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U.S. Department of Homeland Security
20 Massachusetts Ave. NW, Rm. 3000
Washington, DC 20529



U.S. Citizenship
and Immigration
Services

[REDACTED]

H3

FILE:

[REDACTED]

Office: ATHENS, GREECE

Date:

Nov 8, 2011

IN RE:

[REDACTED]

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:

[REDACTED]

PUBLIC COPY

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.

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Acting Officer-in-Charge, Athens, Greece, and 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 is married to a U.S. citizen and seeks a waiver of inadmissibility in order to reside in the United States.

The acting officer-in-charge concluded that the applicant failed to establish that extreme hardship would be imposed on a qualifying relative and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) accordingly. *Decision of the Acting Officer-in-Charge*, dated January 10, 2005.

On appeal, prior counsel asserts that the denial was erroneous as it was not grounded in the facts of the case. *Form I-290B*, dated February 4, 2005.

The record includes, but is not limited to, prior counsel's brief, two supplements to the brief, a psychological evaluation of the applicant's spouse, statements from the applicant and his spouse, a statement from the applicant's spouse's sister and information on the country conditions in Lebanon. The entire record was reviewed and considered in arriving at a decision on the appeal.

In the present application, the record indicates that the applicant entered the United States on a visitor visa on November 16, 1993 and applied for asylum on May 23, 1994. The applicant's asylum case was denied, he was placed in deportation proceedings, his asylum case was denied by the immigration judge and he was granted voluntary departure on August 29, 1995. The applicant's appeal was denied by the Board of Immigration Appeals on July 21, 1997. The applicant's grant of voluntary departure was extended until October 21, 1997, but he failed to depart the United States pursuant to the grant of voluntary departure. The applicant was again granted voluntary departure on March 29, 2002 and he departed the United States on April 29, 2002. The applicant accrued unlawful presence from October 21, 1997, the date his grant of voluntary departure expired, until March 29, 2002, the date he was again granted voluntary departure. 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.

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. 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).

Counsel asserts that the applicant's Form I-212, Application for Permission to Reapply for Admission into the United States after Deportation or Removal, was approved based on the same standard of extreme hardship, therefore, it is inconsistent to deny the Form I-601 based on the failure to establish extreme hardship. *Brief in Support of Appeal*, at 2, dated July 10, 2006. The AAO notes that an I-212 application does not require the applicant to demonstrate extreme hardship to a qualifying relative. Approval of an I-212 is discretionary and is based on the weighing of positive and negative factors. While hardship to a relative may be one of the factors considered, there is no requirement that extreme hardship be established. As such, counsel's contention is incorrect and the applicant is required to demonstrate extreme hardship to his spouse in order to qualify for a Form I-601 waiver.

Matter of Cervantes-Gonzalez, 22 I&N Dec. 560 (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 lawful permanent resident or United States citizen family ties to 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.

The AAO notes that extreme hardship to the applicant's spouse must be established in the event that she resides in Lebanon 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 denial of the applicant's waiver request.

The first part of the analysis requires the applicant to establish extreme hardship to his spouse in the event that she resides in Lebanon. The applicant's spouse's parents and four sisters reside in the United States and she sees her family on a daily basis. *Psychological Evaluation*, at 2, dated June 27, 2006. Counsel states that the

applicant's spouse traveled to Lebanon, but was not able to establish her residence there. *Brief in Support of Appeal*, at 4, dated July 10, 2006. The applicant states that Lebanon has no medical insurance, no electricity most of the time, no traffic laws, no heating in the homes, low minimum wages, high tuition fees, an unstable political situation and security issues. *Applicant's Statement*, at 1-2, dated April 25, 2006. The applicant's spouse stayed with her spouse in Lebanon for fourteen months and states that their child could not adjust to the living conditions and was often sick, she does not know the language, her spouse could not find **employment and water was scarce**. *Applicant's Spouse's Statement*, at 1-3, dated April 6, 2006. The applicant's spouse states that she returned to the United States due to the high cost of private education. *See id.* at 3. The applicant's spouse also states that she returned to the United States in order to go back to work in order for the family to survive. *Applicant's Spouse's First Statement*, dated March 2, 2004. In addition, the record includes a travel warning for Lebanon. *U.S. Department of State, Lebanon Travel Warning*, dated May 6, 2003. Based on the aforementioned factors, the AAO finds that the applicant's spouse would face extreme hardship in the event of relocation to Lebanon.

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 psychological evaluation details the emotional struggles that the applicant's spouse is facing. *Psychological Evaluation*, at 3-4. The psychologist states that the applicant's spouse's symptoms include social isolation, an inability to focus, sadness, fatigue and depression, and her symptoms will become heightened if the applicant is unable to reside with her in the United States. *Id.* at 8. The AAO acknowledges the important role of a clinical psychologist, however, the submitted report is based on a one-time meeting and there is no mention of a follow-up appointment, proposed therapy or treatment for the applicant's spouse. The applicant's spouse's sister details the emotional difficulties that the applicant's spouse faced while residing with her. *Applicant's Spouse's Sister's Statement*, at 2, dated January 13, 2004.

Prior counsel states that the applicant's spouse would have to provide financial support for the applicant. *First Brief in Support of Appeal*, at 6, dated November 24, 2003. The record does not include substantiating evidence of financial hardship. Although sympathetic to the difficulties of separation, the AAO notes that separation entails inherent emotional stress and financial problems that are common to those involved in the situation. The record does not evidence extreme hardship to the applicant's spouse in the event of remaining in the United States without the applicant.

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. Moreover, the AAO notes that the U.S. Supreme Court held in *INS v. Jong Ha Wang*, 450 U.S. 139 (1981), that the mere showing of economic detriment to qualifying family members is insufficient to warrant a finding of extreme hardship.

The AAO notes that 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 appeal will be dismissed.

ORDER: The appeal is dismissed.