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



**U.S. Citizenship  
and Immigration  
Services**

H<sub>2</sub>

FILE: [REDACTED] Office: ATHENS, GREECE

Date: JUL 27 2009

IN RE: Applicant: [REDACTED]

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

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).

John F. Grissom  
Acting Chief, Administrative Appeals Office

**DISCUSSION:** The waiver application was denied by the Officer in Charge, Athens, Greece, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant, a native and citizen of Lebanon, was found inadmissible to the United States under section 212(a)(9)(B)(i)(II) of 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 under section 212(a)(2)(A)(i)(I) of the Act, 8 U.S.C. § 1182(a)(2)(A)(i)(I), for having been convicted of a crime involving moral turpitude.<sup>1</sup> The AAO notes that the applicant is also inadmissible under section 212(a)(6)(C)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(6)(C)(i), for having procured entry to the United States by fraud. The applicant sought waivers of inadmissibility in order to be able to return to the United States to reside with his U.S. citizen spouse and four children, born in 2004, 1998, 1997 and 1994.

The officer in charge concluded that although the applicant had established that extreme hardship would be imposed on a qualifying relative, he was not eligible for a waiver as a matter of discretion. The Application for Waiver of Grounds of Excludability (Form I-601) was denied accordingly. *Decision of the Officer in Charge*, dated September 18, 2006.

In support of the appeal, counsel for the applicant submits a brief, dated November 17, 2006 and referenced exhibits. The entire record was reviewed and considered in rendering this decision.

**A. INADMISSIBILITY BASED ON MISREPRESENTATION UNDER  
SECTION 212(a)(6)(C)(i) OF THE ACT**

Section 212(a)(6)(C) of the Act provides, in pertinent part:

- (i) 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.

. . . .

- (iii) Waiver authorized. – For provision authorizing waiver of clause (i), see subsection (i).

Section 212(i) of the Act provides:

- (1) The Attorney General [now the Secretary of Homeland Security (Secretary)] may, in the discretion of the Attorney General [Secretary], waive the application of clause (i) of subsection (a)(6)(C) in the case of an alien who is

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<sup>1</sup> The AAO notes that the applicant does not contest the officer in charge's findings of inadmissibility.

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 Attorney General [Secretary] that the refusal of admission to the United States of such immigrant alien would result in extreme hardship to the citizen or lawfully resident spouse or parent of such an alien.

The record establishes that in July 1994, the applicant was convicted in the United States District Court for the Eastern District of Michigan for the offense of Fraud and Misuse of Visas, Permits, and Other Documents, a violation of 18 U.S.C. §1546(b). The applicant was sentenced to three years probation. Said conviction was based on an extensive investigation that established that the applicant obtained a nonimmigrant visa and subsequent entry to the United States in 1992 through fraudulent means. *See Record of Deportable Alien*, dated May 2, 1994. The AAO finds that the applicant is inadmissible to the United States under section 212(a)(6)(C)(i) of the Act, for having obtained entry to the United States by fraud. The applicant needs to obtain a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i), in order to reside in the United States with his U.S. citizen spouse.

*Matter of Cervantes-Gonzalez*, 22 I&N Dec. 560, 565-566 (BIA 1999) provides a list of factors the Board of Immigration Appeals deems relevant in determining whether an alien has established extreme hardship. These 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.

Section 212(a)(6)(C)(i) of the Act provides that a waiver under section 212(i) of the Act is applicable solely where the applicant establishes extreme hardship to his or her citizen or lawfully resident spouse or parent. Unlike waivers under section 212(h) of the Act, section 212(i) does not mention extreme hardship to a United States citizen or lawful permanent resident child. Nor is extreme hardship to the applicant himself a permissible consideration under the statute. In the present case, the applicant's spouse, a U.S. citizen, is the only qualifying relative, and hardship to the applicant and/or their children cannot be considered, except as it may affect the applicant's spouse.

The applicant's U.S. citizen spouse contends that she is suffering extreme emotional, physical and financial hardship due to the applicant's inadmissibility. In a declaration she states that she is suffering emotional hardship due to the close relationship she has with her husband and due to the hardships her four children are experiencing based on their father's long-term physical absence. *Letter from* [REDACTED] Moreover, the record establishes that the applicant's spouse suffers from numerous medical conditions, including the lack of a left middle finger, a fractured right arm that requires metal plates and pins, macular degeneration in one eye, and a right knee injury that has made her disabled; based on these medical conditions, the applicant's spouse contends that she is suffering as she needs her husband's presence on a day to day basis. *Letter from* [REDACTED]

██████████, dated November 13, 2006. She also asserts that she is suffering financial hardship because she is unable to work due to her medical conditions and the care of her four children, and that if the applicant were to return to the United States, the family would no longer suffer economic hardship as the applicant has a viable business to which to return. *Id.* at 1. Although the record establishes that the applicant's spouse's parents have helped her and the children financially in the past, they are unable to continue said support. *Letter from Mr. and Mrs. ██████████* The applicant's spouse has been forced to accept state assistance, including cash and food stamps, and Medicaid. *Letter from ██████████ Work First Program Coordinator, Arab Community Center for Economic and Social Services*, dated November 13, 2006.

Since the applicant has been unable to reside in the United States, the applicant's U.S. citizen spouse has assumed the role of primary caregiver and breadwinner to four children, without support of the applicant. Moreover, country condition reports indicate that it would be difficult for the applicant to find a job in Lebanon with sufficient income to support his spouse and four children in the United States. *See U.S. Department of State Profile-Lebanon*, dated January 2009. The AAO thus concurs with the officer in charge that the applicant's U.S. citizen spouse would suffer extreme hardship were the applicant to remain abroad while she remains in the United States. The separation has caused hardship beyond that normally expected of one facing the removal of a spouse.

The AAO notes that extreme hardship to a qualifying relative must also be established in the event that he or she relocates abroad based on the denial of the applicant's waiver request. Counsel references the problematic country conditions in Lebanon, which are fragile, unpredictable, unstable and dangerous. *Brief in Support of Appeal*, dated November 17, 2006. The U.S. Department of State has issued a travel warning, urging U.S. citizens and permanent residents to avoid travel to Lebanon. *Travel Warning-Lebanon, U.S. Department of States*, dated September 10, 2008.

Based on the problematic country conditions in Lebanon, as confirmed by the U.S. Department of States, the applicant's spouse's documented medical conditions and her unfamiliarity with the language, culture and customs, the AAO concurs with the officer in charge that the applicant's U.S. citizen spouse would experience extreme hardship were she to relocate to Lebanon to reside with the applicant.

**B. INADMISSIBILITY BASED ON UNLAWFUL PRESENCE UNDER  
SECTION 212(A)(9)(B)(i)(II) OF THE ACT**

Section 212(a)(9) 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....

The record indicates that the applicant entered the United States in September 1992, with permission to remain until March 29, 1993. He did not depart until December 2002. The applicant accrued unlawful presence from April 1, 1997, the date of the enactment of the unlawful presence provisions, until his departure in December 2002. The officer in charge correctly found the applicant to be inadmissible to the United States pursuant to section 212(a)(9)(B)(i)(II) of the Act, for having been unlawfully present in the United States for more than one year. The applicant seeks a waiver of inadmissibility in order to reside in the United States with his U.S. citizen spouse.

As the AAO has already determined that extreme hardship has been established with respect to the applicant's U.S. citizen spouse in relation to a waiver of inadmissibility under section 212(a)(6)(C)(i) of the Act, for having procured entry to the United States by fraud, the AAO concludes that the applicant is also eligible for a waiver under Section 212(a)(9)(B)(V) of the Act, for unlawful presence.

**C. INADMISSIBILITY BASED ON CONVICTION FOR CRIME INVOLVING MORAL TURPITUDE UNDER SECTION 212(a)(2)(A)(i)(I) OF THE ACT**

As noted above, the record establishes that in July 1994, the applicant was convicted in the United States District Court for the Eastern District of Michigan for the offense of Fraud and Misuse of Visas, Permits, and Other Documents, a violation of 18 U.S.C. §1546(b). The applicant was sentenced to probation for a three year period. The officer in charge correctly concluded that the applicant was inadmissible under section 212(a)(2)(A)(i)(I) of Act, for having been convicted of a crime involving moral turpitude

Section 212(a)(2) of the Act provides, in pertinent part:

(A)(i) [A]ny alien convicted of, or who admits having committed, or who admits committing acts which constitute the essential elements of-

- (I) a crime involving moral turpitude (other than a purely political offense) or an attempt or conspiracy to commit such a crime . . . is inadmissible.

Section 212(h) of the Act provides, in pertinent part:

The Attorney General [now Secretary, Homeland Security, (Secretary)] may, in his discretion, waive the application of subparagraphs (A)(i)(I) . . . of subsection (a)(2) . . . if -

- (1)(A) in the case of any immigrant it is established to the satisfaction of the Attorney General (Secretary) that -
  - (i) . . . the activities for which the alien is inadmissible . . . occurred more than 15 years before the date of the alien's application for a visa, admission, or adjustment of status,
  - (ii) the admission to the United States of such alien would not be contrary to the national welfare, safety, or security of the United States, and
  - (iii) the alien has been rehabilitated; or
- (B) in the case of an immigrant who is the spouse, parent, son, or daughter of a citizen of the United States or an alien lawfully admitted for permanent residence if it is established to the satisfaction of the Attorney General (Secretary) that the alien's denial of admission would result in extreme hardship to the United States citizen or lawfully resident spouse, parent, son, or daughter of such alien . . . .
- (2) The Attorney General (Secretary), in his discretion . . . has consented to the alien's applying or reapplying for a visa, for admission to the United States, or adjustment of status.

As the AAO has already determined that extreme hardship has been established with respect to the applicant's U.S. citizen spouse in relation to a waiver of inadmissibility under section 212(a)(6)(C)(i) of the Act, for having attempted to procure an immigration benefit by fraud, the AAO concludes that the applicant is also eligible for a waiver under Section 212(h) of the Act, for a crime of moral turpitude.

#### D. DISCRETIONARY ANALYSIS

A review of the documentation in the record, when considered in its totality, reflects that the applicant has established that his U.S. citizen spouse would suffer extreme hardship were the applicant unable to reside in the United States. Moreover, it has been established that the applicant's U.S. citizen spouse would suffer extreme hardship were she to relocate abroad to reside with the applicant. Accordingly, the AAO finds that the situation presented in this application rises to the level of extreme hardship.

However, the grant or denial of the waiver does not turn only on the issue of the meaning of "extreme hardship." It also hinges on the discretion of the Secretary and pursuant to such terms, conditions and procedures as he may by regulations prescribe. In discretionary matters, the alien bears the burden of proving eligibility in terms of equities in the United States which are not outweighed by adverse factors. *See Matter of T-S-Y-*, 7 I&N Dec. 582 (BIA 1957). The AAO must then, "[B]alance the adverse factors evidencing an alien's undesirability as a permanent resident with the social and humane considerations presented on the alien's behalf to determine whether the grant of relief in the exercise of discretion appears to be in the best interests of the country." *Id.* at 300. (Citations omitted).

The favorable factors in this matter are the extreme hardship the applicant's U.S. citizen spouse and children would face, letters of support and payment of taxes. The unfavorable factors in this matter are the applicant's criminal conviction, entry to the United States by fraud, periods of unauthorized presence the United States and removal from the United States.

The AAO finds that the unfavorable factors, in particular, the applicant's criminal conviction establishing that the applicant had obtained a visa and subsequent entry to the United States through fraudulent means, in flagrant disregard of immigration laws, outweigh the favorable factors in this application. Therefore, a favorable exercise of the Secretary's discretion is not warranted.

In proceedings for application for waiver of grounds of inadmissibility under sections 212(i), 212(a)(9)(B)(v) and 212(h) of the Act, the burden of establishing that the application merits approval remains entirely with the applicant. Section 291 of the Act, 8 U.S.C. § 1361. The applicant has not met that burden. Accordingly, this appeal will be dismissed.

**ORDER:** The appeal is dismissed. The waiver application is denied.