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Office: ATHENS, GREECE

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IN RE:



APPLICATIONS:

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), and Section 212(i) of the Immigration and Nationality Act, 8 U.S.C. § 1182(i)

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.

Robert P. Wiemann, Chief
Administrative Appeals Office

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

The record reflects that the applicant is a native and citizen of Yemen 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, and section 212(a)(6)(C)(i) of the Act, 8 U.S.C. § 1182(a)(6)(C)(i), for purchasing a fraudulent Pennsylvania identification card and a lawful permanent resident card (Form I-551), in order to obtain an immigration benefit. The record reflects that the applicant is the spouse of a naturalized United States citizen and that he is the beneficiary of an approved Petition for Alien Relative (Form I-130). The applicant 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), and section 212(i) of the Act, 8 U.S.C. § 1182(i), in order to reside in the United States with his wife and two United States citizen children.

The OIC found that the applicant failed to establish that extreme hardship would be imposed on the applicant's spouse and denied the Application for Waiver of Grounds of Excludability (Form I-601) accordingly. *Decision of the Officer-In-Charge*, dated June 22, 2006.

On appeal, the applicant, through counsel, asserts that his wife will suffer extreme hardship if he is denied admission into the United States. *Brief attached to Form I-290B*, filed July 25, 2006. The applicant's wife is in the United States with her two children and the eldest son has been diagnosed with Febrile Seizure Epilepticus. *Letter from [REDACTED]* filed October 2, 2006. Counsel states the applicant's wife is "undergoing tremendous anguish and hardship with her older son's medical condition and the pressure of being a mother of two without the assistance of her husband." *Letter from [REDACTED]* filed February 21, 2007.

The record includes, but is not limited to, a brief and letters from counsel, affidavit from the applicant, affidavits from the applicant's wife, father-in-law, sister-in-law, and brother-in-law, and a letter from [REDACTED] MD, PhD and [REDACTED], RN, MSN, regarding the applicant's son's medical condition, dated September 12, 2006. The entire record was reviewed and considered in arriving at 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-

(I) was unlawfully present in the United States for a period of more than 180 days but less than 1 year, voluntarily departed the United States (whether or not

pursuant to section 244(e)) prior to the commencement of proceedings under section 235(b)(1) or section 240, and again seeks admission within 3 years of the date of such alien's departure or removal, or

(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.

Section 212(a)(6)(C)(i) of the Act provides, in pertinent part, that:

(i) In general.-Any alien who, by fraud or willfully misrepresenting a material fact, seeks to procure (or has sought to procure or has procured) a visa, other documentation, or admission into the United States or other benefit provided under this Act is inadmissible.

...

(iii) Waiver authorized.-For provision authorizing waiver of clause (i), see subsection (i).

Section 212(i) of the Act provides, in pertinent part, that:

(i) (1) The Attorney General [now the Secretary of Homeland Security, "Secretary"] may, in the discretion of the Attorney General [Secretary], waive the application of clause (i) of subsection (a)(6)(C) in the case of an immigrant who is the spouse, 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 the United States of such immigrant alien would result in extreme hardship to the citizen or lawfully resident spouse or parent of such an alien...

The AAO notes that the record contains several references to the hardship that the applicant's United States citizen children would suffer if the applicant were denied admission into the United States. Sections 212(a)(9)(B)(v) and 221(i) of the Act provide that a waiver, under sections 212(a)(9)(B)(i)(II) and

212(a)(6)(C)(i) of the Act, are applicable solely where the applicant establishes extreme hardship to his citizen or lawfully resident spouse or parent. Congress specifically does not mention extreme hardship to United States citizen or lawful permanent resident children. In the present case, the applicant's spouse is the only qualifying relative, and hardship to the applicant's children will not be considered, except as it may cause hardship to the applicant's spouse.

In the present application, the record indicates that the applicant entered the United States on August 27, 1998, at New York, New York, on a B2 nonimmigrant visa, with authorization to remain in the United States until February 26, 1999. On September 5, 2002, the applicant married Ms. [REDACTED], a naturalized United States citizen. On July 17, 2003, an immigration judge granted the applicant voluntary departure. On July 26, 2003, the applicant departed the United States. On May 8, 2004, the applicant filed a Form I-130, which was approved on December 13, 2004. On December 15, 2004, the applicant filed a Form I-601. On June 22, 2006, the OIC denied the applicant's Form I-601, finding that the applicant purchased a fraudulent Pennsylvania identification card and Form I-551 in order to gain an immigration benefit, he accrued more than 365 days of unlawful presence, and he failed to establish extreme hardship would be imposed on his spouse. The OIC stated the applicant accrued unlawful presence from February 1999 until July 2003. The applicant is attempting to seek admission into the United States within 10 years of his July 26, 2003 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.

The AAO notes that for the applicant to be inadmissible under section 212(a)(6)(C)(i) of the Act, the applicant must have procured or sought to procure a benefit under the Act. The OIC stated in her decision that the purchase of the Pennsylvania identification card and lawful permanent resident card "appear to be an effort to gain benefits under the Act." *Decision of the Officer-In-Charge, supra*. The record does not contain any evidence that the applicant used the fraudulent documents to procure a benefit; therefore, the AAO finds that the applicant is not inadmissible under section 212(a)(6)(C)(i) of the Act. However, the AAO finds the applicant is clearly inadmissible to the United States pursuant section 212(a)(9)(B)(II) of the Act, for his periods of unauthorized presence.

A waiver under section 212(a)(9)(B)(v) of the Act is dependent first upon a showing that the bar imposes an extreme hardship to the citizen or lawfully resident spouse or parent of the applicant. Hardship the alien himself experiences upon removal is irrelevant to section 212(a)(9)(B)(v) waiver proceedings; the only relevant hardship in the present case is hardship suffered by 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).

In *Matter of Cervantes-Gonzalez*, 22 I&N Dec. 560, 565-66 (BIA 1999), the Board of Immigration Appeals (BIA) provided a list of factors it deemed relevant in determining whether an alien has established extreme hardship to a qualifying relative. 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.

Counsel asserts that the applicant's wife would face extreme hardship if she relocated to Yemen in order to remain with the applicant. The applicant's oldest son suffers from a medical condition that is being treated and monitored by specialists in the United States. The applicant's son was diagnosed with "recurrent and prolonged febrile seizures [and]...He is currently participating in a NIH study of 'Consequences of Prolonged Febrile Seizures in Childhood'." *Letter from [REDACTED] MD, PhD and [REDACTED] RN, MSN, Comprehensive Epilepsy Management Center*, dated September 12, 2006. Dr. [REDACTED] states the applicant's son "will need close follow-up for any subsequent or recurrent episodes of status epilepticus. He is being followed as a subject in the study with frequent telephone calls and MD visits. He will receive detailed testing including MRI, EEG and neuropsychological testing. This testing would not be available to him in Yemen." *Id.* Additionally, the applicant's wife helps care for her sick father. The applicant's wife claims that she "cannot stay [in the United States] without her husband because [she] will not have a place to live or means to support [herself]." *Affidavit from [REDACTED]* dated July 18, 2006. The AAO notes that the applicant's wife's father, sister, and brother reside in the New York area and she has not established that she could not reside with them. The applicant's wife states she has "never worked in Yemen or in the United States, [and she] does not want to work because [she wants] to take care of [her] children and [she expects her] husband to financially support [them]." *Id.* The AAO notes that the applicant's wife has no work experience; however, she has not established that she is incapable of securing employment in the United States. The applicant's wife states the applicant has not secured employment in Yemen, but if he was in the United States, he could find employment, "and it will not matter what he does because he will be making more money than he would in Yemen." *Id.*

The record establishes that the applicant's spouse would suffer extreme hardship if she joins the applicant in Yemen, being separated from her family and medical treatment for her son's medical condition. However, the applicant did not establish that his wife would suffer extreme hardship if she stays in the United States without the applicant. The applicant's wife has been living without the applicant since returning to the United States in July 2006, and it has not been established that she cannot get along without him. The record does not contain any evidence that the applicant ever contributed financially to his wife; therefore, it does not appear that the applicant's spouse has experienced financial hardship as a result of the separation from the applicant. Additionally, the record fails to demonstrate that the applicant will be unable to contribute to his wife's financial wellbeing from a location outside of the United States. Moreover, the United States Supreme Court has held that the mere showing of economic detriment to qualifying family members is insufficient to warrant a finding of extreme hardship. *INS v. Jong Ha Wang*, 450 U.S. 139 (1981). The AAO, therefore, finds the applicant has failed to establish extreme hardship to his wife if she remains in the United States.

In limiting the availability of the waiver to cases of "extreme hardship," Congress provided that a waiver is not available in every case where a qualifying family relationship exists. The AAO recognizes that the applicant's wife will endure, and has endured, hardship as a result of separation from the applicant; however, he has not demonstrated extreme hardship if she remains in the United States.

A review of the documentation in the record fails to establish the existence of extreme hardship to the applicant's wife 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.