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U.S. Citizenship
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Services

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FILE: [REDACTED] Office: ATHENS, GREECE Date: **MAR 10 2009**

IN RE: Applicant: [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 PETITIONER:

[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.

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, and 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 under 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 a period of one year or more. The applicant is married to a U.S. citizen and is the beneficiary of an approved Petition for Alien Relative. The applicant seeks a waiver of inadmissibility pursuant to section 212(a)(9)(B)(v) of the Act, 8 U.S.C. § 1182(a)(9)(B)(v), in order to return to the United States and reside with her spouse and children.

The officer-in-charge concluded that the applicant failed to establish that extreme hardship would be imposed on a qualifying relative and denied the application accordingly. *See Decision of the Officer-in-Charge* dated June 30, 2008.

On appeal, counsel asserts that Citizenship and Immigration Services (“CIS”) failed to correctly apply relevant case law to the applicant’s individual circumstances and erred in failing to consider the decision of the Board of Immigration Appeals (BIA) in *Matter of Kao & Lin*, 23 I & N Dec. 45 (BIA 2001). *Brief in Support of Appeal* at 2. Counsel further states that the applicant’s husband is suffering extreme hardship as a result of separation from the applicant, and the officer-in-charge erred in finding that the applicant had not provided objective documentary evidence of the hardship and had relied too much on hardship to the applicant’s children, who are not qualifying relatives. *Brief* at 2-3. In support of the waiver application counsel submitted affidavits from the applicant and her husband, medical records for the applicant, documentation concerning travel to Egypt by the applicant’s husband and older children, a letter from the applicant’s husband’s employer, school records and psychological evaluations for the applicant’s daughters who reside in Egypt, letters from the applicant’s children, and school records for the applicant’s children in the United States. The entire record was reviewed and considered in arriving at a decision on the appeal.

Section 212(a)(9)(B) of the Act provides, in pertinent part:

- (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 Secretary, 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 contains references to hardship the applicant's children would experience if the waiver application were denied. It is noted that Congress did not include hardship to an alien's children as a factor to be considered in assessing extreme hardship. Counsel refers to *Matter of Kao & Lin*, 23 I & N Dec. 45 (BIA 2001), to support a claim that hardship to the applicant's children was not adequately considered by the officer-in-charge. That decision involved an application for suspension of deportation in which the respondent's U.S. Citizen children were qualifying relatives, and relief was granted after extreme hardship to the children was established. In the present case, however, the applicant's spouse is the only qualifying relative for the waiver under section 212(a)(9)(B)(v) of the Act, and hardship to the applicant's children will not be separately considered, except as it may affect the applicant's spouse.

Section 212(a)(9)(B)(v) of the Act provides that a waiver of the bar to admission is dependent first upon a showing that the bar imposes an extreme hardship on a qualifying family member. 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).

In *Matter of Cervantes-Gonzalez*, 22 I&N Dec. 560 (BIA 1999), the Board of Immigration Appeals (BIA) provided a list of factors it deemed relevant in determining whether an alien has established extreme hardship. These factors included 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.

U.S. court decisions have additionally 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, in *Matter of Pilch*, 21 I&N Dec. 627 (BIA 1996), the BIA 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, in *Perez v. INS*, 96 F.3d 390 (9th Cir. 1996), the court 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. In *Hassan v. INS*, *supra*, the court further held 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. Moreover, the U.S. Supreme Court additionally held in *INS v. Jong Ha Wang*, 450 U.S. 139 (1981),

that the mere showing of economic detriment to qualifying family members is insufficient to warrant a finding of extreme hardship.

The record reflects that the applicant is a forty-six year-old native and citizen of Egypt who resided in the United States from 1989, when she entered as a visitor for pleasure, until June 9, 2002, when she returned to Egypt. The applicant is therefore inadmissible under section 212(a)(9)(B)(i)(II) of the Act for having residing unlawfully in the United States from April 1, 1997, the date section 212(a)(9)(B)(i) of the Act entered into effect, until June 9, 2002. She married her husband, a fifty-two year-old native of Egypt and citizen of the United States, on July 24, 1989 in Alexandria, Egypt. The applicant currently resides in Alexandria, Egypt with their two youngest daughters and her husband resided in Garland, Texas with their three older children.

Counsel states that the applicant's husband is suffering extreme emotional and psychological hardship due to separation from the applicant and financial hardship due to the cost of traveling to Egypt with his older children and maintaining two households. *Brief* at 2-3. The applicant's husband further states, "The separation from my wife has been unbearable . . . Living apart has caused us a lot of difficulties and hardships, of which I will mention a few." *Affidavit of* [REDACTED] [REDACTED] dated August 13, 2007. He states that he resides in Texas with their three older children and must support two households, which "affects our lifestyle and standard of living" and requires them to follow a strict budget in order to travel to Egypt once or twice a year to visit the applicant and their two younger children. *Affidavit of* [REDACTED]. He further claims that the separation has affected his health and the applicant's health, and he states that he was admitted to the hospital two years ago with heart problems and has also developed sleep apnea. The applicant's husband further states that his two younger children are evaluated by a psychiatrist every six months "due to separation of the family," and his older children's grades have dropped since being separated from their mother. *Id.*

In support of these assertions, counsel submitted several documents related to the applicant's children, including letters from the school attended by the applicant's two youngest daughters in Egypt and a report entitled "Initial Exam/ Consult" for each of the girls. These reports state that an examination was requested by their mother, who needed a psychiatric assessment and a report for the girls. Both reports state that the two girls are experiencing symptoms including sadness and sleep difficulties, and both are diagnosed with major depression. *See Initial Exam/ Consult for* [REDACTED] *and* [REDACTED] *from* [REDACTED], dated September 3, 2006. The input of any mental health professional is respected and valuable in assessing a claim of emotional hardship. However, the AAO notes that although the submitted letters are based on a psychological evaluation of the applicant's two daughters, the record fails to reflect an ongoing relationship between a mental health professional and the applicant's children or any history of treatment for any mental illness or disorder. Further, no information on the individual preparing the reports or that person's credentials was submitted. Further the AAO notes that it is not clear who wrote two letters from the girls' school, which describe the psychological condition of both girls and are signed by a teacher, the school principal, and a school counselor.

Although the emotional effects of a serious medical or psychological condition of a qualifying relative's child could be considered in assessing his claim of extreme hardship, the evidence in the present case does not establish that either of the applicant's children is suffering from such a condition. It appears that the applicant's children are having some difficulty in school, but the evidence is not sufficient to demonstrate that they are suffering from any serious condition that would cause their father to suffer extreme hardship beyond the common results of exclusion or deportation. The evidence does not establish that the emotional hardship the applicant's husband is experiencing is more serious than the type of hardship a family member would normally suffer when faced with the prospect of separation from his spouse. Although the depth of his distress caused by separation from the applicant and its effects on his children is not in question, a waiver of inadmissibility is only available where the resulting hardship would be unusual or beyond that which would normally be expected upon deportation or exclusion. The prospect of separation or involuntary relocation nearly always results in considerable hardship to individuals and families. But in specifically limiting the availability of a waiver of inadmissibility to cases of "extreme hardship," Congress did not intend that a waiver be granted in every case where a qualifying relationship exists.

The applicant's husband states that he is suffering financial hardship due to the cost of supporting two households and having to travel to Egypt with his three older children. The AAO notes, however, that aside from copies of itineraries and airline tickets for travel to Egypt, no documentation concerning the applicant's husband's income or the family's expenses was submitted to support an assertion that the applicant's husband is suffering financial hardship as a result of separation from the applicant. 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)). Further, there is no indication that there are any unusual circumstances that would cause financial hardship beyond what would normally be expected as a result of denial of admission to the applicant. The financial impact of having to maintain two households and of travel to Egypt therefore appears to be a common result of exclusion or deportation, and does not rise to the level of extreme hardship for the applicant's husband. See *INS v. Jong Ha Wang*, *supra* (holding that the mere showing of economic detriment to qualifying family members is insufficient to warrant a finding of extreme hardship). The AAO further notes that no documentary evidence was submitted to support the assertion of the applicant's husband that he suffers from a serious medical condition that is caused or exacerbated by being separated from the applicant.

It appears from the record that any emotional or financial hardship to the applicant's husband would be the type of hardship that family members would normally suffer as a result of removal or exclusion. U.S. court decisions have repeatedly held that the common results of deportation or exclusion are insufficient to prove extreme hardship. 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); *Hassan v. INS*, 927 F.2d 465, 468 (9th Cir. 1991); *Matter of Pilch*, 21 I&N Dec. 627 (BIA 1996) (holding that emotional hardship caused by severing family and community ties is a common result of deportation and does not constitute extreme hardship). No information or evidence was submitted to support a claim that the applicant's husband would suffer

extreme hardship if he relocated to Egypt with the applicant. Therefore, the AAO cannot make a determination of whether the applicant's husband would suffer extreme hardship if he moved to Egypt.

A review of the documentation in the record reflects that the applicant has failed to show that the hardships faced by the qualifying relative, when considered in the aggregate, rise beyond the common results of removal or inadmissibility to the level of extreme hardship. Having found the applicant statutorily ineligible for relief, no purpose would be served in discussing whether the applicant merits a waiver as a matter 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. 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.