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FILE:



Office: ATHENS

Date: MAR 15 2007

IN RE:



APPLICATION:

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

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.

A handwritten signature in black ink, appearing to read "Robert P. Wiemann".

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The Officer-in-Charge (OIC) Athens, Greece denied the waiver application. The matter is now on appeal before the Administrative Appeals Office (AAO) in Washington, DC. The appeal will be dismissed.

The applicant, [REDACTED], 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. [REDACTED] a U.S. citizen, is the wife of the applicant. He seeks a waiver of inadmissibility pursuant to section 212(a)(9)(B)(v) of the Act, 8 U.S.C. § 1182(a)(9)(B)(v).

The OIC's denial letter states the following. [REDACTED] entered the United States with as a visitor for pleasure (a B-2 visa) on December 11, 1996 and immediately began working as a cook in violation of his visa. He worked until January 2002, at which time he departed the United States, overstaying his visa by more than four years. [REDACTED] never applied to extend his authorized stay and thus accrued unlawful presence from June 1997 to January 2002. The applicant divorced his wife in March 2002 and married Ms. [REDACTED] on July 30, 2002, in Egypt. *Matter of Ige*, 20 I&N Dec. 880 (BIA 1994) sets forth the concepts underlying the meaning of extreme hardship. *Garcia-Lopez v. INS*, 923 F.2d 72 (7th Cir. 1991) indicates that less weight is given to equities acquired after a deportation order has been entered. The equity of a marriage and the weight given to any hardship to the spouse is diminished if the parties married after the commencement of deportation proceedings with the knowledge that the alien might be deported. *Ghassan v. INS*, 972 F.2d 631 (5th Cir. 1992), cert. denied, 507 U.S. 971 (1993). The applicant's marriage took place in Egypt six months after his departure from the United States. The courts have consistently given far less weight to such "after acquired" family ties. Neither the applicant in his interview at the consulate in Egypt or his wife acknowledge in any way the activity on which excludability was based, nor do they make any mention of extenuating circumstances. The pattern of actions the subject has taken while in the United States tend to demonstrate and reveal a consistent lack of respect for the immigration laws of the United States. The discretionary factors pertaining to the hardships of the applicant's spouse do not outweigh the seriousness of the applicant's overt misrepresentations and lack of respect for the law. The application for waiver of admissibility pursuant to section 212(a)(9)(B)(v) of the Act, 8 U.S.C. § 1182(a)(9)(B)(v) is denied. *Decision of the OIC*, dated May 5, 2004.

The AAO will first address the OIC's finding of inadmissibility under section 212(a)(9)(B)(i)(II) of the Act, 8 U.S.C. § 1182(a)(9)(B)(i)(II).

Unlawful presence accrues when an alien is present in the United States after the expiration of the period of stay authorized by the Attorney General or is present in the United States without being admitted or paroled. Section 212(a)(9)(B)(ii) of the Act, 8 U.S.C. § 1182(a)(9)(B)(ii). Exceptions and tolling for good cause are set forth in sections 212(a)(9)(B)(iii) and (iv) of the Act, 8 U.S.C. § 1182(a)(9)(B)(iii) and (iv), respectively. The periods of unlawful presence under section 212(a)(9)(B)(i)(II) of the Act, 8 U.S.C. § 1182(a)(9)(B)(II), are not counted in the aggregate. Each period of unlawful presence in the United States is counted separately for purposes of section 212(a)(9)(B)(i)(II) of the Act, 8 U.S.C. § 1182(a)(9)(B)(II). Memo, Virtue, Acting

Assoc. Comm. INS, *Grounds of Inadmissibility, Unlawful Presence, June 17, 1997 INS Memo on Grounds of Inadmissibility, Unlawful Presence* (96Act.043); and Cable, DOS, No. 98-State-060539 (April 4, 1998). For purposes of section 212(a)(9)(B) of the Act, time in unlawful presence begins to accrue on April 1, 1997. DOS Cable, *supra.*; and *IIRIRA Wire #26, HQIRT 50/5.12*. The three- and ten-year bars of sections 212(a)(9)(B)(i)(I) and (II) of the Act, 8 U.S.C. § 1182(a)(9)(B)(i)(I) and (II), are triggered by a departure from the United States following accrual of the specified period of unlawful presence. If someone accrues the requisite period of unlawful presence but does not subsequently depart the United States, then sections 212(a)(9)(B)(i)(I) and (II) of the Act, 8 U.S.C. § 1182(a)(9)(B)(i)(I) and (II), would not apply. DOS Cable, *supra.* See also *Matter of Rodarte*, 23 I&N Dec. 905 (BIA 2006)(departure triggers bar because purpose of bar is to punish recidivists).

The OCI correctly found that the applicant was unlawfully present in the United States for more than one year. He entered the United States with a B-2 visa on December 11, 1996 and departed from the United States in January 2002. It is clear that [REDACTED] accrued more than one year of unlawful presence in the United States from April 1, 1997 to January 2002, at which time he departed from the country, triggering the ten-year bar. Thus, the OIC correctly found him to be inadmissible to the United States pursuant to 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.

The AAO will now address the director's finding of failure to establish eligibility for a waiver of inadmissibility pursuant to section 212(a)(9)(B)(v) of the Act, 8 U.S.C. § 1182(a)(9)(B)(v).

Section 212(a)(9)(B) of the Act provides, in pertinent part:

- (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 Secretary, 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.

...

On appeal, counsel submits additional evidence to establish the applicant's eligibility for a waiver of inadmissibility: a letter from the applicant's wife; a letter from [REDACTED]; a letter from [REDACTED]; a residential lease; letters attesting to the applicant's character; and photographs of the applicant and his wife.

The applicant seeks a waiver of inadmissibility under section 212(a)(9)(B)(v). A waiver of inadmissibility under section 212(a)(9)(B)(v) is dependent upon a showing that the bar to admission imposes an extreme hardship on a qualifying relative, *i.e.*, the U.S. citizen or lawfully resident spouse or parent of [REDACTED]. Hardship to the applicant is not a permissible consideration under the statute and will be considered only insofar as it results in hardship to a qualifying relative. [REDACTED]'s spouse is the only qualifying relative here. If extreme hardship to the qualifying relative is established, the Secretary then assesses whether an exercise of discretion is warranted. Section 212(i) of the Act; *see also Matter of Mendez-Morales*, 21 I&N Dec. 296 (BIA 1996).

“Extreme hardship” is not a definable term of “fixed and inflexible meaning”; establishing extreme hardship is “dependent upon the facts and circumstances of each case.” *Matter of Cervantes-Gonzalez*, 22 I&N Dec. 560, 564 (BIA 1999). In *Matter of Cervantes-Gonzalez*, the Board of Immigration Appeals (BIA) lists the factors that it considers relevant in determining whether an applicant has established extreme hardship pursuant to section 212(i) of the Act. The 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. *Id.* at 564. The BIA indicated that these factors relate to the applicant’s “qualifying relative.” *Id.* at 565-566.

In *Matter of O-J-O-*, 21 I&N Dec. 381, 383 (BIA 1996), the BIA stated that the factors to consider in determining whether extreme hardship exists “provide a framework for analysis,” and that the “[r]elevant factors, though not extreme in themselves, must be considered in the aggregate in determining whether extreme hardship exists.” It further stated that “the trier of fact must consider the entire range of factors concerning hardship in their totality” and then “determine whether the combination of hardships takes the case beyond those hardships ordinarily associated with deportation.” (citing *Matter of Ige*, 20 I & N Dec. 880, 882 (BIA 1994).

U. S. courts have stated, “the most important single hardship factor may be the separation of the alien from family living in the United States,” and also, “[w]hen the BIA fails to give considerable, if not predominant, weight to the hardship that will result from family separation, it has abused its discretion.” *Salcido-Salcido v. INS*, 138 F.3d 1292, 1293 (9th Cir. 1998) (citations omitted); *Cerrillo-Perez v. INS*, 809 F.2d 1419, 1424 (9th Cir. 1987) (remanding to BIA) (“We have stated in a series of cases that the hardship to the alien resulting from his separation from family members may, in itself, constitute extreme hardship.”) (citations omitted). Separation from one’s spouse will therefore be given appropriate weight in evaluating the hardship factors in the present case.

The AAO observes that the OIC cites to *Garcia-Lopez v. INS*, *supra*, and *Ghassan v. INS*, *supra*, to establish that a marriage following the commencement of deportation proceedings is given less weight in determining extreme hardship. However, because the record reveals that deportation proceedings were never commenced against the applicant, the AAO is not persuaded that the weight of his marriage is to be diminished as such.

The AAO will now apply the *Cervantes-Gonzalez* factors to the present case to the extent they are pertinent in determining extreme hardship to [REDACTED]. It is noted that extreme hardship to [REDACTED] must be established in the event that she joins the applicant to live overseas; and in the alternative, that she remains in the United States. A qualifying relative is not required to reside outside of the United States based on the denial of the applicant's waiver request.

In several letters, [REDACTED] describes her life, including her childhood, adolescence, education, marriages, and weight problems. She states that her mother has diabetes, has been diagnosed with Alzheimer's disease, and is losing her eyesight. [REDACTED] indicates that her sister is a nurse and is not always able to drive their mother to medical appointments. [REDACTED] states that she should not have to choose between leaving her mother and family and being with her husband in Egypt; she conveys that she cannot leave her mother. [REDACTED] states that her husband assisted in caring for her mother while he was in the country. [REDACTED] expresses concern about living in Egypt and indicates that she has depression caused by separation from her husband. [REDACTED] indicates that she has chronic interstitial cystitis, a urinary bladder disease. She states that she is unemployed and that it is difficult to find a job that pays well, and that her husband has a job waiting for him in the United States. *Letters from* [REDACTED], dated June 29, 2004, October 30, 2003, and October 22, 2002

The letter from [REDACTED] indicates that [REDACTED] visited his office in March 2000 when overweight, or medically speaking, morbidly obese. [REDACTED] did well on the doctor's program until her return from overseas in August 2002. The doctor states that [REDACTED] is struggling with the weight control program and is visibly depressed and that he is treating her with appetite suppressant medication and antidepressants. The doctor states that being without [REDACTED] has had a deleterious effect on [REDACTED] weight and mood, and that if the problems become worse, may require the intervention of other medical specialists. *Letter from* [REDACTED], dated May 24, 2004

The letter from [REDACTED] states that his office was destroyed in a fire in April 1995, and all records, including those of [REDACTED], were destroyed. *Letter from* [REDACTED], dated June 28, 2004.

The letters from [REDACTED] attest to the good character of [REDACTED]

The entire record has been reviewed in rendering this decision.

The AAO finds that the evidence in the record fails to establish extreme emotional hardship to [REDACTED] if she remains in the United States, where she indicates she will live so as not to separate from her mother who she indicates has diabetes that has destroyed her vision, heart, and kidneys. [REDACTED] has lived her entire life in the United States. All of her close family ties, except for her husband, are in the United States. She married the applicant on July 30, 2002 and filed a Petition for Alien Fiance on February 20, 2003, about seven months after her marriage. The waiver application was denied on May 5, 2004, two years after their marriage.

It is clear from the record that [REDACTED] has endured emotional hardship as a result of separation from her husband, even though they have had a relatively short marriage. Her doctor conveys that she has been depressed and has struggled to maintain her weight. The AAO is not unsympathetic to [REDACTED] s plight.

However, it finds that her situation, if she remains in the United States, is typical to individuals separated as a result of deportation or exclusion and does not rise to the level of extreme hardship as required by 212(a)(9)(B)(v). In *Hassan v. INS*, 927 F.2d 465, 468 (9th Cir. 1991) the Court of Appeals upheld the BIA's finding that deporting the applicant and separating him from his wife and child was not conclusive of extreme hardship as it "was not of such a nature which is unusual or beyond that which would normally be expected from the respondent's bar to admission." (citing *Patel v. INS*, 638 F.2d 1199, 1206 (9th Cir. 1980) (severance of ties does not constitute extreme hardship). Furthermore, the Ninth Circuit in *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. The record before the AAO is insufficient to show that the emotional hardship endured by Ms. [REDACTED] is unusual or beyond that which is normally to be expected upon deportation.

[REDACTED] indicates that she will suffer economic hardship if her husband is not permitted to join her in the United States. The AAO notes that the record reveals that [REDACTED] was previously able to secure employment that sustained her and her two sons. *Letter from [REDACTED]*, dated June 29, 2004. No evidence in the record corroborates [REDACTED]'s assertion that she is not able to economically support herself while living in the United States. [REDACTED] indicates that her mother has serious health problems. However, Ms. [REDACTED] submitted no medical records to corroborate that her mother has serious health problems or show that she is unable to financially support herself because she is her mother's primary care provider. [REDACTED] indicates that her sister is a nurse and that she is "more than handy when it comes to taking care of mother" and that [REDACTED] has used up her earned time off. Simply going on record without supporting documentary evidence is not sufficient for the purpose of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)).

The record does not reflect that [REDACTED] would endure extreme hardship if she joins the applicant to live in Egypt. [REDACTED] has indicated that she has a weight problem as well as a urinary bladder disease. It is noted that no independent evidence in the record substantiates that she has a urinary bladder disease or establishes the severity of the disease. In addition, no evidence shows that Egypt lacks suitable medical care to address such health conditions. No evidence has been submitted to show the hardships that [REDACTED] would face in Egypt as a result of economic, cultural, or political conditions. No evidence shows that they will be unable to find any work to support themselves in Egypt. Simply going on record without supporting documentary evidence is not sufficient for the purpose of meeting the burden of proof in these proceedings. *Matter of Soffici* at 165.

Having fully weighed the factors mentioned above, both individually and in the aggregate, it is concluded that the factors do not, in this case, constitute extreme hardship to a qualifying family member for purposes of relief under 212(a)(9)(B)(v) of the Act, 8 U.S.C. § 1182(a)(9)(B)(v).

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 an application for waiver of grounds of inadmissibility under section 212(a)(9)(B)(v) 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. In this case, the applicant has met his burden that he merits approval of his application.

ORDER: The appeal is denied.