290B*.

In support of these assertions the record includes, but is not limited to, a January 12, 2005 statement from the applicant's spouse. 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 matter, the record indicates that the applicant resided in the United States from February 1999 to October 2001. *Form I-601, Application for Waiver of Ground of Excludability*. According to the District Director, the applicant was admitted to the United States as a non-immigrant visitor for pleasure with authority to remain in the United States for six months. *Decision of the District Director*, dated September 26, 2006. The applicant departed the United States in October 2001. *Id.* The applicant was therefore unlawfully present in the United States from August 1999 to October 2001.¹ *Form I-601*. In applying for an immigrant visa, the applicant is seeking admission within ten years of his October 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 experiences upon removal is not directly relevant to the determination as to whether he 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 whether she resides in Jordan or the United States, as she is not required to reside outside 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.

¹ The District Director's decision indicates that the applicant entered the United States in February 2000 rather than in February 1999. The AAO notes that whether the applicant entered the United States in February 1999 or February 2000, he was unlawfully present for more than one year.

If the applicant's spouse joins the applicant in Jordan, the applicant needs to establish that his spouse will suffer extreme hardship. The applicant was born in the United States. *Approved Form I-130, Petition for Alien Relative*. The applicant's spouse states that she cannot live in Jordan because the customs there are very different from the United States. *Statement from the applicant's spouse*, dated January 12, 2005. She further asserts that she lives with and cares for her 62-year-old aunt and 90-year-old great grandfather in the United States, and thus cannot stay in Jordan. *Id.* While the AAO acknowledges this statement, it notes that the record does not provide documentary evidence that establishes the applicant's spouse is responsible for the care of her aunt and grandfather. The applicant's spouse states that she is struggling with hardly any income. *Id.* The AAO notes that the record does not include documentation of the expenses of the applicant's spouse, such as utility bills, credit card bills, car payments, rent or mortgage payments, nor does the record include tax statements, earnings statements or Forms W-2 showing the income of the applicant's spouse. 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)). The applicant's spouse states that she wants her future children to live in the United States and have all of the opportunities that the United States has to offer. *Statement from the applicant's spouse*, dated January 12, 2005. The AAO notes that the applicant's future children are not qualifying relatives for the purpose of this case and an extreme hardship analysis cannot be conducted on speculation that the applicant's spouse may have children in the future. Accordingly, the AAO is unable to 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. As previously noted, the applicant's spouse was born in the United States. *Approved Form I-130, Petition for Alien Relative*. She lives with her aunt and great grandfather. *Statement from the applicant's spouse*, dated January 12, 2005. The applicant's spouse states that she was hospitalized for trying to hurt herself and since that time, she has been trying to get things settled mentally and physically. *Form I-290B*. While the AAO acknowledges this statement, it notes that the record does not include any documentation, such as hospital records, medical records, or a statement from a licensed healthcare professional, to support this assertion. As previously noted, 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)).

The applicant's spouse states that she loves the applicant and misses him very much. *Statement from the applicant's spouse*, dated January 12, 2005. The AAO acknowledges the emotions of applicant's spouse. However, 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 hardship experienced by the families of most aliens being removed. Separation from a loved one is a normal result of the removal process. The AAO recognizes that the applicant's spouse will endure hardship as a result of her 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 removal. 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.

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.