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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: [Redacted] Office: ATHENS, GREECE

Date: **JUN 23 2009**

IN RE: [Redacted]

APPLICATION: Application for Waiver of Grounds of Inadmissibility under Section 212(a)(9)(B)(v)
of the Immigration and Nationality Act (the 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, Athens, Greece. The matter 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 Turkey who was found to be inadmissible to the United States pursuant to section 212(a)(9)(B)(i)(II) of 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. The applicant is married to a lawful permanent resident and seeks a waiver of inadmissibility pursuant to section 212(a)(9)(B)(v) of the Act, 8 U.S.C. § 212(a)(9)(B)(v), in order to reside with her husband and children in the United States.

The officer in charge found that the applicant failed to establish extreme hardship to a qualifying relative and denied the application accordingly. *Decision of the Officer in Charge*, dated October 4, 2006.

On appeal, counsel contends the officer in charge did not adequately assess or properly weigh all of the evidence and that the totality of circumstances show that the applicant's husband, [REDACTED] will continue to suffer extreme hardship if the applicant's waiver application is denied.

The record contains, *inter alia*: a copy of the marriage certificate of the applicant and her husband, [REDACTED], indicating they were married on October 18, 1994; statements from [REDACTED] copies of the birth certificates of the couple's three minor, U.S. citizen children; a letter from [REDACTED] doctor; letters from a clinical psychologist; letters from [REDACTED] employers; tax documents; copies of decisions by immigration judges; and a copy of an approved Petition for Alien Relative (Form I-130). The entire record was reviewed and considered in rendering this 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 this case, the record indicates that the applicant entered the United States on October 7, 1993, by jumping over the international fence at the US-Mexico border. *Record of Deportable Alien*, dated October 7, 1993. Upon being apprehended, the applicant gave a false identity and country of origin, requested a deportation hearing and was served with an Order to Show Cause and Notice of Hearing, ordering her to appear before an immigration judge on January 10, 1994. *Id*; *Order to Show Cause and Notice of Hearing (Form I-221)*, dated October 7, 1993. On January 10, 1994, the applicant failed to appear for her hearing and was ordered deported *in absentia*. *Decision of the Immigration Judge*, dated January 10, 1994. In October 1994, the applicant married [REDACTED] who filed a Petition for Alien Relative and an Application to Register Permanent Residence or Adjust Status in August 1995. While the applicant's application for adjustment of status was pending, in July 1996, the applicant was granted advance parole for one year, until July 24, 1997. According to [REDACTED] in August 1997, the applicant, [REDACTED] and their children left the United States to visit Turkey. *Letter from [REDACTED]* dated March 23, 1998 (stating the family left the United States on August 22, 1997, to visit his wife's family); *Letter from [REDACTED]* dated October 22, 1997 (stating that he and the applicant had to leave the United States for an emergency, had "no time to apply for advance parole," and requesting humanitarian parole).¹ The record shows that the applicant attempted to enter the United States on February 18, 1999, by using her expired advance parole letter. *Record of Sworn Statement in Affidavit Form*, signed by the applicant on February 18, 1999. The applicant was served with a Notice to Appear and charged with violating section 212(a)(7)(A)(i)(I) of the Act for failing to be in possession of valid entry documents and section 212(a)(4)(A) for being likely to become a public charge. *Notice to Appear (Form I-862)*, dated February 18, 1999. On October 19, 1999, before an immigration judge, the applicant withdrew her application for admission and was ordered to voluntarily depart the United States before October 26, 1999. *Order of the Immigration Judge*, dated October 19, 1999. The applicant did not timely depart the United States, but rather, did not depart until five years later in October 2004 for a consular interview in Turkey. *Affidavit of [REDACTED]*, dated November 1, 2004.

Therefore, the record shows that the applicant accrued unlawful presence for five years from October 27, 1999, until her departure from the United States in October 2004. She now seeks admission within ten years of her October 2004 departure. Accordingly, she is inadmissible to the

¹ A subsequent application for parole was denied. *Letter from [REDACTED] District Director*, dated February 20, 1998.

United States under section 212(a)(9)(B)(i)(II) of the Act, 8 U.S.C. § 1182(a)(9)(B)(i)(II), 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 U.S. citizen or lawfully resident spouse or parent of the applicant. *See* section 212(a)(9)(B)(v) of the Act, 8 U.S.C. § 1182(a)(9)(B)(v). *See* section 212(a)(9)(B)(v) of the Act, 8 U.S.C. § 1182(a)(9)(B)(v). Hardship the applicant's children may experience may only be considered to the extent it affects the U.S. citizen or lawfully resident spouse or parent of the applicant. *Id.* 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, 565-566 (BIA 1999), provides a list of factors the Bureau of Immigration Appeals deems relevant in determining whether an alien has established extreme hardship under 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.

In this case, [REDACTED] states that he is a lawful permanent resident and that he is waiting to be sworn in as a U.S. citizen. He states that his wife has been in Turkey since October 2004 and that she has never been convicted or charged with any crime in either the United States or Turkey. [REDACTED] further states that they have three U.S. citizen children, the youngest of whom is in Turkey with the applicant while the older two children are in the United States attending school. [REDACTED] requests that his wife's waiver application be approved, particularly considering that their three children will suffer extreme hardship due to their mother's absence. *Affidavits of* [REDACTED], dated May 23, 2005, and November 1, 2004.

A letter from a clinical psychologist in the record states that the psychologist has been evaluating [REDACTED] for the past month. The psychologist states that [REDACTED] has developed a depressive disorder due to his wife's absence and the stress of raising two children who suffer from depression, exhibit "disruptive behavior due to anger over their mother being denied them," and are "declining in school." In addition, the letter states that the psychologist spoke with [REDACTED] doctor, who told him that Mr. [REDACTED] suffers from a hernia and anemia. According to the psychologist, [REDACTED] doctor states that [REDACTED] cannot move to Turkey. The psychologist agrees that [REDACTED] cannot move to Turkey due to "extreme psychological disorders that need consisten[t] treatment here in the United States." *Letter from* [REDACTED], dated October 24, 2006.²

² Another letter in the record from the same clinical psychologist evaluates the couple's two older children. *Letter from* [REDACTED], dated October 24, 2006. However, as stated above, hardship to

A letter from [REDACTED] doctor states that [REDACTED] "is scheduled to have surgery. During his hospital stay and recovery period, [it] would be very important for his wife to be here in order to give support to her husband as well as care for her children." *Letter from [REDACTED] dated September 29, 2006; see also Letter from [REDACTED] dated August 31, 2006 (stating that Mr. [REDACTED] "is being treated for multiple medical problems and has frequent follow up")*. Another letter in the record, from a social worker, states that [REDACTED] will have hernia repair surgery on November 28, 2006. and that it will be difficult for him to care for his children after the operation. *Letter from [REDACTED], dated November 21, 2006*. In addition, the record shows that [REDACTED] was in a car accident in April 1996. *Letter from [REDACTED] dated November 25, 1997*.

After a careful review of the record, there is insufficient evidence to show that [REDACTED] has suffered or will suffer extreme hardship if his wife's waiver application were denied. Significantly, although the psychologist claims that [REDACTED] cannot move to Turkey, [REDACTED] himself does not discuss the possibility of moving to Turkey to avoid the hardship of separation, and he does not address whether such a move would represent a hardship to him.

Furthermore, [REDACTED] has the option of staying in the United States and the record does not show that he would suffer extreme hardship if he were to remain in the United States without his wife. The AAO recognizes that [REDACTED] has endured hardship since the applicant departed the United States and is sympathetic to the family's circumstances. However, the Board of Immigration Appeals and the Courts of Appeals have repeatedly held that the common results of deportation or exclusion are insufficient to prove extreme hardship. 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. *See also Hassan v. INS*, 927 F.2d 465, 468 (9th Cir. 1991) (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).

Regarding [REDACTED] depression, although the input of any mental health professional is respected and valuable, the AAO notes that the letter from the psychologist states that he has been evaluating Mr. [REDACTED] "for the last month." *Letter from [REDACTED], supra*. The record fails to reflect an ongoing relationship between a mental health professional and the applicant's husband. Moreover, the conclusions reached in the submitted evaluation do not reflect the insight and elaboration commensurate with an established relationship with a psychologist, thereby rendering the therapist's findings speculative and diminishing the evaluation's value to a determination of extreme hardship. In addition, [REDACTED] himself states only that his children will suffer extreme hardship if his wife's waiver

the applicant's children may only be considered to the extent it affects the qualifying relative, which the letter addressing [REDACTED] psychological state addresses.

application were denied. *Affidavits of* [REDACTED] dated May 23, 2005, and November 1, 2004. He does not address how caring for his two older children as a single parent rises to the level of extreme hardship and he does not allege that his situation is unique or atypical compared to other individuals separated as a result of deportation or exclusion. *See Perez v. INS*, 96 F.3d 390 (9th Cir. 1996) (defining extreme hardship as hardship that was unusual or beyond that which would normally be expected upon deportation).

Regarding [REDACTED] physical health, although the record shows that [REDACTED] had hernia repair surgery, [REDACTED] affidavits fail to mention his medical condition. Without any specific statements from [REDACTED] it is unclear whether the hardship he would experience if the applicant's waiver application were denied rises to the level of extreme hardship. The letter from [REDACTED] doctor did not specify the surgery for which he was scheduled, but even assuming it was hernia repair surgery, Mr. [REDACTED] doctor did not discuss the severity or prognosis for [REDACTED] hernia. There is no indication that he is on any medication or receives any on-going treatment for his hernia. There is no indication in the record addressing how [REDACTED] medical condition affects his daily life. There is no claim the applicant requires his wife's assistance in any way, other than generalized statements that her presence in the United States is required to care for their children. Without more detailed information, the AAO is not in the position to reach conclusions regarding the severity of a medical condition, or the treatment and assistance needed.

A review of the documentation in the record fails to establish the existence of extreme hardship to the applicant's husband 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. The AAO notes, however, that the applicant has been ordered removed by immigration judges twice and has ignored both removal orders. The applicant's repeated and flagrant disregard for U.S. immigration laws weighs heavily against any favorable exercise of discretion.

In proceedings for application for waiver of grounds of inadmissibility under section 212(a)(9)(B)(v) 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.