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U.S. Citizenship  
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FILE:



Office: ATHENS, GREECE Date:

MAY 22 2007

IN RE:

Applicant:



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.

Robert P. Wiemann, Chief  
Administrative Appeals Office

**DISCUSSION:** The waiver application was denied by the Officer-in-Charge (Acting OIC), Athens, Greece, and is now before the Administrative Appeals Office (AAO) on appeal. 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) 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 180 days, but less than one year; and to section 212(a)(9)(A)(ii), for prior removal from the United States.

[REDACTED] a U.S. citizen, is the wife of the applicant. 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). The OIC found the applicant failed to establish that he merits granting a waiver of inadmissibility, and denied the application accordingly. On appeal, counsel asserts that the applicant has established that his wife would endure extreme hardship if his application for waiver of inadmissibility is denied.

The AAO will first address the director's finding of inadmissibility 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 180 days, but less than one year.

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 a period of more than 180 days but less than 1 year, voluntarily departed the United States . . .
  - (III) 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.

...

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).<sup>1</sup> For purposes of section 212(a)(9)(B) of the Act, time in unlawful presence begins to accrue on April 1, 1997.<sup>2</sup> 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). With regard to an adjustment applicant who had 180 days of unauthorized stay in the United States before filing an adjustment of status application, his or her return on an advance parole will trigger the three- and ten-year bar. Memo, Virtue, Acting Exec. Comm., INS, HQ IRT 50/5.12, 96 Act. 068 (Nov. 26, 1997).

The OIC was correct in finding that the applicant was unlawfully present in the United States. However, the AAO disagrees with the OIC's finding that the applicant had been unlawfully present in the United States for more than 180 days, but less than one year. The record reflects that the applicant had been unlawfully present in the United States for more than one year. He was admitted to the United States on or about July 19, 1999 as a nonimmigrant B-2 visitor with authorization to remain in the country until December 31, 1999. *Notice to Appeal, dated December 3, 2002*. The applicant remained in the country without authorization and a Warrant of Removal/Deportation was issued on January 3, 2003; his removal occurred on February 12, 2003. *Form I-205*. Based on the record, the applicant is 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, and is barred for admission for 10 years.

The OIC found that the applicant did not merit a waiver of inadmissibility.<sup>3</sup> She stated that the standard and factors used to determine "extreme hardship" is found in cases such as *Matter of Ige*, 20 I&N Dec. 880 (BIA 1994) and *Matter of Anderson*, 16 I&N Dec. 596 (BIA). The OIC further stated that *Garcia-Lopez v. INS*, 923 F.2d 72 (7<sup>th</sup> Cir. 1991) indicates that less weight is given to equities acquired after a deportation has been entered; and that 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 (5<sup>th</sup> Cir. 1992), *cert. denied*, 507 U.S. 971 (1993). She stated that in *Carnalla-Munoz v. INS*, 627 F. 2d 1004 (9<sup>th</sup> Cir. 1980), the court held that an after-acquired equity (referred to as "after-acquired family ties") need not be accorded great weight. The OIC stated that [REDACTED] has been living in Egypt for more than one year with her husband and child and that [REDACTED] indicates that she has not been able to find employment and attend college in Egypt; that Egypt lacks good medical facilities; that her family ties are in the United States; and that she has a medical condition. The OIC stated that these consequences are a result of [REDACTED] living with her husband

<sup>1</sup> 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).

<sup>2</sup> DOS Cable, *supra*.; and IIRIRA Wire #26, HQIRT 50/5.12.

<sup>3</sup> The OIC also denied the applicant's Form I-212 application, a discretionary application in which the applicant's equities are balanced.

outside of the United States, and that [REDACTED] has the right and ability to return to the United States with her child. The OIC stated that the applicant's marriage to [REDACTED] took place after he was placed in deportation proceedings, so his wife had notice of her husband's immigration problems.

On appeal, counsel states the following. [REDACTED] met M [REDACTED] while separated from his first wife, and the couple awaited his official divorce so they could wed, which occurred on Marcy 12, 2003. The OIC confused the dates regarding when [REDACTED] was placed in proceedings and was ordered removed. The OIC failed to consider that [REDACTED] has a U.S. citizen child, that she does not speak Arabic, that the rest of her family is in the United States, and that she is concerned about medical care in Egypt. The cases of *Barrera-Leyva v. INS*, 637 F. 2d 640 (9<sup>th</sup> Cir. 1980); *Ramos v. INS*, 695 F. 2d 181 (5<sup>th</sup> Cir. 1983); *Luciano-Vicente v. INS*, 786 F. 2d 706; *Matter of Da Silva*, 17 I&N Dec. 288 (Comm. 1979); and *Matter of Nagi*, 19 I&N Dec. 245 (Comm. 1984) provide the framework in which to determine whether there is "extreme hardship." The OIC denied the waiver application based on the conclusion that the discretionary factors relating to [REDACTED] hardships did not outweigh the seriousness of the applicant's lack of respect for the law. Very few cases have the extreme hardship that this case has. The medical condition of Ms. [REDACTED] is well-documented and the couple and their child have tried living in Egypt for three years. The OIC's conclusion that the applicant can return to the United States is insensitive. The importance of family unification needs to be considered and how separation from her husband would impact [REDACTED] and her child emotionally and physically. *Matter of Lopez-Monzon*, 17 I&N Dec. 280 (Comm. 1979) indicates that one of the central purposes of the waiver is the unification of families.

The AAO will now address the OIC's conclusion that a waiver of inadmissibility is not warranted in the present case.

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 the applicant. Hardship to the applicant and his or her child is not a permissible consideration under the statute and will be considered only insofar as it results in hardship to a qualifying relative. The applicant's wife 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. *See 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). The Board of Immigration Appeals (BIA) in *Matter of Cervantes-Gonzalez* lists the factors 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).

The AAO will now apply the *Cervantes-Gonzalez* factors here in its consideration of hardship to the applicant’s wife. Extreme hardship to the applicant’s wife must be established in the event that she joins the applicant, which she has done in the present case; 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.

The record contains the hardship statement of [REDACTED] in which she states the following. If the waiver application is not granted, her four-month-old son would not be able to see his relatives, receive good medical care, have a good education, and be treated well. If permitted to immigrate, they will live near her parents to help them. She plans on returning to school and going to work. She has been living in Egypt for over a year and has had a difficult time because foreigners, especially Americans, are treated differently. She has no friends, except for her husband. Her husband’s family visits them when they are in Egypt. She does not understand Arabic. She does not feel safe without her husband and worries about her American son. She has been unable to find employment because she does not have a college degree. She has been unable to complete her education in Egypt. Her husband cannot find employment in Egypt. Her husband’s father has been supporting them and other family members; however, he is 63 years old and will retire soon. The hospitals in Egypt are awful; her first baby died because of this. She worries about herself and her son in Egypt. She is an only child and it is difficult being separated from her parents. Her father’s health is not good: he has clogged arteries in his legs and takes medication for it and his leg will be amputated if the medication does not work. Her father had to find a new job because of his health. Her uncle has lung cancer and is undergoing chemotherapy. Her mother, who lives with and cares for her grandparents, may have a tumor in her ear. She would like to visit her family, but cannot afford the airfare and does not want to leave her husband and son.

The record contains the hardship statement of [REDACTED], which is similar to that of his wife.

The record contains two letters from [REDACTED], [REDACTED]’s father. In the August 4, 2004 letter, he states that he has problems with his legs and has changed his job for health reasons. He describes the health problems of family members. In the February 11, 2004 letter, [REDACTED] states that he has a rental house he is willing to have his daughter and her husband move into.

The record contains [REDACTED]’s medical records and an undated letter, which was received by the American Embassy in Athens, Greece, on February 2, 2005, describing her visits to medical doctors concerning swollen joints.

The AAO finds that the evidence in the record is insufficient to establish that [REDACTED] would endure extreme hardship if she continued to live with her husband in Egypt. Although [REDACTED] has indicated that her husband has been unable to find employment in Egypt, the record reflects that he has been employed as a merchant with Dyetex – New Burg El-Arab, in Alexandria, Egypt, since September 2003. *Form G-325A*. There is no information in the record, such as [REDACTED] income and the family’s household expenses, to

establish that he is unable to financially support his family in Egypt. There is no evidence in the record supporting the assertion that [REDACTED] is unable to find employment in Egypt and complete her studies. 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)).

Furthermore, U.S. courts have universally held that difficulty in finding employment is not sufficient in itself to support a finding of economic hardship. *See, e.g. INS v. Jong Ha Wang*, 450 U.S. 139, 144 (1981) (upholding BIA finding that economic loss alone does not establish extreme hardship); *Santana-Figueroa v. INS*, 644 F.2d 1354, 1356 (9th Cir. 1981) (Difficulty in finding employment or inability to find employment in one's trade or profession is mere detriment, relevant to a claim of hardship but not sufficient to require relief; and *Marquez-Medina v. INS*, 765 F.2d 673, 677 (7th Cir. 1985) (Economic hardship claims of not finding employment in Mexico do not reach the level of extreme hardship).

Significant conditions of health, particularly when tied to an unavailability of suitable medical care in the country to which the qualifying relative would relocate, are a hardship consideration. [REDACTED] assertion that the medical care in Egypt is inferior to that of the United States is not persuasive in establishing extreme hardship. The BIA had held that "second class" medical facilities in foreign countries are not per se extreme hardship. *Matter of Correa*, 19 I&N Dec. 130 (BIA 1984). In *Marquez-Medina v. INS*, *supra*, the court held that economic hardship claims of not having proper medical care benefits do not reach the level of extreme hardship. The medical documents in the record reveal that [REDACTED] has had health problems while living in Egypt. However, the submitted evidence does not convey that she or her child has a significant health condition and suitable medical is unavailable in Egypt.

Although hardship to the applicant's child is not a consideration under section 212(a)(9)(B)(v) of the Act, the hardship endured by the applicant's wife, as a result of her concern about the well-being of her son, is a relevant consideration. [REDACTED] is concerned that her son will not be able to see his relatives in the United States, receive a good education in Egypt, and be treated well in Egypt. In *Ramirez-Durazo v. INS*, 794 F.2d 491, 498 (9th Cir. 1986), the Ninth Circuit stated that "[t]he disadvantage of reduced educational opportunities for the children was also considered by the BIA and found insufficient to establish "extreme hardship." It also stated that "[a]lthough the citizen child may share the inconvenience of readjustment and reduced educational opportunities in Mexico, this does not constitute "extreme hardship."

[REDACTED] family ties are in the United States. [REDACTED] states that his health is failing and his brother has lung cancer. He indicates that his only child, his daughter, will take care of him if she lives in the United States. The record, however, lacks evidence of [REDACTED] medical condition. 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*, *supra*.

The record is insufficient to establish that [REDACTED] would endure extreme hardship if she remained in the United States without her husband.

U. S. courts have stated that "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).

However, the fact that the applicant has an American-born child is not sufficient in itself to establish extreme hardship. The general proposition is that the mere birth of a deportee’s child who is a U.S. citizen is not sufficient to prove extreme hardship. The BIA has held that birth of a U.S. citizen child is not per se extreme hardship. *Matter of Correa*, supra. In *Marquez-Medina v. INS*, 765 F.2d 673 (7th Cir. 1985), the Seventh Circuit has stated that an illegal alien cannot gain a favored status merely by the birth of a citizen child. The Ninth Circuit has found that an alien illegally present in the United States cannot gain a favored status merely by the birth of his citizen child. *Lee v. INS*, 550 F.2d 554 (9<sup>th</sup> Cir. 1977). In a per curiam decision, *Banks v. INS*, 594 F.2d 760 (9th Cir. 1979), the Ninth Circuit found that an alien, illegally within this country, cannot gain a favored status on the coattails of his (or her) child who happens to have been born in this country.

There is no evidence suggesting that [REDACTED] would endure financial hardship if her husband’s waiver application is not granted and she lived in the United States. 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*, supra.

If [REDACTED] were to live in the United States, the AAO is mindful of and sympathetic to the emotional hardship that she will endure as a result of separation from her husband. However, the AAO finds that the emotional hardship should be weighed against the fact that prior to her marriage to the applicant on March 30, 2003 in Egypt she was aware that he had been deported from the United States. *Matter of Cervantes*, supra at 567, indicates that it is relevant to consider whether the applicant’s spouse married the applicant after removal proceedings began. The court stated that:

[T]he respondent's wife knew that the respondent was in deportation proceedings at the time they were married. In contrast to the respondent's assertions on appeal, this factor is not irrelevant. Rather, it goes to the respondent's wife's expectations at the time they were wed. Indeed, she was aware that she may have to face the decision of parting from her husband or following him to Mexico in the event he was ordered deported. In the latter scenario, the respondent's wife was also aware that a move to Mexico would separate her from her family in California. We find this to undermine the respondent's argument that his wife will suffer extreme hardship if he is deported.

(citations omitted).

Here, [REDACTED] was aware at the time she wed that the applicant had been deported from the United States and that she might be faced with the decision of parting from him or following him to Egypt in the event that he was not allowed entry into the country. In the latter scenario, [REDACTED] was also aware that a move to Egypt would separate her from her mother, father, and other family in the United States. Ms. [REDACTED] has a difficult choice to make. However, it is choice that confronted her well before her marriage to the applicant and the birth of their child. The AAO therefore agrees with the OIC that in marrying the applicant with this awareness, the emotional hardship claims of [REDACTED] are greatly diminished.

Furthermore, the AAO finds that [REDACTED]’s situation, if she decided to live 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 based on the record. In *Hassan v. INS*, 927 F.2d 465, 468 (9<sup>th</sup> Cir. 1991), the Ninth Circuit 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). 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 conveys that the emotional hardship to be endured by Ms. [REDACTED] upon separation from her husband if she remains in the United States, is a heavy burden; but it is not unusual or beyond that which is normally to be expected upon deportation.

In considering the hardship factors raised here, the AAO examines each of the factors, both individually and cumulatively, to determine whether extreme hardship has been established. It considers whether the cumulative effect of claims of economic and emotional hardship would be extreme, even if, when considered separately, none of them would be. It considers the entire range of factors concerning hardship in their totality and then determines whether the combination of hardships takes the case beyond those hardships ordinarily associated with deportation.

In the final analysis, the AAO finds that the requirement of significant hardships over and above the normal economic and social disruptions involved in deportation has not been met so as to warrant a finding of extreme hardship. Having carefully considered each of the hardship factors raised, both individually and in the aggregate, it is concluded that these 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 she merits a waiver as a matter of discretion. In addition, as the applicant remains inadmissible to the United States, no purpose would be served in granting permission to reapply for admission. The OIC's decision to deny the Form I-212 is affirmed.

In proceedings for application for waiver of grounds of inadmissibility under section 212(a)(6)(C) of the Act, the burden of proving eligibility remains entirely with the applicant. See Section 291 of the Act, 8 U.S.C. § 1361. The applicant has not met that burden. Accordingly, the appeal will be dismissed.

**ORDER:** The appeal is dismissed.