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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
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U.S. Citizenship
and Immigration
Services

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FILE:



Office: ATHENS, GREECE

Date: APR 14 2009

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.

If you believe the law was inappropriately applied or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. Please refer to 8 C.F.R. § 103.5 for the specific requirements. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$585. Any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen, as required by 8 C.F.R. § 103.5(a)(1)(i).

John F. Grissom
Acting Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Officer in Charge (OIC), Athens, Greece, and 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 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 her last departure from the United States. The record indicates that the applicant is married to a naturalized United States citizen and she 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), in order to reside in the United States with her United States citizen husband and 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 December 11, 2007.

On appeal, the applicant, through counsel, contends that the OIC erred when she denied the applicant's waiver application. *Form I-290B*, filed January 15, 2007. Additionally, counsel asserts that the OIC failed "to adequately review the numerous materials submitted...namely, that [the applicant's husband's] many medical conditions prevented him from traveling, and further, that he heavily relied on [the applicant's] care and support." *Id.*

The record includes, but is not limited to, counsel's brief; medical documents regarding the applicant's medical conditions; and the applicant's marriage certificates from Michigan and Lebanon. 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-
 -
 - (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 [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 the present application, the record indicates that the applicant entered the United States on April 24, 2001 on a K-1 fiancée visa. The applicant failed to marry the petitioner of the K-1 visa, and instead married her current husband on May 15, 2004 in Michigan.¹ On October 27, 2004, the applicant's naturalized United States citizen husband filed a Form I-130 on behalf of the applicant. On January 21, 2005, the applicant's Form I-130 was approved. In June 2007, the applicant departed the United States. On or about March 6, 2007, the applicant filed a Form I-601. On December 11, 2007, the OIC denied the Form I-601, finding the applicant accrued more than a year of unlawful presence and she failed to demonstrate extreme hardship to her United States citizen spouse.

The applicant accrued unlawful presence from June 2001, the date the applicant's visa expired, until January 2007, the date the applicant departed the United States. The applicant is attempting to seek admission into the United States within 10 years of her January 2007 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.

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 citizen or lawfully resident spouse or parent of the applicant. Hardship the applicant herself experiences upon removal is irrelevant to a section 212(a)(9)(B)(v) waiver proceeding. 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 (Board) 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 claims that the applicant's husband has been suffering extreme hardship since the applicant departed the United States. *See appeal brief*, dated March 6, 2008. Counsel states the applicant's husband "has been in a perpetual state of mental, emotional, and physical distress since the [the applicant] left." *Letter from counsel*, dated March 13, 2007. The AAO notes that other than counsel's

¹ The AAO notes that the applicant submitted a Lebanese marriage certificate which states the applicant married her current husband on June 5, 2001. Additionally, in counsel's letter dated March 13, 2007, counsel states the applicant has been married to her husband for over six years.

statement regarding the applicant's husband's psychological state, there are no professional psychological evaluations for the AAO to review to determine if the applicant's husband is suffering from any depression or anxiety, or whether any depression and anxiety is beyond that experienced by others in the same situation. Counsel states that the applicant's husband is "suffering from numerous medical complications, including, but not limited to the following: Suffers from seizures; has a left arm and knee damage; blind in the left eye and deaf in the left ear; has tremendous problems sleeping." *Appeal brief, supra* at 2. Counsel claims the applicant's husband's medical conditions "require attention by the [a]pplicant." *Id.* However, the AAO notes that the applicant's husband's mother has been caring for him. *See id.* at 3. The AAO notes that medical documentation in the record appears to indicate that the applicant's husband has been diagnosed with a seizure disorder, disability in his left arm and knee, blindness in his left eye, and deafness in his left ear; however, there was nothing from a doctor indicating any prognosis or what assistance is needed and/or given by the applicant. *See letter from [REDACTED]* dated February 29, 2008; *see also letter from [REDACTED]*, dated February 23, 2005; *see also audiologic assessment from Hearing Rehabilitation Center*, dated April 12, 2005; *see also evaluation from [REDACTED]*, dated April 26, 2004. Additionally, the AAO notes that there was no documentation submitted establishing that the applicant's husband could not receive treatment for his medical conditions in Lebanon or that he has to remain in the United States to receive her medical treatments. Counsel claims that most of the applicant's husband's family resides in the United States. *See appeal brief, supra* at 3. The AAO notes that the applicant's husband did not provide a statement or an affidavit regarding what, if any, hardship he would suffer if he joined the applicant in Lebanon. Additionally, it has not been established that the applicant's husband has no transferable skills that would aid him in obtaining a job in Lebanon. Furthermore, the AAO notes that the applicant's husband is a native of Lebanon, he spent his formative years in Lebanon, he speaks the native language, and it has not been established that he has no family ties to Lebanon. The AAO finds that the applicant failed to establish that her husband would suffer extreme hardship if he joins her in Lebanon.

In addition, counsel does not establish extreme hardship to the applicant's husband if he remains in the United States, in close proximity to his family. As a United States citizen, the applicant's husband is not required to reside outside of the United States as a result of denial of the applicant's waiver request. Counsel states if the applicant was in the United States she could provide her husband financial help. *See appeal brief, supra* at 4. The AAO notes that beyond generalized assertions regarding country conditions in Lebanon, the record fails to demonstrate that the applicant, who is trained as a nurse, cannot obtain employment in Lebanon, or that she will be unable to contribute to her husband'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).

United States 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, in *Matter of Pilch*, 21 I&N Dec. 627 (BIA 1996), the Board 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. In *Hassan, supra*, the Ninth Circuit Court of Appeals 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.

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 she 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.