

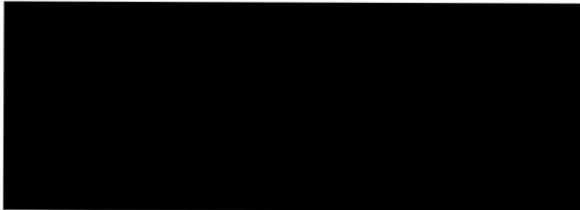
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U.S. Department of Homeland Security
20 Mass. Ave., N.W., Rm. 3000
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**U.S. Citizenship
and Immigration
Services**

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FILE:



Office: ATHENS, GREECE

Date:

MAR 03 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:

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).

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, Athens, Greece. 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 Egypt 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 married to a U.S. citizen. He seeks a waiver of inadmissibility in order to reside in the United States with his wife.

The officer in charge found that based on the evidence in the record, the applicant had failed to establish that a qualifying relative would undergo extreme hardship as a result of his continued inadmissibility. The application was denied accordingly. *Decision of the Officer in Charge*, dated September 29, 2006.

On appeal, the applicant's spouse states that she is suffering and will continue to suffer physically, financially and emotionally because of the denial of the applicant's waiver application. *Spouse's Statement on Appeal*, undated. The record also contains statements from the applicant's spouse submitted in support of the applicant's visa and waiver applications. *Spouse's Statements*, undated. The entire record was considered in rendering a decision on the appeal.

In the present application, the record indicates that the applicant entered the United States without inspection in November 1999. The applicant remained in the United States until November 5, 2003 when he voluntarily departed from the United States in compliance with the voluntary departure order issued by the immigration judge. Therefore, the applicant accrued unlawful presence from November 1999, the date of his entry without inspection into the United States, until November 5, 2003, when he departed the United States. In applying for an immigrant visa, the applicant is seeking admission within ten years of his November 2003 departure from the United States. Therefore, the applicant is inadmissible to the United States under section 212(a)(9)(B)(II) of the Act for being unlawfully present in the United States for a period of more than one year.

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.

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 and/or parent of the applicant. Hardship the applicant or other relatives experience due to separation is not considered in section 212(a)(9)(B)(v) waiver proceedings unless it causes hardship to the qualifying relative. The record does not reflect that the applicant has U.S. citizen or lawful resident parents. Therefore, the qualifying family member in this proceeding is the applicant's spouse, and the only directly relevant hardship is hardship suffered by the applicant's spouse.

The concept of extreme hardship to a qualifying relative "is not . . . fixed and inflexible," and whether extreme hardship has been established is determined based on an examination of the facts of each individual case. *Matter of Cervantes-Gonzalez*, 22 I&N Dec. 560, 565 (BIA 1999). In *Matter of Cervantes-Gonzalez*, the Board of Immigration Appeals set forth a list of non-exclusive factors relevant to determining whether an applicant has established extreme hardship to a qualifying relative pursuant to section 212(i) of the Act. These factors include, with respect to the qualifying relative, the presence of family ties to U.S. citizens or lawful permanent residents in the United States, family ties outside the United States, country conditions where the qualifying relative would relocate and family ties in that country, the financial impact of departure, and significant health conditions, particularly where there is diminished availability of medical care in the country to which the qualifying relative would relocate. *Id.* at 566.

Relevant factors, though not extreme in themselves, must be considered in the aggregate in determining whether extreme hardship exists. In each case, the trier of fact must consider the entire range of factors concerning hardship in their totality and determine whether the combination of hardships takes the case beyond those hardships ordinarily associated with deportation.

Matter of O-J-O-, 21 I&N Dec. 381, 383 (BIA 1996) (citations omitted). 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).

The AAO notes that extreme hardship to the applicant's spouse must be established whether she resides in Egypt 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.

The applicant's spouse asserts that she suffers and would continue to suffer extreme hardship as a result of relocating to Egypt as she would be forced to abandon her home, job, furniture and friends. The applicant's spouse states that she, although born in Egypt, no longer has strong ties there as she has lived in the United States for 25 years. She states that she cannot live in a country about which she knows nothing. She asserts that she has not received proper medical care from Egyptian gynecologists and obstetricians because she does not know Arabic and that she knows that the United States has better technology. She also asserts that it is very hard to find a job in Egypt, and that, even if she found one, it would not be the same as in the United States.

While social and economic conditions in the applicant's homeland are relevant to this proceeding, the applicant's spouse's claims regarding the hardships she faces in Egypt are, alone, insufficient to establish extreme hardship. No documentary evidence has been submitted to establish that the applicant's spouse requires specialized medical treatment to become pregnant, has received inadequate medical treatment in Egypt or that she is unable to obtain employment. No evidence in the record establishes that the applicant's spouse has been unable to adjust to life in Egypt. The AAO notes that the applicant's spouse states that she and the applicant have been in Egypt for three years and live in her mother's house. Simply going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *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)).

When considered in the aggregate and in light of the Cervantes-Gonzalez factors previously cited, the AAO does not find the evidence of record to establish that the applicant's spouse would suffer extreme hardship if she relocated to Egypt with the applicant.

The applicant's spouse also contends that she would suffer extreme hardship if she returned to and remained in the United States following the denial of the applicant's waiver application. She states that she cannot leave her husband and go back to the United States alone because he is the one who supports her and takes care of her now that her mother is dead. She asserts that seeking medical assistance to get pregnant will not be possible if her husband is not with her in the United States. She also states that being separated from husband will not be easy and that it will be very hard to make a future in the United States without him because they are partners.

The AAO is mindful of and sensitive to the applicant's and his spouse's concerns about maintaining their family and the hardship the applicant's spouse will endure if separated. However, the record does not contain evidence that distinguishes the applicant's spouse's situation, if she returns to and remains in the United States, from that of other individuals separated as a result of removal. U.S.

court decisions have repeatedly held that the common results of deportation or exclusion are insufficient to prove extreme hardship. *See, e.g. Hassan v. INS*, 927 F.2d 465, 468 (9th Cir. 1991)(upholding the BIA's finding that deporting the applicant and separating him from his wife and child was not conclusive of extreme hardship as it "was not of such a nature which is unusual or beyond that which would normally be expected from the respondent's bar to admission); *Perez v. INS*, 96 F.3d 390 (9th Cir. 1996)(holding that the common results of deportation are insufficient to prove extreme hardship and defining "extreme hardship" as hardship that was unusual or beyond that which would normally be expected upon deportation); and *Patel v. INS*, 638 F.2d 1199, 1206 (9th Cir.1980)(severance of ties does not constitute extreme hardship). Having carefully considered the hardship factors, both individually and in the aggregate, it is concluded that the record in this case does not demonstrate extreme hardship to the applicant's spouse if she resides in the United States following the denial of the applicant's waiver application.

In the final analysis, the AAO finds that the applicant has failed to establish that his spouse would experience hardships over and above the normal economic and social disruptions created by removal so as to warrant a finding of extreme hardship. As the applicant is statutorily ineligible for relief under 212(i) of the Act, 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)(6)(C) of the Act, the burden of proving eligibility remains entirely with the applicant. *See* section 291 of the Act, 8 U.S.C. § 1361. The applicant has not met that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.