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U.S. Department of Homeland Security
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U.S. Citizenship
and Immigration
Services

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[REDACTED]

FILE:

Office: FRANKFURT, GERMANY

Date: JAN 30 2009

IN RE:

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:

[REDACTED]

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.

A handwritten signature in black ink, appearing to read "John F. Grissom".

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 sustained.

The applicant is a native and citizen of Syria 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 his last departure from the United States. The applicant is the son of a naturalized United States citizen and married to a naturalized United States citizen. He seeks a waiver of inadmissibility in order to reside in the United States with his mother and spouse.

The Officer in Charge found that, based on the evidence in the record, the applicant had failed to establish extreme hardship to a qualifying relative. The application was denied accordingly. *Decision of the Officer in Charge*, dated October 2, 2006.

On appeal, counsel for the applicant contends that United States Citizenship and Immigration Services (USCIS) has erred as a matter of law in finding that he has failed to meet the burden of establishing extreme hardship to his qualifying relative as necessary for a waiver under 212(a)(9)(B)(v) of the Act. *Form I-290B; Attorney's brief*.

In support of these assertions, counsel submits a brief. The record also includes, but is not limited to, statements from the applicant's brother; statements from the applicant's mother; tax statements for the applicant's brother; a statement from the applicant's spouse; a statement from [REDACTED], dated January 20, 2006; a list of medications for the applicant's mother; a name change application for the applicant's mother; a statement of in-home services provided to the applicant's mother by the State of California; and a petition for name change 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.

....

(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 application, the record indicates that the applicant was admitted to the United States on April 21, 1995 with a P-2 visa. The applicant subsequently filed for asylum, but withdrew his application before the Immigration Judge. The applicant was granted voluntary departure until July 26, 1996. *Order of the Immigration Judge*, dated January 26, 1996. The applicant did not comply with the July 26, 1996 order of voluntary departure, eventually departing the United States in May 2003. *Consular notes, United States Embassy, Damascus, Syria*, dated February 13, 2006. Therefore, the applicant accrued unlawful presence from April 1, 1997, the date of enactment of the unlawful presence provisions under the Act, until May 2003, when he departed the United States. In applying for a K-3 visa as the spouse of a U.S. citizen, the applicant is seeking admission within ten years of his May 2003 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 would experience is not directly relevant to the determination as to whether the applicant 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 mother and 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 mother must be established whether she resides in Syria or the United States, as she 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 mother travels with the applicant to Syria, the applicant needs to establish that his mother will suffer extreme hardship. The applicant's mother is a native of Syria and while the record does not state how long the applicant's mother has resided in the United States, the AAO notes that the applicant's mother naturalized in 2001. *Naturalization certificate*. The record does not note what additional family members the applicant's mother may have in Syria.

The applicant's mother suffers from hypertension, peripheral occlusive vascular disease, peripheral neuropathy, chest pain/artherosclerotic heart disease/palpitations, shortness of breath, chronic osteoarthritis/low back pain/leg pain, gastroesophageal reflux disease/abdominal pain, stress incontinence/nocturia, hearing loss, and osteoporosis/bone pain/general weakness. *Statement from [REDACTED]*, dated January 20, 2006. According to the applicant's mother, she is a widow who needs assistance in taking care of herself. *Statement from the applicant's mother*, dated January 25, 2006. She has difficulty walking and uses a walker to get around. *Id.* Even with the walker, it is difficult to stand up, lie down, or move easily. *Statement from the applicant's mother*, dated October 26, 2006. She often feels dizzy and disoriented, and is worried she may fall. *Statement from the applicant's mother*, dated January 25, 2006. The applicant's mother is also 80 years old. *Form G-325A, Biographic information sheet, for the applicant*. The AAO notes that relocation would disrupt her established treatment program in the United States. When looking at the aforementioned factors, specifically the significant amount of time the applicant's mother has resided in the United States, her health conditions as documented by a licensed health professional, and the impact her health conditions have on her ability to function as well as travel, the AAO finds that the applicant has demonstrated that his mother would suffer extreme hardship if she were to reside in Syria.

If the applicant's mother resides in the United States, the applicant needs to establish that her mother will suffer extreme hardship. As previously noted, the applicant's mother suffers from a variety of health conditions. *Statement from [REDACTED]*, dated January 20, 2006. She notes that in the time span of a few months, her arthritis has gotten progressively worse. *Statement from the applicant's mother*, dated October 26, 2006. She now has much more difficulty walking and doing daily activities, even in her own house. *Id.* She refused to go into a nursing home because she only speaks Arabic and would not be able to understand the nurses or doctors in a facility. *Id.* The applicant's mother has another son in the United States; however, he states that he cannot become a full-time caretaker to his mother, which is what she needs right now. *Statement from the applicant's brother*, dated October 25, 2006. The applicant's brother runs three businesses and has his own family to support. *Id.* When the applicant lived in the United States, he was the one who helped her, took her to the doctor, and checked on her. *Id.* According to the applicant's brother, from the time he left, her condition has deteriorated and continues to deteriorate. *Id.* While the AAO acknowledges this statement, it notes that the record does not include documentation from a licensed healthcare provider regarding the deterioration of the applicant's mother's condition. *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)). Going on record without supporting documentary evidence will not meet the burden of proof of this proceeding. *Id.* The applicant's mother does not drive and needs someone to take her to the doctor, grocery store, to pick-up medical prescriptions, and take her to church or family outings. *Statement from the applicant's mother*, dated January 25, 2006. The trip to Syria is over ten hours and she states she is no longer well enough to travel such distances. *Id.* It is too physically draining, and she no longer has such energy. *Id.* The applicant's mother will therefore not be able to visit the applicant in Syria which would affect her on an emotional level. *Statement from the applicant's brother*, dated October 25, 2006. When looking at the aforementioned factors, specifically the elderly age of the applicant's mother, her poor health condition as documented by a licensed health professional, her inability to perform daily activities and fully care for herself, her lack of family help in the United States, and the long distance between Syria and the United States resulting in her inability to travel to visit the applicant, the AAO finds that the applicant has demonstrated extreme hardship to his mother if she were to reside in the United States.

As the AAO has found that the applicant has established that his mother would suffer extreme hardship, there is no need to conduct an additional extreme hardship analysis for the applicant's naturalized United States citizen spouse.

The AAO additionally finds that the applicant merits a waiver of inadmissibility as a matter of discretion. In discretionary matters, the alien bears the burden of proving eligibility in terms of equities in the United States which are not outweighed by adverse factors. *See Matter of T-S-Y-*, 7 I&N Dec. 582 (BIA 1957).

The adverse factors in the present case are the applicant's prior unlawful presence for which he now seeks a waiver, periods of unauthorized employment, his failure to comply with a voluntary departure order, and his inadmissibility under section 212(a)(9)(A) of the Act. The favorable and mitigating factors are his United States citizen mother, spouse, and child, the extreme hardship to his mother if he were refused admission, and his supportive relationship with his mother, brother and spouse as evidenced by their affidavits.

The AAO finds that, although the immigration violations committed by the applicant were serious and cannot be condoned, when taken together, the favorable factors in the present case outweigh the adverse factors, such that a favorable exercise of discretion is warranted. Accordingly, the appeal will be sustained.

ORDER: The appeal is sustained.