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U.S. Department of Homeland Security  
Citizenship and Immigration Services  
Administrative Appeals Office MS 2090  
Washington, DC 20529-2090



U.S. Citizenship  
and Immigration  
Services

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FILE: [REDACTED] Office: VIENNA Date:

JUL 28 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, Vienna. 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 Macedonia 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 for more than one year and seeking readmission within 10 years of his last departure. The applicant seeks a waiver of inadmissibility in order to enter the United States and reside with his U.S. citizen wife.

The officer-in-charge found that the applicant failed to establish extreme hardship to his U.S. citizen wife and denied the Form I-601 application for a waiver accordingly. *Decision of the Officer-in-Charge*, dated December 29, 2006.

On appeal the applicant's daughter asserts that the applicant's wife will suffer hardship should the applicant be prohibited from entering the United States. *Statement from the Applicant's Daughter on Form I-290B*, dated January 26, 2007.

The record contains statements from the applicant's daughter; a medical document for the applicant's wife; a statement from the applicant's wife; a letter regarding the applicant's employment; a copy of the applicant's wife's permanent resident card, and; information regarding the applicant's unlawful presence in the United States. 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.

The record reflects that the applicant entered the United States in B status in February 2000. The applicant has not shown that he extended his B status or changed to another status. He did not depart the United States until September 2004. Thus, the record shows by a preponderance of the evidence that the applicant accrued over one year of unlawful presence in the United States. He now seeks admission as an immigrant pursuant to a Form I-130 relative petition filed on his behalf. Accordingly, he was deemed inadmissible to the United States under section 212(a)(9)(B)(II) of the Act for having been unlawfully present for more than one year and seeking readmission within 10 years of his last departure. The applicant does not contest his inadmissibility on appeal.

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 U.S. citizen or lawfully resident spouse or parent of the applicant. Hardship the applicant experiences upon being found inadmissible is not a basis for a waiver under section 212(a)(9)(B)(v) of the Act. 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).

*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 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.

On appeal the applicant's daughter asserts that the applicant's wife will suffer hardship should the applicant be prohibited from entering the United States. *Statement from the Applicant's Daughter on Form I-290B* at 1. She explained that the applicant received a social security card in the United States that he used for employment, and that he filed taxes for two years. *Statement from the Applicant's Daughter*, dated January 26, 2007. She stated that she has been supporting her mother with food and shelter during the applicant's absence. *Id.* at 1. The applicant's daughter provided that the applicant's wife is helping her with childcare, but that the applicant's absence is causing his wife to be depressed. *Id.* The applicant's daughter noted that the applicant has been married for over 26 years. *Id.*

The applicant submitted a brief medical letter that indicates that his wife has been diagnosed with depression for which she takes medication. *Letter from* [REDACTED] dated January 18, 2007.

The letter states that the applicant's wife's health is worsening and that she requires "a regular psychiatrist's control." *Id.* at 1.

The applicant's wife stated that she needs the applicant to come to the United States to assist her with earning a living and so that they can support each other. *Statement from the Applicant's Wife*, undated. She stated that they wish to live a comfortable American lifestyle together. *Id.* at 1.

The applicant submitted a letter from his employer in the United States that reflects that he has a position waiting for him as a Construction Supervisor. *Letter from European General Contracting Corp.*, dated August 8, 2006.

Upon review, the applicant has not established that his wife will suffer extreme hardship if he is prohibited from entering the United States. The applicant's wife stated that she wishes to have the applicant in the United States to help her financially. However, the applicant has not submitted any documentation to show his wife's expenses or income, thus he has not shown that she is enduring economic hardship.

The applicant's wife expressed that she wishes to live a comfortable life with the applicant in the United States. However, the applicant has not provided detailed information about any emotional hardship his wife is experiencing without him. The applicant has not distinguished his wife's hardship from that which is ordinarily expected when spouses live apart due to inadmissibility. U.S. court decisions have held that the common results of deportation or exclusion are insufficient to prove extreme hardship. *See Hassan v. INS*, 927 F.2d 465, 468 (9<sup>th</sup> 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 (9<sup>th</sup> 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 applicant has not described other instances of hardship his wife would encounter should she remain in the United States without him. Based on the foregoing, the applicant has not shown that his wife would experience extreme hardship should he be prohibited from entering the United States and she remain.

The applicant has not asserted or shown that his wife would experience hardship should she return to Macedonia to maintain family unity.<sup>1</sup> Accordingly, the applicant has not shown by a preponderance of the evidence that denial of the waiver application "would result in extreme hardship" to his wife.

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<sup>1</sup> The AAO notes that the doctor's letter submitted on appeal appears to be from a doctor located in Struga, Macedonia, therefore, it is unclear whether the applicant's wife is living with him in Macedonia or with their daughter in the United States.

Section 212(a)(9)(B)(v) of the Act. Having found the applicant statutorily ineligible for relief, no purpose would be served in discussing whether he 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.