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

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FILE: [REDACTED]

Office: FRANKFURT

Date: JUN 15 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 Jordan 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.

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 January 8, 2007.

On appeal, the applicant contends that his family will benefit from life in the United States, and that he is unable to sufficiently provide for them in Jordan. *Statement from the Applicant*, dated February 1, 2007. He states that he has concern for the fact that his wife and children are separated from their family in the United States. *Id.* at 1-2.

The record contains statements from the applicant and the applicant's wife; documentation regarding the applicant's employment; documentation regarding the applicant's criminal history; a copy of the applicant's marriage certificate; a copy of a birth record for one of the applicant's children; documentation regarding the applicant's proceedings in immigration court and removal from the United States; a copy of the applicant's passport; 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) 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.

Section 212(a)(2)(A) of the Act states in pertinent part, that:

- (i) [A]ny alien convicted of, or who admits having committed, or who admits committing acts which constitute the essential elements of-
 - (I) a crime involving moral turpitude (other than a purely political offense) or an attempt or conspiracy to commit such a crime . . . is inadmissible.
- (ii) Exception.-Clause (i)(I) shall not apply to an alien who committed only one crime if-
 -
 - (II) the maximum penalty possible for the crime of which the alien was convicted (or which the alien admits having committed or of which the acts that the alien admits having committed constituted the essential elements) did not exceed imprisonment for one year and, if the alien was convicted of such crime, the alien was not sentenced to a term of imprisonment in excess of 6 months (regardless of the extent to which the sentence was ultimately executed).

The record reflects that the applicant entered the United States as a fiancé on September 1, 1993, and was granted conditional permanent resident status on December 7, 1993 based on his marriage to his U.S. citizen wife. The applicant failed to submit a joint petition requesting removal of the conditional basis of his residence between September 7, 1995 and December 7, 1995, as required by section 216(c) of the Act. His conditional permanent resident status was revoked effective December 8, 1995. The record does not show that the applicant held a legal immigration status after that date. He was placed into removal proceedings and he was removed on July 21, 1999.

Based on the foregoing, the applicant accrued unlawful presence from April 1, 1997, the date the unlawful presence provisions in the Act took effect, until his removal on July 21, 1999. This period totals over one year. He now seeks admission as an immigrant pursuant to an approved Form I-130 relative petition filed by his wife on his behalf. He was deemed inadmissible to the United States under section 212(a)(9)(B)(II) of the Act for having been unlawfully present in the United States for

more than one year and seeking readmission within 10 years of his last departure. The applicant does not contest his inadmissibility under section 212(a)(9)(B)(II) of the Act on appeal.

The record reflects that the applicant pleaded guilty to one count of misuse of food stamps under New York Penal Code § 147. The applicant has not provided an official record of the actions for which he was convicted, yet New York Penal Code § 147 describes unauthorized conduct that circumvents the laws regarding a public benefits program. There is support that a conviction under New York Penal Code § 147 constitutes a crime involving moral turpitude, and the applicant has not shown otherwise. *See, e.g., Matter of Adetiba*, 20 I&N Dec. 506 (BIA 1992); *Michel v. INS*, 206 F.3d 253, 261-66 (2d Cir. 2000).

However, the applicant's crime was classified as a Class A Misdemeanor. New York Penal Code section 70.15 provides that a Class A Misdemeanor results in a maximum sentence of one year of incarceration. The applicant was not given a sentence that involved incarceration. The applicant has only been convicted of one crime involving moral turpitude. Thus, the applicant's conviction meets the exception found in section 212(a)(2)(A)(ii)(II), and he is not inadmissible under section 212(a)(2)(A) of the Act.

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 contends that his family will benefit from life in the United States, including freedom of speech, thought, and expression. *Statement from the Applicant* at 1. He stated that economic conditions in Jordan are difficult, and that he is unable to provide for his family to the degree he wishes. *Id.* at 1-2. He states that he has concern for the fact that his wife and children are separated from their family in the United States. *Id.* at 1-2.

The applicant explained that one of his sons has had difficulty with the Arabic language and that he has developed a dislike for school as a result. *Prior Statement from the Applicant*, undated. He stated that he is unable to earn sufficient income to provide a tutor for his son. *Id.* at 1.

The applicant's wife stated that she is residing in Jordan with the applicant. *Statement from the Applicant's Wife*, dated December 26, 2005. She explained that she and the applicant have three children, two of who were born in the United States. *Id.* at 1. She stated that she wishes for the applicant to be able to return to the United States so their family can reside here. *Id.* She indicated that she misses her family in the United States. *Id.* The applicant's wife explained that it is difficult to earn income in Jordan, and that she does not read or write in Arabic. *Id.* She stated that she wishes for her children to learn English. *Id.*

The applicant's wife provided that she has limited access to work due to her language deficiency. *Prior Statement from the Applicant's Wife*, undated. She explained that she has difficulty assisting her children with their homework due to the language barrier. *Id.* at 1. She asserted that she has a health condition that she cannot have treated until she returns to the United States. *Id.* at 2.

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 has not shown that his wife will experience extreme hardship should she return to the United States and he remain in Jordan. The applicant's wife identified elements of life in the United States that she desires, including close contact with her family and friends, economic opportunities, English language education for her children, and an environment in which she is fluent in the language. Should the applicant's wife return to the United States, she would have access to such benefits.

The applicant's wife stated that she is close with the applicant and that she is residing in Jordan to maintain a unified family. The AAO acknowledges that the separation of family members due to inadmissibility often involves significant hardship. Yet, the applicant has not clearly stated factors to distinguish his wife's potential hardship in the United States from that which is ordinarily experienced when families are separated due to inadmissibility.

The applicant bears the burden of showing that denial of the present waiver application "would result in extreme hardship" to a qualifying relative. Section 212(a)(9)(B)(v) of the Act. In the absence of clear assertions by the applicant, the AAO may not make assumptions regarding hardship the applicant's family members may face should the waiver application be denied. As the applicant has not presented clear evidence or explanation regarding hardship his wife would face in the United States without him, the applicant has not shown that she would experience extreme hardship should she return. Section 212(a)(9)(B)(v) of the Act.

The applicant has not shown that his wife will experience extreme hardship should she remain in Jordan. The applicant states that his family is experiencing economic challenges in Jordan. Yet, the applicant has not indicated his income or expenses such that the AAO can assess the economic circumstances his wife faces. The applicant has not stated whether his wife works or whether she

has access to employment in Jordan to supplement their family's income. Thus, the applicant has not shown by a preponderance of the evidence that his wife is facing significant economic hardship.

The applicant's wife expressed that she misses her family in the United States and that she would like to be reunited with them. However, the applicant has not distinguished his wife's emotional hardship due to separation from her family from that which is commonly expected when spouses live abroad. 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 (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 applicant's wife stated that she has a medical condition that may not be treated until she returns to the United States. However, she did not describe the medical condition, and the applicant has not submitted any medical documentation to show by a preponderance of the evidence that his wife requires medical services that are unavailable in Jordan.

The applicant and his wife indicated that their children are experiencing hardship due to residing in Jordan. Direct hardship to an applicant's children is not a basis for a waiver under section 212(a)(9)(B)(v) of the Act. However, all instances of hardship to qualifying relatives must be considered in the aggregate. Hardship to a family unit or non-qualifying family member should be considered to the extent that it has an impact on qualifying family members. It is reasonable to expect that the applicant's children's emotional state due to residence in Jordan affects the applicant's wife. Yet, the applicant has not described hardship to his children that is sufficiently severe to cause his wife extreme hardship.

The applicant has not shown by a preponderance of the evidence that his wife will experience extreme hardship should she continue to reside with him in Jordan. Thus, the applicant has not established that denial of the present waiver application "would result in extreme hardship" to his wife. 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.

It is noted that the applicant departed the United States on July 21, 1999 when he was removed. Under section 212(a)(9)(B) of the Act, the applicant is inadmissible for 10 years from his date of

departure due to over one year of unlawful presence in the United States. Should the applicant remain outside the United States until July 21, 2009, he will have been out of the country for 10 years and he will no longer be inadmissible under section 212(a)(9)(B) of the Act. The record does not reflect that the applicant is inadmissible based on other provisions of the Act.

ORDER: The appeal is dismissed.