

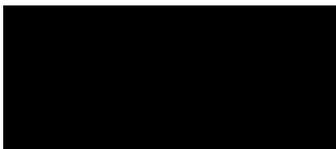
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U.S. Department of Homeland Security
20 Massachusetts Avenue N.W. A3042
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U.S. Citizenship
and Immigration
Services

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FILE:



Office: ATHENS, GREECE

Date:

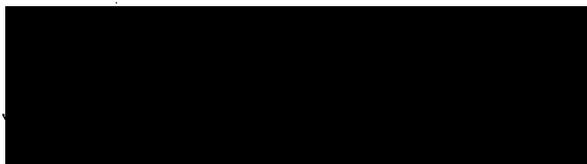
MAY 25 2005

IN RE:



PETITION: 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 PETITIONER:



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, Director
Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Acting Officer-in-Charge (Acting 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 Lebanon 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's wife, [REDACTED] is also a native and citizen of Lebanon. The applicant and his wife have five United States citizen children ranging in age from eighteen years to two years. The applicant is the beneficiary of approved I-130 Petitions for Alien Relative filed by his brother and father, both of who are United States citizens. The applicant was placed in immigration proceedings on December 16, 1994, and an immigration judge granted the applicant voluntary departure until August 17, 1997. The applicant was removed from the United States on December 4, 2003. The applicant filed an I-212 Application for Permission to Reapply for Admission Into the United States After Deportation or Removal, which was approved on April 7, 2004. The applicant seeks a waiver of inadmissibility in order to return to the United States to live with his family

The Acting OIC concluded that the applicant failed to establish that extreme hardship would be imposed on the applicant's United States citizen father and denied the Application for Waiver of Grounds of Excludability (Form I-601) accordingly. *Decision of the Acting Officer-in-Charge, Athens, Greece, dated September 15, 2004.*

On appeal, the applicant contends that his entire family will experience hardship if the waiver is denied. In support of the appeal, the applicant submitted a statement; his father's certificate of naturalization; notice of approval for the I-130 filed by his brother; a letter addressed to the Acting OIC from [REDACTED] a member of the United States House of Representatives; and a letter addressed to Congressman Conyers from the Acting OIC. The entire record was considered in rendering this decision.

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.

The record indicates that the applicant last entered the United States as a B-2 visitor for pleasure on September 3, 1985. The applicant was in unlawful status from April 1, 1997 (the effective date of the statute) until the time that he was removed from the United States on December 4, 2003. Accordingly, the applicant was unlawfully present in the United States for more than one year. He now seeks admission to the United States within 10 years of his departure, making him inadmissible under section 212(a)(9)(B).

The proper filing of an affirmative application for adjustment of status has been designated by the Attorney General [Secretary] as an authorized period of stay for purposes of determining bars to admission under section 212 (a)(9)(B)(i)(I) and (II) of the Act. *See Memorandum by Johnny N. Williams, Executive Associate Commissioner, Office of Field Operations dated June 12, 2002.* The record contains a completed Supplement A to Form I-485 Adjustment of Status Under Section 245(i) submitted by counsel that was signed by the applicant on November 9, 2003 and by counsel on November 20, 2003. There is no evidence that this I-485 was actually filed, but even if it was filed in November 2003, the applicant was unlawfully present in the United States for a period greater than one year.

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 or parent of the applicant. Hardship the alien himself experiences upon deportation is irrelevant to section 212(a)(9)(B)(v) waiver proceedings. 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 concept of extreme hardship “is not . . . fixed and inflexible,” and whether extreme hardship has been established is 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 (BIA) provided a list of non-exclusive factors to determine 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 the 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).

In the instant case, the applicant's United States citizen father [REDACTED] is the qualifying relative. Accordingly, the applicant must demonstrate that Mr. [REDACTED] will experience extreme hardship if the applicant is denied admission to the United States.

In his statement in support of the applicant's waiver, [REDACTED] stated:

Abbas is one of the closest children I have. He has been a very important part of my life especially as an elder. Over the years Abbas has been my care taker, my friend, my companion, and most importantly, my help. He took care of my medical needs like doctor visits, emergencies, medications, and others. After the sudden death of my wife for 50 years, I suffered from a terrible depression. Abbas helped me immensely to survive the loss. He gave me comfort and the will to live.

I'm urging you again to help me. If the 601 waiver is not granted for [REDACTED] I will have extreme hardships living without his help and support.

Mr. [REDACTED] provided no specific examples of how the applicant assisted him with his medical needs, nor did Mr. [REDACTED] explain why the applicant is the only person who can help. The AAO notes that Mr. [REDACTED] has other family members in the United States, e.g. two United States citizen sons. The applicant provided no evidence establishing that other family members cannot assist Mr. [REDACTED] with his medical needs and provide companionship.

In their statements in support of the waiver, the applicant and her husband stated that [REDACTED] is a dangerous place to live; however, the AAO notes that Mr. [REDACTED] is a United States citizen and lives here. He is not required to move to Lebanon. The applicant has not established that Mr. [REDACTED] will experience extreme hardship because of conditions in [REDACTED]

In their statements in support of the waiver, the applicant and his wife stated that the children would suffer extreme hardship [REDACTED] because of the dangerous conditions there and because they are fully integrated into an American way of life and are unfamiliar with Lebanese culture. The applicant and his wife further indicated that the children would be devastated if they had to separate from their parents. The record indicates that the children have remained in the United States. As United States citizens, they are not required to move to Lebanon. The AAO notes that the children are not qualifying relatives under the statute. Accordingly, the potential hardship experienced by them is not relevant to this analysis, except as it may affect Mr. [REDACTED]. Nothing has been submitted to establish that the presence of the children has resulted in extreme hardship to Mr. [REDACTED]

In his statement in support of the appeal, the applicant apologized for staying in the United States without authorization and explained his reasons for doing so. The applicant's apology and explanation are not relevant to the determination of whether Mr. [REDACTED] will experience extreme hardship if the applicant is denied admission 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. The AAO recognizes that Mr. [REDACTED] has endured some hardship as a result of separation from the applicant. However, his situation, based on the record, does not rise to the level of extreme hardship.

A review of the documentation in the record fails to establish the existence of extreme hardship to the applicant's United States citizen father 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)(6)(C) 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 previous decision of the Acting OIC is affirmed.

ORDER: The appeal is dismissed.