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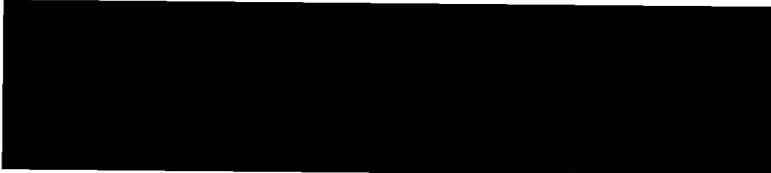


FILE: [REDACTED] Office: ATHENS, GREECE Date: JUN 03 2008

IN RE: [REDACTED]

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 PETITIONER:



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, 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 Iraq who was found to be inadmissible to the United States under section 212(a)(9)(B)(i)(II) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(9)(i)(II), for having been unlawfully present in the United States for one year or more. The applicant is married to a U.S. citizen and is the beneficiary of an approved Petition for Alien Relative. The applicant initially entered the United States with a K-1 fiancé(e) visa on June 5, 1999 and was required to depart the United States by September 5, 1999 if he had not married the U.S. Citizen petitioner. The applicant did not marry the petitioner and remained in the United States until February 18, 2004, when he departed under an order of voluntary departure and traveled to Jordan to apply for an immigrant visa. 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), in order to return to the United States and reside with his spouse.

The 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 Officer-in-Charge*, dated May 5, 2006.

On appeal, counsel asserts that the applicant's wife is suffering extreme emotional and financial hardship due to being separated from the applicant. Counsel further contends that the applicant's wife would suffer physical, emotional, and economic hardship if she were to relocate to Iraq or Jordan with the applicant. Specifically, counsel states that the applicant's wife is suffering from depression due to her separation from the applicant and she is unable to survive on her income alone. Counsel further claims that the applicant's wife would suffer extreme hardship in Jordan, where the applicant is currently residing but where he has no permanent legal status, and in Iraq, the applicant's country of citizenship. In addition to documentation submitted with the waiver application, counsel submitted with the appeal documentation concerning the applicant's wife's current psychological and physical condition and her financial situation to support the assertion that denial of the waiver would cause her to suffer extreme hardship. Counsel also submitted information documenting conditions in Iraq and Jordan.

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.

In *Matter of Cervantes-Gonzalez*, 22 I&N Dec. 560 (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. These factors included 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.

U.S. court decisions have additionally 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, in *Matter of Pilch*, 21 I&N Dec. 627 (BIA 1996), the BIA 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, in *Perez v. INS*, 96 F.3d 390 (9th Cir. 1996), the court 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. Moreover, the U.S. Supreme Court additionally 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.

In the present case, the record reflects that the applicant is a forty-year-old native and citizen of Iraq who resided in the United States from June 5, 1999, when he entered with a K-1 fiancé(e) visa, until February 2004, when he departed under an order of voluntary departure. The applicant resides in Jordan, but appears to have no permanent legal status in that country. See *copy of applicant's passport, Exhibit 13*. The applicant's wife, a U.S. Citizen by birth, is thirty-three years old and resides in Royal Oak, Michigan. She and the applicant were married on October 15, 1999 and she submitted a Petition for Alien relative on his behalf in 2000. The petition was approved, but the applicant was ineligible to apply for adjustment of status pursuant to section 245(c) of the Act, 8 U.S.C. § 1255(c), because he did not marry the U.S. Citizen who submitted the fiancé(e) petition for him. The applicant was issued an order of voluntary departure by the Immigration and Naturalization Service (INS, now CIS), and when he did not depart as ordered, was served with a Notice to Appear. The immigration judge then granted the applicant voluntary departure and he left the United States as ordered on February 18, 2004. The AAO notes that although counsel states that the applicant is also a citizen of Germany and the applicant claims he once held a German passport, the record indicates that the applicant was never a citizen of Germany. The document issued to the applicant by German authorities appears to be a refugee travel document and specifically lists the applicant's status in Germany as a refugee, with no authority to accept employment without separate authorization. See *Travel Document issued by the Federal Republic of Germany, Exhibit 15*. This travel document further states that the applicant was authorized to return to Germany until September 18, 2001.

Counsel asserts that the applicant's wife would suffer extreme emotional, physical, and economic hardship if she were to relocate to Iraq with the applicant. In support of this assertion, counsel submitted a U.S. State

Department Travel Warning dated December 29, 2005 and the 2005 Country Report on Human Rights Conditions for Iraq. *See Exhibits 30 and 31.* The travel warning states,

The Department of State continues to strongly warn U.S. citizens against travel to Iraq, which remains very dangerous. Remnants of the former Ba'ath regime, transnational terrorists, criminal elements and numerous insurgent groups remain active. . . . All vehicular travel in Iraq is extremely dangerous. There have been numerous attacks on civilian vehicles, as well as military convoys.

The country report further states,

During the year unsettled conditions prevented effective governance in parts of the country, and the government's human rights performance was handicapped by insurgency and terrorism that impacted every aspect of life. . . . Throughout the year, the prime minister renewed the "state of emergency" originally declared in November 2004 throughout the country, excluding Kurdistan. The state of emergency was based on the dangers posed by the ongoing campaign of violence aimed at preventing the establishment of a broad-based government and the peaceful participation of all citizens in the political process.

Evidence on the record further indicates that the applicant and his wife, whose parents were born in Iraq, are Chaldean Christians. *See letter from [REDACTED] Our Lady of Chaldeans Cathedral, Exhibit 23.* According to the country report,

Extremists, including terrorist groups and militia members, targeted many individuals because of their religious orientation, and very conservative elements of society targeted others because of their secular leanings. . . . Women and girls reportedly often were threatened for not wearing the traditional headscarf (*hijab*), assaulted with acid for noncompliance, and sometimes killed for refusing to cover their heads or for wearing western-style clothing. Some women were reportedly denied employment and educational opportunities because they were non-Muslim or did not present themselves as sufficiently conservative.

Due to the ongoing insurgency and presence of various terrorist and extremist groups, conditions in Iraq continue to be dangerous, and the applicant's wife, as a U.S. Citizen and Chaldean Christian woman, would be in particular danger if she were to reside in Iraq. These conditions, combined with her lack of family ties in Iraq, would amount to extreme hardship to the applicant's wife if she were to relocate to Iraq with the applicant.

Counsel states that the applicant has no permanent status in Jordan, where he currently resides, and the applicant's wife, although able to visit the country, would also be unable to obtain permanent status there. *Brief* at 16. A stamp in the applicant's passport indicates that the applicant had permission to enter Jordan temporarily in 1995 for three months, but his current status in Jordan is not clear. *See Exhibit 13.* Since there is no evidence to indicate that the applicant has permanent status in Jordan or that his wife would be able to obtain any lawful status there, the applicant is not required to establish that his wife would suffer extreme hardship if she were to relocate to Jordan to qualify for the waiver.

Counsel further asserts that the applicant's wife would suffer severe emotional and financial hardship if she remains in the United States without the applicant. In support of this assertion, counsel submitted a report from a psychologist who evaluated the applicant's wife in May 2006. The report states that the applicant's wife suffers from Major Depressive Disorder, Single Episode, Severe without Psychotic Features. *See Report from [REDACTED] Exhibit 18.* The report further indicates that her "clinical symptoms of depression are a direct result of the circumstances surrounding her husband's departure." These symptoms include sleep disturbances, social isolation, inability to concentrate, fatigue, and sadness. [REDACTED] states further that if the applicant is unable to reside with his wife in the United States, her symptoms "will surely become heightened, to the degree that she will sink even further into her depression." *Id.* The input of any mental health professional is respected and valuable in assessing a claim of emotional hardship. However, the AAO notes that although the submitted letter is based on a psychological evaluation of the applicant's wife, the record fails to reflect an ongoing relationship between a mental health professional and the applicant's wife or any history of treatment for her depression. The conclusions reached in the submitted evaluation, being based on one interview, do not reflect the insight and elaboration commensurate with an established relationship with a psychologist, thereby rendering the psychologist's findings speculative and diminishing the evaluation's value to a determination of extreme hardship. Further, there is no evidence that [REDACTED] or any other mental health professional provided any follow-up treatment, despite the diagnosis of major depression.

Counsel additionally asserts that the applicant's wife would suffer economic hardship if the applicant were deported. The applicant's wife states in her affidavit,

Financially, I am struggling to pay my living expenses and my husband's living expenses in Jordan. When my husband was employed in the United States our financial situation was comfortable. But since he is in Jordan and he cannot work in Jordan, I am assisting him and this has become a financial burden. I am constantly borrowing money from relatives because I cannot keep up.

As evidence counsel submitted affidavits from two relatives who state that the applicant's wife has borrowed a total of \$5500 because of the financial hardship she is experiencing. *See Affidavits from [REDACTED] (signed [REDACTED]) and [REDACTED] Exhibits 21 and 22.* No further evidence was submitted to document the applicant's wife's income and expenses, the amount of money she has sent to the applicant in Jordan, or the applicant's income when he resided in the United States from 1999 to 2004. Going on record without supporting documentary evidence is not sufficient for purposes 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 applicant's wife stated in a letter dated February 12, 2004 that she earned about \$8.50 per hour working as a cashier, but no income tax returns or other documentary evidence of her current income was submitted. No evidence was submitted documenting the amount of money the applicant's wife has sent to support him in Jordan, or addressing whether the applicant has any other relatives willing and capable of providing him with financial support while he resides in Jordan. The AAO notes, however, that an affidavit of support submitted for the applicant by [REDACTED] as a joint sponsor in 1999 indicates that he earned \$61,000 in 1997 and had a net worth of \$3,078,808, with assets including retail businesses and residential and commercial real estate. *See Form I-134 submitted by [REDACTED], dated October 1, 1998.* It therefore appears that the applicant has relatives who would be willing and able to assist the applicant's wife in providing the applicant with financial support while residing

in Jordan. Further, even if it were established that the applicant's income in the United States created a comfortable financial situation as the applicant's wife indicated, the loss of his income and the resulting economic detriment would be a common result of deportation. The mere showing of economic detriment to qualifying family members is insufficient to warrant a finding of extreme hardship. *See INS v. Jong Ha Wang, supra.*

It appears from the record that any emotional or financial hardship to the applicant's wife if she remains in the United States would be the type of hardship that family members would normally suffer as a result of removal or exclusion. U.S. court decisions have repeatedly held that the common results of deportation or exclusion are insufficient to prove extreme hardship. *See Perez v. INS*, 96 F.3d 390 (9th Cir. 1996) (defining "extreme hardship" as hardship that was unusual or beyond that which would normally be expected upon deportation); *Hassan v. INS*, 927 F.2d 465, 468 (9th Cir. 1991); *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).

A review of the documentation in the record, when considered in its totality, reflects that the applicant has failed to show that his U.S. Citizen spouse would suffer extreme hardship if she remains in the United States without him. Having found the applicant statutorily ineligible for relief, no purpose would be served in discussing whether the applicant merits a waiver as a matter of discretion.

In proceedings for application for waiver of grounds of inadmissibility under section 212(a)(9)(B)(v) of the Act, the burden of proving eligibility remains entirely with the applicant. 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.