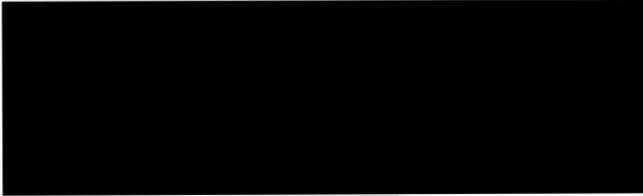


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U.S. Citizenship  
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*Hr*

FILE: [redacted] Office: ATHENS, GREECE Date: **MAY 12 2008**

IN RE: Applicant: [redacted]

APPLICATIONS: Application for Waiver of Grounds of Excludability under Sections 212(i) and 212(a)(9)(B)(v) of the Immigration and Nationality Act, 8 U.S.C. §§ 1182(i) and 1182(a)(9)(B)(v);

Application for Permission to Reapply for Admission into the United States after Deportation or Removal under Section 212(a)(9)(A)(iii) of the Immigration and Nationality Act, 8 U.S.C. § 1182(a)(9)(A)(iii).

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.

A handwritten signature in black ink, appearing to read "Robert P. Wiemann".

Robert P. Wiemann, Chief  
Administrative Appeals Office

**DISCUSSION:** The Officer in Charge, Athens, Greece, denied the Forms I-601 and I-212, Application for Waiver of Ground of Excludability and Application for Permission to Reapply for Admission into the United States after Deportation or Removal. The matter 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 Jordan who was found inadmissible to the United States pursuant to sections 212(a)(6)(C) and 212(a)(9)(B)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. §§ 1182(a)(6)(C) and 1182(a)(9)(B)(i) for having sought to obtain an immigration benefit by fraud and for having been unlawfully present. The applicant was admitted to the United States as a nonimmigrant visitor on July 22, 2000 and authorized to remain until March 21, 2001. He was placed in removal proceedings based on immigration fraud charges, which he admitted. The applicant was removed from the United States on March 29, 2003. The applicant has been married to [REDACTED], a 30-year-old citizen of the United States, since August 12, 2003. He seeks a waiver of inadmissibility and permission to reapply for admission in order to return to the United States and obtain lawful permanent resident status on the basis of an approved Petition for Alien Relative filed by his spouse on his behalf.

The officer in charge found the applicant to be inadmissible, and denied the application for a waiver and for permission to reapply for admission. The officer determined that the applicant had failed to establish that his spouse would face extreme hardship and that applicant's circumstances did not merit a grant of permission to reapply for admission. The applications were denied accordingly and this appeal followed.

On appeal, the applicant's spouse states that she is in poor mental health, suffering from depression, anxiety and psychotic disorder. She states that she is facing extreme emotional and financial hardship due to her separation from the applicant. In support of the appeal, the applicant submits medical records relating to his spouses mental health treatment.

Section 212(a)(6)(C)(i) of the Act, 8 U.S.C. § 1182(a)(6)(C)(i), provides:

*In general.—Any alien who, by fraud or willfully misrepresenting a material fact, seeks to procure (or has sought to procure or has procured) a visa, other documentation, or admission into the United States or other benefit provided under this Act is inadmissible.*

Section 212(i) of the Act, 8 U.S.C. § 1182(i)(1), provides, in pertinent part:

(i) (1) The Attorney General [now Secretary of Homeland Security] may, in the discretion of the Attorney General [now Secretary of Homeland Security], waive the application of clause (i) of subsection (a)(6)(C) in the case of an immigrant who is the spouse, 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 the United States of such immigrant alien would result in extreme hardship to the citizen or lawfully permanent resident spouse or parent of such an alien . . .”

Section 212(a)(9) of the Act, 8 U.S.C. § 1182(a)(9), provides, in pertinent part:

(A) Certain alien previously removed.-

(i) Arriving aliens. Any alien who has been ordered removed under Section 235(b)(1) or at the end of proceedings under Section 240 initiated upon the alien's arrival in the United States and who again seeks admission within 5 years of the date of such removal (or within 20 years in the case of a second or subsequent removal or at any time in the case of an alien convicted of an aggravated felony) is inadmissible.

...

(iii) Exception.- Clauses (i) and (ii) shall not apply to an alien seeking admission within a period if, prior to the date of the aliens' reembarkation at a place outside the United States or attempt to be admitted from foreign continuous territory, the Attorney General [now, Secretary, Department of Homeland Security] has consented to the aliens' reapplying for admission.

(B) Aliens Unlawfully Present.-

(i) In general. - Any alien (other than an alien lawfully admitted for permanent residence) who-

....

(I) has been unlawfully present in the United States for a period of more than 180 days but less than 1 years, voluntarily departed the United States ... and again seeks admission within 3 years of the date of such alien's departure ... is inadmissible.

(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 record reflects that the applicant admitted during removal proceedings that he illegally obtained a nonimmigrant visa in July 2000. The record further indicates, and the applicant does not dispute, that the applicant was unlawfully present in the United States for a period of more than 180 days. The inadmissibility determination made by the officer in charge is therefore affirmed. The AAO finds that the applicant is

inadmissible as charged under sections 212(a)(6)(C) and 212(a)(9)(B) of the Act, 8 U.S.C. §§ 1182(6)(C) and 1182(a)(9)(B).

A review of the 1996 Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA) amendments to the Act and prior statutes and case law regarding permission to reapply for admission reflects that Congress has, (1) increased the bar to admissibility and the waiting period from 5 to 10 years in most instances and to 20 years in others, (2) has added a bar to admissibility for aliens who are unlawfully present in the United States, and (3) has imposed a bar to admission for aliens who have been ordered removed and who subsequently enter or attempt to enter the United States without being lawfully admitted. It is concluded that Congress has placed a high priority on deterring aliens from overstaying their authorized period of stay and from being present in the United States without lawful admission or parole.

As noted above, the applicant has been found to be inadmissible to the United States pursuant to sections 212(a)(6)(C) and 212(a)(9)(B) of the Act, 8 U.S.C. §§ 1182(a)(6)(C) and 1182(a)(9)(B). The question remains whether the applicant qualifies for a waiver of inadmissibility. The AAO finds that he does not.

A waiver under sections 212(i) or 212(a)(9)(B)(v) of the Act, 8 U.S.C. §§ 1182(i) and 1182(a)(9)(B)(v), is dependent upon a showing that the bar to admission imposes an extreme hardship on the U.S. citizen or lawfully resident spouse or parent of the applicant. Hardship to the applicant himself is not a permissible consideration under the statute. Hardship to the applicant's child also may not be considered, except as it may affect the qualifying family member.

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 alien 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. The BIA has held:

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).

The applicant's spouse, [REDACTED], is a Jordanian-American born in 1977 in the United States. She married the applicant in 2003, in Jordan. The couple had a child in 2005. The record reflects that the applicant's spouse and child have visited him in Jordan.

The applicant's spouse states that if the waiver application is denied she would face extreme hardship. The applicant's spouse claim is based primarily on her mental health condition. She states that she is being treated for depression, anxiety and psychotic disorder. The applicant has submitted medical records corroborating his spouse's mental health condition and treatment, indicating that the applicant's spouse suffers from severe depression including suicidal ideation. The AAO finds that the applicant has established that his spouse would face extreme hardship should she remain in the United States separated from him.

The AAO, however, finds that the applicant has failed to establish that his spouse would face extreme hardship should she relocate to Jordan. The AAO notes that the record does not contain relevant evidence of the applicant's spouse's family ties, financial situation, employment status, or community involvement. The record suggests that the applicant's spouse would not consider relocating to Jordan. The spouse stated that she did not like driving in Jordan, that she could not speak Arabic, and that she is concerned about her employment prospects should she relocate to Jordan. *See e.g.* Statement from Applicant's Spouse dated September 10, 2006. The AAO notes that these are the type of unfortunate, but expected, disruptions, inconveniences, and difficulties facing anyone in the applicant's situation and do not rise to the level of extreme.

**Congress provided for a waiver of inadmissibility, but under limited circumstances.** In limiting the availability of the waiver to cases of "extreme hardship," Congress did not intend that a waiver be granted in every case where a qualifying relationship exists. U.S. court decisions have repeatedly held that the common results of removal are insufficient to prove extreme hardship. *See Hassan v. INS*, 927 F.2d 465, 468 (9<sup>th</sup> Cir. 1991); *Perez v. INS*, 96 F.3d 390 (9<sup>th</sup> Cir. 1996). The AAO therefore finds that the applicant failed to establish extreme hardship to his U.S. citizen spouse.

Having found the applicant to be inadmissible to the United States, and ineligible for a waiver of inadmissibility, the Form I-212 was properly denied by the officer in charge. *See Matter of Martinez-Torres*, 10 I&N Dec. 776 (reg. Comm. 1964) (holding that an application for permission to reapply for admission is denied, in the exercise of discretion, to an alien who is mandatorily inadmissible to the United States under another section of the Act, and no purpose would be served in granting the application).

The AAO further notes, and agrees with, the discretionary analysis in the officer's decision. In *Matter of Tin*, 14 I&N Dec. 371 (Reg. Comm. 1973), the Regional Commissioner listed the following factors to be considered in the adjudication of a Form I-212, Application for Permission to Reapply After Deportation or Removal:

The basis for deportation; recency of deportation; length of residence in the United States; applicant's moral character; his respect for law and order; evidence of reformation and rehabilitation; family responsibilities; any inadmissibility under other sections of law; hardship involved to himself and others; and the need for his services in the United States.

In *Tin*, the Regional Commissioner noted that the applicant had gained an equity (job experience) while being unlawfully present in the U.S. The Regional Commissioner then stated that the alien had obtained an advantage over aliens seeking visa issuance abroad or who abide by the terms of their admission while in this

country, and he concluded that approval of an application for permission to reapply for admission would condone the alien's acts and could encourage others to enter the United States to work unlawfully. *Id.*

The favorable factors in this matter are the applicant's U.S. citizen spouse and child, the applicant's spouse's mental health condition, and the approval of a petition for alien relative. The unfavorable factors include the applicant's attempts to illegally enter and remain in the United States. The AAO further notes that the applicant's first Petition for Alien Relative, filed by his first wife, was revoked on suspicion of fraud. In sum, the applicant has not established that the favorable factors outweigh the unfavorable ones.

In proceedings to determine admissibility to the United States, the burden of proving eligibility rests with the applicant. 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.