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FILE:

Office: PHILADELPHIA

Date: MAR 09 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)

ON BEHALF OF APPLICANT: Self-represented (counsel withdrew October 14, 2004)

**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 District Director, Philadelphia, denied the waiver application and a subsequent appeal was dismissed by the Administrative Appeals Office (AAO). A previous motion to reconsider was granted and the order dismissing the appeal was affirmed. The matter is now before the AAO on a second motion to reconsider. The motion to reconsider will be granted and the previous decisions will be affirmed. The application will be denied.

The applicant is a native and citizen of Egypt 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 is married to a citizen of the United States and seeks a waiver of inadmissibility in order to reside in the United States with his wife.

The district director found that based on the evidence in the record, the applicant had failed to establish extreme hardship to his U.S. citizen spouse. The application was denied. *Decision of the District Director*, dated February 26, 2001. On appeal, the AAO found that based on the evidence in the record, the applicant had failed to establish extreme hardship to his U.S. citizen spouse. The appeal was dismissed and the application denied. *Decision of the AAO*, dated August 21, 2001. On a previous motion to reconsider, the AAO found that based on the evidence in the record, the applicant had failed to establish extreme hardship to his U.S. citizen spouse. The order dismissing the appeal was affirmed accordingly. *Decision of the AAO*, dated April 16, 2003.

It is noted that even though counsel has withdrawn, the AAO will address the arguments counsel asserted in its brief. *Counsel's Brief*, dated May 13, 2003. On appeal, counsel asserts that the district director and the AAO abused their discretion by not considering the hardship factors in the aggregate in the applicant's case.

In support of these assertions, counsel submits a third affidavit from the applicant's spouse; affidavits from the applicant's spouse's family members; letters confirming the applicant's spouse's employment history, but not her income; copies of receipts and records relating to the medical history of the applicant's spouse; newspaper article and a contract of sale purporting to attest to the applicant's financial support of his spouse; and the applicant's 2002 tax return purporting to attest to the applicant's financial support of his 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 application, the record indicates that, on November 5, 1995, the applicant was admitted to the United States as a B-2 nonimmigrant until May 4, 1996. On December 1, 1998, the applicant filed an Application to Register Permanent Residence or Adjust Status (Form I-485). On June 8, 1999, the applicant departed the United States and used the Authorization for Parole of an Alien into the United States (Form I-512), issued to him in June 1999, to reenter the United States on August 29, 1999. The AAO notes that the applicant overstayed the period of stay authorized by his visitor visa by remaining in the United States for over 2 years.

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 applicant accrued unlawful presence from April 1, 1997, the date of enactment of unlawful presence provisions under the Act, until December 1, 1998, the date of his proper filing of the Form I-485. In applying to adjust his status to that of Lawful Permanent Resident (LPR), the applicant is seeking admission within 10 years of his August 1999 departure from the United States. The applicant is, therefore, 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.

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.

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 at 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. *Supra.* 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).

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 statements of counsel as to matters of which they have no personal knowledge are not evidence. *Matter of Obaigbena*, 19 I&N Dec. 3042 (BIA 1988); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 2820 (BIA 1980).

The record in the instant case reflects that the applicant was born in Egypt. The record reflects that the applicant's wife [REDACTED] is a U.S. citizen by birth and that she met her husband in October 1997 and married him in February 1998. The record reflects that no children have been born to the marriage. The record reflects further that the applicant is in his late 40's and [REDACTED] is in her early 50's. Counsel claims that [REDACTED] needs ongoing psychological treatment and regular dental and medical treatment. The record reflects that [REDACTED] has required psychological treatment in the past and that there are no current health concerns.

Counsel asserts that [REDACTED] would suffer financial hardship if she were to remain in the United States without her husband. Counsel contends that, as a result of psychological trauma she suffered during her first marriage, [REDACTED] is unable to consistently maintain employment and would be unable to support herself financially without the support of the applicant. In her affidavit, dated May 9, 2003, [REDACTED] states that she is currently employed as a Sales Associate and undergoing management training with her employer. Tax records for [REDACTED] indicate that since the dissolution of her first marriage and prior to marrying the applicant, she had earned up to \$31,104.00 per year. In her affidavit, [REDACTED] claims that she has not consistently earned sufficient money to support herself outside of the marriage because of psychological issues that arose out of her first marriage. However, while the applicant submitted a receipt for a psychological consult [REDACTED] underwent in May 2003 and a psychological report from 1985 to 1986, he has not submitted documentation to indicate that [REDACTED] has ongoing psychological problems that lead to her inability to maintain employment or that the departure of the applicant from the United States would be detrimental to the applicant's ability to support herself financially. There is no evidence in the record, besides [REDACTED] affidavit, that her inability to maintain employment in the past is due to anything other than the economic depression that is prevalent in the area in which [REDACTED] chooses to reside. Moreover, while the applicant has submitted a 2002 tax return for himself, which was filed separately from his wife, he has failed to submit recent tax records for [REDACTED] that indicate her recent earnings or detailed receipts for the couple

which would enable an evaluation of whether [REDACTED] would be unable to meet her financial responsibilities with her earnings.

The fact that [REDACTED] property was destroyed in 2000 and she was unable to recover damages from that loss does not have any bearing on [REDACTED] ability to meet her financial responsibilities. The fact that the applicant is part owner of a restaurant in Hanover, Pennsylvania, without other documentation as to Mrs. [REDACTED] earnings or [REDACTED] financial responsibilities, does not have any bearing on [REDACTED] ability to meet her financial responsibilities. Additionally, the AAO notes that, while the newspaper article indicates that the applicant is an owner of the restaurant, the contract submitted with the motion to reconsider is not executed and the applicant's name does not appear on it.

Counsel asserts that [REDACTED] would suffer emotional hardship if she remained in the United States and her husband returned to Egypt. In her affidavit, [REDACTED] states that the emotional hardship she would suffer if the applicant returned to Egypt would be severe due to the psychological problems she has experienced since her first marriage. However, [REDACTED] also states that, while she did require a four-day hospitalization due to acrimony involved in her divorce, she only underwent psychiatric counseling for two years and was supported financially and emotionally by her sisters during this time. According to her affidavit [REDACTED] completed her psychiatric care in 1990, more than seven years before she met the applicant. In fact, it appears that [REDACTED] sisters still reside close to her and would be able to support her emotionally and financially in the absence of her husband.

Despite conflicting with [REDACTED] testimony, counsel contends that [REDACTED] has been under psychological treatment since her first marriage ended and she would suffer severe emotional problems if the applicant left the United States because of her ongoing psychological issues. However, during the original application, appeal and both motions to reconsider, the applicant has failed to submit documentation to show that [REDACTED] is participating in ongoing psychological care. The applicant has submitted a receipt for payment to an adult psychiatrist in May 2003 and a psychological evaluation. However, the psychological evaluation that has been submitted for [REDACTED] is dated 1985 to 1986 and there is no evidence [REDACTED] has received psychological treatment other than 1985 to 1986 and during the May 2003 appointment. Moreover, outside [REDACTED] affidavit, there is no evidence that [REDACTED] would experience more than the normal emotional hardship caused by the severing of family and community ties that is a common result of deportation if the applicant were to depart the United States.

Counsel asserts that the applicant's spouse would face extreme hardship if she relocated to Egypt in order to remain with the applicant. Counsel contends that [REDACTED] would face extreme hardship because she is a United States citizen who does not speak, read or write Arabic, and that, even though she is a convert to Islam, she does not approve of the way it is practiced in Egypt. The record contains no evidence that Mrs. [REDACTED] would face hardship due to these factors. Additionally, according to country conditions reports, the vast majority of Egyptians speak English, there are English-language television channels and the Egyptian government and populace are generally accepting of all religious practices, including contemporary Muslim practitioners. *Department of State Country Background Notes, Egypt*, [www.state.gov/r/pa/ei/bgn/5309.htm](http://www.state.gov/r/pa/ei/bgn/5309.htm); *Department of State International Religious Freedom Report, Egypt*, [www.state.gov/g/drl/rls/irf/2004/35496.htm](http://www.state.gov/g/drl/rls/irf/2004/35496.htm). Counsel contends that [REDACTED] would not be able to receive the medical care she requires. The record contains no evidence that [REDACTED] requires ongoing medical or

psychological treatment or that these services are not available in Egypt. Additionally, country conditions reports indicate that there is a wide-variety of medical services available in Egypt. *Egyptian Medical Information Network*, [www.misrmedical.com](http://www.misrmedical.com); *Arab Worldwide Web Directory, Egypt-Health*, [www.arabinfoseek.com/egypt-health.htm](http://www.arabinfoseek.com/egypt-health.htm). Counsel contends that the applicant would be unable to financially support Mrs. [REDACTED] if she accompanied him to Egypt. The record contains no evidence that supports this contention. Furthermore, there is evidence in the record that the applicant's family financially supported him while he was unemployed in the United States. Additionally, the record reflects that the applicant continued to receive higher education in Egypt, past the age of 30, indicating that the applicant possesses an education that would make the applicant a more desirable employee. Counsel contends that Mrs. [REDACTED] does not have family ties in Egypt and that the applicant's family would be hostile towards her because the applicant divorced his first wife in order to marry an American. However, the record reflects that the applicant divorced his first wife in 1996, more than year before he met Mrs. [REDACTED]. Counsel contends that, as a woman, Mrs. [REDACTED] would be unable to work or to seek expansion beyond a women's expected role in society. There is no evidence in the record that supports this contention. Additionally, country conditions reports indicate that women serve in high-ranking positions within the government, including the Supreme Court, Parliament and the Cabinet. The AAO notes that, as a U.S. citizen, the applicant's spouse is not required to reside outside of the United States as a result of denial of the applicant's waiver request. Moreover, in two of Mrs. Sayed's affidavits, dated 2001 and 2003, she states that she would not accompany the applicant to Egypt.

The record, reviewed in its entirety and in light of the *Cervantes-Gonzalez* factors, cited above, does not support a finding that the applicant's spouse would face extreme hardship if the applicant were refused admission. Rather, the record demonstrates that Mrs. [REDACTED] will face no greater hardship than the unfortunate, but expected, disruptions, inconveniences, and difficulties arising whenever a spouse is removed from the United States. In nearly every qualifying relationship, whether between husband and wife or parent and child, there is a deep level of affection and a certain amount of emotional and social interdependence. While, in common parlance, the prospect of separation or involuntary relocation nearly always results in considerable hardship to individuals and families, in specifically limiting the availability of a waiver of inadmissibility to cases of "extreme hardship," Congress did not intend that a waiver be granted in every case where a qualifying relationship, and thus the familial and emotional bonds, exist. The point made in this and prior decisions on this matter is that the current state of the law, viewed from a legislative, administrative, or judicial point of view, requires that the hardship, which meets the standard in section 212(i) of the Act, be above and beyond the normal, expected hardship involved in such cases. 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); *Matter of Pilch*, 21 I&N Dec. 627 (BIA 1996) (holding that emotional hardship caused by severing family and community ties is a common result of deportation and does not constitute extreme hardship); *Matter of Shaughnessy*, 12 I&N Dec. 810 (BIA 1968) (holding that separation of family members and financial difficulties alone do not establish extreme hardship). "[O]nly in cases of great actual or prospective injury . . . will the bar be removed." *Matter of Ngai*, 19 I&N Dec. 245, 246 (BIA 1984). Further, demonstrated financial difficulties alone are generally insufficient to establish extreme hardship. *See INS v. Jong Ha Wang*, 450 U.S. 139 (1981) (upholding BIA finding that economic detriment alone is insufficient to establish 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.

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 motion to reconsider will be denied.

**ORDER:** The previous decisions are affirmed. The application is denied.