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U.S. Citizenship  
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FILE:

Office: ATHENS, GREECE

Date: JUL 07 2006

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

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 waiver application and the application for permission to reapply for admission were denied by the Acting Officer-in-Charge, 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 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 10 years of his last departure from the United States. On May 5, 2003 the applicant departed the United States in accordance with a removal order from an Immigration Judge. As a result of this removal the applicant is also inadmissible under section 212(a)(9)(A)(ii) of the Act, 8 U.S.C. § 1182(a)(9)(A)(ii). He now seeks permission to reapply for admission into the United States under section 212(a)(9)(A)(iii) of the Act, 8 U.S.C. § 1182(a)(9)(A)(iii). The applicant is married to a U.S. citizen and seeks a waiver of inadmissibility and permission to reapply for admission in order to reside in the United States with his U.S. citizen spouse.

The acting officer-in-charge found that based on the evidence in the record, the applicant failed to establish extreme hardship to his U.S. citizen spouse. The applications were denied accordingly. *Decision of the Acting Officer-in-Charge*, dated September 29, 2004.

The AAO notes that the Acting Officer in Charge incorrectly cites section 212(a)(9)(A)(ii) of the Act, which refers to applicants who were removed from the United States and now seek to re-enter, as the basis for the applicant requiring a waiver of inadmissibility. The applicant requires a waiver of inadmissibility based on his unlawful presence in the United States under section 212(a)(9)(B)(i)(II) of the Act. The applicant is inadmissible under both section 212(a)(9)(B)(i)(II) of the Act and section 212(a)(9)(A)(ii) of the Act, however to overcome his inadmissibility under section 212(a)(9)(B)(i)(II) of the Act he requires a waiver and to overcome his inadmissibility under section 212(a)(9)(A)(ii) of the Act he requires permission to reapply for admission.

On appeal, the applicant asserts that his wife is suffering extreme emotional, financial and physical hardship as a result of his inadmissibility to the United States. *See Letter from Applicant*, October 26, 2004.

In the present application, the record indicates that the applicant entered the United States with a Visitor's Visa on August 4, 1989. The applicant remained in the United States until May 5, 2003. The applicant's authorized stay under his visitor's visa expired on August 3, 1990. On January 14, 1994 the applicant filed an application for asylum, on June 25, 1996 he had his asylum interview and on October 10, 1997 his asylum application was referred to an Immigration Judge. On June 8, 1998, an Immigration Judge denied the applicant's asylum application and granted him voluntarily departure until August 7, 1998. The applicant then filed a timely appeal to the Board of Immigration Appeals (BIA), which was denied on October 6, 2000. The applicant also filed an appeal with the U.S. Court of Appeals for the Seventh Circuit on October 25, 2000.

On November 10, 2000 the applicant was issued a letter to report for removal on November 28, 2000. On November 22, 2000 the applicant filed an Emergency Motion for a Stay of Deportation with the Seventh Circuit Court of Appeals and an application for a Stay of Removal (Form I-246) with the Immigration Service. The Seventh Circuit Court of Appeals granted the Stay of Deportation the same day it was filed. The applicant appeared for removal on November 28, 2000, but was not removed pursuant to the stay of deportation issued by the Seventh Circuit. On January 11, 2002 the Seventh Circuit lifted the stay of deportation. The Seventh Circuit Court then

affirmed the BIA decision on April 19, 2001. The applicant filed an Alien Relative Petition (Form I-130) on April 24, 2001. On August 3, 2001, the Immigration Service denied the applicant's Form I-246. On August 9, 2001 the applicant was issued a second letter to report for removal on August 30, 2001. On August 27, 2001 he filed a second Form I-246. When he reported for his removal on August 30, 2001 the immigration officers did not take him into custody because he had a pending Form I-130 and Form I-246. On February 13, 2002 the applicant's second I-246 was denied.

On April 25, 2003 the applicant appeared at the District Office in Chicago, IL to register with the Immigration Service. While at the District Office the immigration officer issued the applicant a letter stating that he is required to appear for removal on May 1, 2003. The applicant complied and on May 5, 2003 departed the United States. Therefore, the applicant accrued unlawful presence from February 13, 2002 when his last Stay of Removal application was denied until May 5, 2003, the date he departed the United States. In applying for an immigrant visa, the applicant is seeking admission within 10 years of his May 5, 2003 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-

(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.

As a result of the applicant's removal from the United States he is also subject to 212(a)(9)(A)(ii) of the Act and currently requires permission to reapply for admission to the United States.

Section 212(a)(9). Aliens previously removed.-

(A) Certain alien previously removed.-

. . . .

(ii) Other aliens.- Any alien not described in clause (i) who-

(I) has been ordered removed under section 240 or any other provision of law, or

(II) departed the United States while an order of removal was outstanding, and seeks admission within 10 years of the date of such alien's departure or removal (or within 20 years of such date 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 alien's 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 alien's reapplying for admission.

The AAO notes that this decision will first discuss the applicant's eligibility for a waiver of inadmissibility under section 212(a)(9)(B)(v) of the Act. 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 due to separation is irrelevant to section 212(a)(9)(B)(v) waiver proceedings unless it causes hardship to the applicant's spouse. 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 Jordan or 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.

The first part of the analysis requires the applicant to establish extreme hardship to his spouse in the event that she resides in Jordan. The applicant's spouse states that her two children and parents live in the United States. She also states that her father is a diabetic, has heart problems and she helps to care for both of her parents. *Spouse's Letter*, dated October 17, 2004. The applicant submits no documentation to support these claims and makes no other assertions in regard to this claim. Therefore, the record does not reflect that relocation will result in extreme hardship to the applicant's spouse.

The second part of the analysis requires the applicant to establish extreme hardship in the event that his spouse remains in the United States. The applicant states that his spouse is suffering emotional, financial and physical hardship as a result of his inadmissibility. The applicant did not submit any documentation to establish the extent of

the emotional hardship being suffered by his spouse. In addition, although he did submit tax documents showing that in 2001 and 2002 the applicant's spouse's salary was approximately half the salary of the applicant, the applicant does not establish that his wife would not be able to find work for better pay or more hours to support her family. The physical problems of the applicant's spouse include a back injury, which occurred in September 2003 and an eye injury, which occurred in July 2004. The record indicates that she has recovered from these injuries and they are no longer causing her to be out of work. The letter from the spouse's chiropractor [REDACTED] states that the applicant's spouse received treatment from September 29, 2003 to November 11, 2003. During this time she was restricted in her ability to walk. There is no evidence in the record that indicates the spouse is still suffering from this injury. In addition, the record includes a letter from the spouse's eye doctor, [REDACTED] which states that the applicant has surgery on her right eye on July 27, 2004 and was unable to work or drive for four weeks. Again, there is no evidence in the record to establish the applicant's spouse is still restricted by this injury. Therefore, a thorough review of the entire record does not reflect that separation will result in extreme hardship to the applicant's spouse.

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 the applicant's spouse will endure hardship as a result of separation from the applicant. However, her situation, if she remains in the United States, is typical to individuals separated as a result of removal and 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 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.

Having found the applicant ineligible for a waiver of inadmissibility under section 212(a)(9)(B)(v) of the Act, no purpose would be served in adjudicating the applicant's application for permission to reapply for admission under 212(a)(9)(A)(iii) of the Act.

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.