



U.S. Citizenship
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FILE: [REDACTED] Office: ATHENS, GREECE (CAIRO)

Date: MAY 05 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, 8 U.S.C. § 1182(a)(9)(B)(v)

ON BEHALF OF PETITIONER:

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, 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 the husband of a Lawful Permanent Resident and the derivative beneficiary of an Immigrant Petition for Alien Worker filed on behalf of his wife. 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 his wife and children.

The officer in charge concluded that the applicant had 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 May 26, 2006. The AAO notes that the applicant had previously applied for a waiver of inadmissibility and that application was denied on January 23, 2004. The applicant, through former counsel, attempted to file an appeal, but it was returned and refiled by former counsel with the AAO and later rejected as untimely. The applicant filed a new waiver application in 2005, and the decision denying this application is the subject of the current appeal.

On appeal, the applicant states that he and his spouse would face extreme hardship because they are Christians and Christians living in Egypt are persecuted because of their religious beliefs. *See Applicant's Statement in Support of Appeal* dated June 29, 2006. The applicant states that if his wife and sons were to relocate to Egypt they would be placed in extremely dangerous and discriminatory conditions, and he and his wife would be unable to find employment because they are Christians. *See Applicant's Statement in Support of Appeal*. The applicant's wife further asserts that she is suffering extreme financial and emotional hardship due to being separated from the applicant, in particular after the birth of their second child in 2006, which caused her to experience post-partum depression. Documentation submitted with both waiver applications and the appeal includes the following: Letters from the applicant and his wife, a letter from the applicant's wife's doctor, information on conditions in Egypt, a copy of a lease for an apartment rented by the applicant's wife, documentation related to the sale of their home, documentation related to the sale of the applicant's business, receipts for child care for the applicant's son, copies of airline tickets for the applicant's wife and son, and copies of greeting cards sent from the applicant to his wife and son. 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. In the present case, 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 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 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. 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.

In the present case, the record reflects that the applicant is a thirty-nine year-old native and citizen of Egypt who resided in the United States from 1991, when he entered as a visitor for pleasure, to October 2002, when he was removed from the United States. The applicant married his wife, a thirty-nine year-old native and citizen of the Philippines and Lawful Permanent Resident, on September 23, 1996. The applicant currently resides in Cairo, Egypt and his wife and sons reside in Astoria, New York.

The applicant asserts that his wife would suffer extreme hardship if she relocated to Egypt because she and their sons would face discrimination and mistreatment by the Muslim majority due to their Christian faith. The applicant's wife further claims that she and their sons would face hardship there because she and the applicant would be unable to find employment and she and their sons do not speak Arabic. As evidence of this hardship, the applicant submitted a U.S. State Department *Country Report on International Religious Freedom* and other reports describing incidents of discrimination and mistreatment of Coptic Christian in Egypt, including torture of Christians jailed for assisting Muslim converts to Christianity to forge identification cards, the abduction of Coptic Christian girls and the refusal of local authorities to take action, and the acquittal of Muslim suspects charged with killing 21 Christians during sectarian violence in 2000. *See Christian Solidarity Worldwide, Reports on Egypt*. A more recent report on religious freedom in Egypt states, "Although Christians and Muslims share a common culture and live as neighbors throughout the country, violent sectarian attacks on Copts continued to occur during the reporting period, as they have in previous years." *U.S. Department of State, Bureau of Democracy, Human Rights, and Labor, 2008 Report on International Religious Freedom – Egypt*. The report describes incidents involving monks and laborers at a Christian monastery being attacked and several monks being abducted and abused, Muslim citizens setting fire to Christian-owned shops and other attacks on churches and Copt-owned businesses, and other sectarian assaults on Christians throughout Egypt occurring in 2007 and 2008.

According to the applicant's wife's affidavit, neither she nor her sons speak Arabic, and she has lived her entire life in either the Philippines or the United States. She further states that she has relatives that live near her in New York, including a sister with whom she and her son resided after returning from a visit to Egypt in 2005. She further states that if she attempted to relocate to Egypt, she would likely abandon her lawful permanent resident status and be unable to travel to the United States to visit her relatives. The hardship that would result from having to adjust to a different language and culture and being separated from her family, combined with the potential discrimination and possible mistreatment she and her sons would face as Christians in Egypt, would amount to extreme hardship if she were to relocate to Egypt with the applicant.

The applicant asserts that his wife is suffering extreme emotional and financial hardship in the United States as a result of separation from the applicant and loss of his income. In support of these assertions the applicant submitted a letter from the applicant's wife's doctor, documentation related to the sale of their home, an unemployment claims filed by the applicant's wife, and documentation related to sale of the applicant's share in his business in the United States. In her letter submitted with the waiver application, the applicant's wife states,

This departure has weighed heavy on my heart, and affected me emotionally, financially and physically. After he was deported I struggled, sold our house in May

2004 because I couldn't afford to pay the mortgage, . . . losing most of our money that we put in when we bought the house. We also had to sell our 2 cars. Without my husband, my son and myself are barely surviving on our daily necessity. *Letter from* [REDACTED] dated March 8, 2005.

In a subsequent letter, the applicant's wife further states that she was suffering emotional and physical hardship and submitted a letter from her gynecologist stating that she was suffering from severe post-partum depression after the birth of their second son in October 2005. *See letter from* [REDACTED] dated July 14, 2006. The letter states that she feels overwhelmed most of the time without the support of her husband and further concludes that "if he were here, her therapy would improve greatly." *Id.*

Significant conditions of health, particularly when tied to an unavailability of suitable medical care in the country to which the qualifying relative would relocate, are relevant factors in establishing extreme hardship. The evidence on the record does not establish, however, that the applicant's wife's condition is so serious that she would suffer extreme hardship if she remained in the United States without the applicant. The record contains a brief letter from the applicant's wife's gynecologist indicating that she was suffering from severe post-partum depression in 2006, but the letter contains no more detail about the nature of her condition, the prognosis for recovery, or any treatment or therapy she was receiving. Without more detailed information, the AAO is not in the position to reach conclusions concerning the severity of a medical or psychological condition or the treatment and assistance needed.

The evidence on the record is insufficient to establish that the emotional effects of being separated from the applicant are more serious than the type of hardship a family member would normally suffer when faced with her spouse's deportation or exclusion. Although the depth of her concern over being separated from the applicant 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 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 additionally asserts that his wife is suffering economic hardship since his removal from the United States. The applicant's wife further describes her financial situation and indicates that her monthly net income is about \$2000, and her expenses before food, daily necessities and utilities are \$1490. *Letter from* [REDACTED] dated March 8, 2005. She additionally states that as of the date the waiver application was filed, she was unemployed and would move in with her sister upon returning to the United States after visiting the applicant in Egypt. *Id.* No documentation of the applicant's income when he resided in the United States or the family's expenses was submitted with the waiver application or appeal, and although the applicant's wife indicated she was unemployed in 2005 when the waiver application was filed, no further information was submitted with the appeal to indicate that the applicant's wife remained unemployed. 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)). The evidence on the record is insufficient to support the assertion that the applicant's wife was completely financially dependent on the applicant or that she is unable to support herself and their children. Although it appears that the loss of the applicant's income has had a negative effect on his wife's financial situation, this is a common result of deportation. The mere showing of economic detriment to qualifying family members is insufficient to warrant a finding of extreme hardship. *See INS v. Jong Ha Wang, supra.*

The emotional and financial hardship the applicant's wife would suffer if she remains in the United States appears to be the type of hardship that a family member would normally suffer as a result of deportation 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)

A review of the documentation in the record, when considered in its totality, reflects that the applicant has failed to show that his Lawful Permanent Resident spouse would suffer extreme hardship if he were removed and she remained in the United States. 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.