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FILE: [REDACTED] Office: FRANKFURT, GERMANY Date: **FEB 05 2009**

IN RE: [REDACTED]

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

ON BEHALF OF APPLICANT:

SELF-REPRESENTED

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, Frankfurt, Germany. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native and citizen of Israel 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 ten years of her last departure from the United States. The applicant is married to a naturalized United States citizen. She seeks a waiver of inadmissibility in order to reside in the United States with her spouse and their four United States citizen children.

The Officer in Charge found that, based on the evidence in the record, the applicant had failed to establish extreme hardship to her qualifying relative. The application was denied accordingly. *Decision of the Officer in Charge*, dated October 23, 2006.

On appeal, the applicant<sup>1</sup> asserts that she speaks very little English and did not understand what transpired at her visa interview in Tel Aviv, nor the consequences of that interview. She notes that she has a bona fide response to the alleged overstay. *Form I-290B*.

In support of these assertions the record includes, but is not limited to, a statement from the applicant's spouse; tax statements for the applicant and her spouse; W-2 Forms for the applicant's spouse; and a psychoeducational screening evaluation for the applicant's spouse. The entire record was reviewed and considered in rendering 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.

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<sup>1</sup> The AAO notes that the record reflects that the applicant may be represented. However, as no Form G-28, Notice of Entry of Appearance as Attorney or Representative has been filed, the AAO will not recognize this representation. The applicant will be considered as self-represented.

(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.

In the present case, the record indicates that the applicant was admitted to the United States in April 1996 on a B-1/B-2 visa. *Form 601, Application for Waiver of Ground of Excludability*. On January 26, 1999, her spouse filed a Form I-130, Petition for Alien Relative, which was subsequently approved on May 29, 2003. *Form I-130*. According to the interview notes taken at the applicant's interview at the United States embassy in Tel Aviv, the applicant traveled to the United States in April 1996 to join her spouse, whom she had married in Israel, for a holiday. *Interview notes, U.S. embassy, Tel Aviv, Israel*, dated April 4, 2005. She initially planned to remain in the United States for one month, but she remained in the United States until November 1999. *Id.* At no point did she apply for an extension of her stay. *Id.* The applicant, therefore, accrued unlawful presence from April 1, 1997, the date of enactment of the unlawful presence provisions under the Act, until she departed the United States in November 1999. In applying for an immigrant visa, the applicant is seeking admission within ten years of her November 1999 departure from the United States. The applicant is, therefore, inadmissible to the United States under section 212(a)(9)(B)(i)(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 a violation of 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. The plain language of the statute indicates that hardship that the applicant or her children would experience upon removal is not directly relevant to the determination as to whether she is eligible for a waiver under section 212(a)(9)(B)(v). The only relevant hardship in the present case is hardship suffered by the applicant's spouse if the applicant is found to be inadmissible. If 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).

*Matter of Cervantes-Gonzalez*, 22 I&N Dec. 560 (BIA 1999) provides a list of factors the Board of Immigration Appeals deems relevant in determining whether an alien has established extreme hardship pursuant to section 212(i) of the Act. These factors include the presence of a lawful permanent resident or United States citizen family ties to 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.

The AAO notes that extreme hardship to the applicant's spouse must be established whether he resides in Israel or the United States, as he is not required to reside outside the United States based on the denial of the applicant's waiver request. The AAO will consider the relevant factors in adjudication of this case.

If the applicant's spouse travels with the applicant to Israel, the applicant needs to establish that her spouse will suffer extreme hardship. The applicant's spouse is a native of Israel and his parents continue to reside there. *Form G-325A, Biographic Information sheet, for the applicant's spouse.* The applicant's spouse states that he has lived most of his life in the United States and he is too old to begin a new life in Israel. *Statement from the applicant's spouse*, stamped May 1, 2005. He notes that he tried to live in Israel in the past, but left after a short time. *Id.* The AAO notes that the record does not include information on why the applicant's spouse left Israel after a short time or what difficulties he encountered there. The record does not include any additional information as to how the applicant's spouse would be affected if he travels with the applicant to Israel. The record makes no mention and does not document what types of job opportunities the applicant's spouse would have in Israel, nor the cost of living for a family of six in Israel. A psychoeducational screening evaluation of the applicant's spouse notes that he had great difficulty learning to write in Hebrew and was placed in special education classes from the third grade on. *Ph.D., Report of Psychoeducational Screening Evaluation*, dated March 14, 1996. The evaluation also indicates that although the applicant's spouse speaks several languages, he has been unable to learn to write in any of them. *Id.* The AAO notes that the record fails to include any information on how any learning disability from which the applicant's spouse may suffer would affect his ability to obtain employment in Israel. When looking at the aforementioned factors, the AAO does not find that the applicant has demonstrated extreme hardship to her spouse if he were to reside in Israel.

If the applicant's spouse resides in the United States, the applicant needs to establish that her spouse will suffer extreme hardship. The record does not address what family members the applicant's spouse may have in the United States. The applicant's spouse states that since his three oldest children left the United States, he has missed all of the important events in their lives. *Statement from the applicant's spouse*, stamped May 1, 2005. He has not been there to hug them when they were sad or to participate in their happiness. *Id.* The AAO notes that the applicant's children are not qualifying relatives for the purposes of this case and any hardship they may experience will only be analyzed in the context of how it impacts the applicant's spouse, the only qualifying relative in this particular case. The applicant's spouse notes that the cost of visiting Israel twice a year which includes airplane tickets, hotels, buying presents, and going on trips with the family has caused him a loss of income. *Id.* While the AAO acknowledges these assertions, it notes that record fails to include documentation, such as receipts of airline tickets and hotel bills, to support them. Going on record without supporting documentary evidence will not meet the burden of proof of this proceeding. *See 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 spouse asserts that it is very difficult to manage two houses and pay all of the bills. *Statement from the applicant's spouse*, stamped May 1, 2005. Again, the record fails to document the expenses for the applicant's spouse, such as rent or a mortgage, as well as bills. The record also does not document whether the applicant, who works as a part-time Hebrew/history teacher, contributes to the financial well-being

of her family. *Interview notes, U.S. embassy, Tel Aviv, dated April 4, 2005.* It also fails to address what additional expenses the applicant and her spouse have in supporting themselves and their four children.

The applicant's spouse states that he wants to enjoy living with his children and his wife. *Id.* While the AAO acknowledges these emotions, U.S. 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, *Matter of Pilch*, 21 I&N Dec. 627 (BIA 1996), 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. *Hassan v. INS, supra*, 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. The AAO recognizes that the applicant's spouse will endure hardship as a result of separation from the applicant. However, the record does not distinguish his situation, if he remains in the United States, from that of other individuals separated as a result of removal. Accordingly, it does not establish that the hardship experienced by the applicant's spouse would rise to the level of extreme hardship. When looking at the aforementioned factors, the AAO does not find that the applicant has demonstrated extreme hardship to her spouse if he were to reside in the United States.

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