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U.S. Department of Homeland Security
Citizenship and Immigration Services
Administrative Appeals Office MS 2090
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U.S. Citizenship
and Immigration
Services

H3



FILE: Office: ATHENS, GREECE Date: MAY 20 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 sustained.

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 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 and reside with his U.S. citizen wife.

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 November 2, 2006.

On appeal, the applicant contends that his U.S. citizen wife will experience extreme hardship if the present waiver application is denied. *Statement from the Applicant on Form I-290B*, dated October 18, 2006.

The record contains statements from the applicant, the applicant's wife, the applicant's father-in-law, friends of the applicant and his wife, and the applicant's and his wife's church; employment and financial documentation for the applicant and his wife; documentation regarding the applicant's son's medical care; a copy of the applicant's son's birth certificate; reports on conditions in Egypt; a copy of the applicant's marriage certificate; a copy of the applicant's wife's birth certificate; a copy of the applicant's passport; documentation regarding the applicant's prior application for asylum and proceedings in Immigration Court, 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)(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.

The record reflects that the applicant entered the United States as a crew member in or about February 1998. He was authorized to remain until March 1, 1998, yet he did not depart by that date. He filed a Form I-589 application for asylum on January 2, 2003. His application was referred to an Immigration Judge by the San Francisco Asylum Office, and an Immigration Judge issued an order of voluntary departure valid until October 26, 2004. The applicant departed on October 24, 2004, within the time permitted by the voluntary departure order. Based on the foregoing, the applicant accrued unlawful presence from March 2, 1998 until January 2, 2003, the date he filed an application for asylum. This period totals over four years. The applicant now seeks reentry as an immigrant pursuant to an approved Form I-130 relative petition filed by his U.S. citizen wife on his behalf. Accordingly, the applicant is inadmissible to the United States under section 212(a)(9)(B)(II) of the Act for having been unlawfully present for more than one year and seeking readmission within 10 years of his last departure. The applicant does not contest his inadmissibility on appeal.

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 wife will experience extreme hardship if he is prohibited from entering the United States. *Statement from the Applicant on Form I-290B* at 1. The applicant stated that his wife is residing with him and their two sons in Egypt. *Statement from the Applicant*, dated October 15, 2006. He explained that his wife's family in the United States misses them, and

that they have never met his youngest son. *Id.* at 1. The applicant stated that he and his wife value marriage and that they wish to remain unified as a family. *Id.* The applicant expressed remorse for violating the immigration laws of the United States. *Id.* at 2. He noted that one of his sons was treated for parasites, and one of them was treated for a third degree burn due to an accident. *Id.*

The applicant's wife stated that she loves the applicant and that she does not wish to be separated from him. *Statement from the Applicant's Wife*, dated December 13, 2005. She explained that she believes a father figure is vital for her two sons, and that she does not wish to separate them from the applicant. *Id.* at 1. The applicant's wife provided that she traveled to Egypt while she was pregnant and she gave birth to her second son there in order to maintain family unity. *Id.*

The applicant's wife indicated that she has experienced cultural differences residing in Egypt, in part due to the fact that she and the applicant are Christians residing in a predominantly Muslim country. *Additional Statement from the Applicant's Wife*, dated May 9, 2006. She cited reports of attacks on Christian churches and businesses, including one that occurred near a school in Alexandria where she and the applicant considered working, and one in Sharm El-Sheikh where she and the applicant considered vacationing. *Id.* at 1. She expressed concern for health conditions in Egypt. *Id.* She stated that she does not wish to return to the United States without the applicant and endure family separation. *Id.*

The applicant's wife explained that their marriage is bona fide, and they did not marry to obtain immigration benefits for the applicant. *Brief from Applicant's Wife*, undated. The applicant's wife stated that, should the present waiver application be denied, she will have to choose between residing in the United States and seeing the applicant as much as finances allow, or residing in Egypt and seeing her family as finances allow. *Id.* at 2. She stated that either choice represents significant hardship. *Id.* The applicant's wife provided that the applicant is the only English-speaking person she knows well in Egypt. *Id.* She stated that her mother, father, brother, sister, aunt, and grandmother live near each other in California, and that they visit often. *Id.* The applicant's wife expressed that she wishes to reside near her family. *Id.* She indicated that her mother suffers from breast cancer and underwent two surgeries to replace her hips, and that she laments not being able to be in the United States to offer her mother support. *Id.* at 2-3.

The applicant's wife expressed that she is experiencing significant emotional hardship despite the fact that she has not received treatment from a doctor for mental health concerns. *Id.* at 3. She stated that she has been advised by numerous individuals to return to the United States with her two sons to avoid the hardship of residing in Egypt, but that she does not wish to do so due to her desire to maintain family unity. *Id.*

The applicant's wife asserted that, should she attempt to return to the United States without the applicant, she would be unable to earn sufficient income to hire childcare services. *Id.*

The applicant's wife indicated that she is capable of sacrificing some comforts found in the United States, but that she is enduring hardships and facing conditions in Egypt that go beyond the loss of conveniences. *Id.* at 3-4. She described health problems that she and her children have faced, including parasites, rashes, and stomach viruses. *Id.* at 4. She noted that medical records are not

available in Egypt such as they are in the United States, thus she is unable to submit more than is contained in the record. *Id.*

The applicant's wife cited difficult conditions for Christians in Egypt. *Id.* at 5. She explained that they attempted to obtain a detailed letter from a priest regarding issues faced by Christians, but that they were told that no Christian priest would write such a letter for fear of reprisals from Muslims. *Id.* She indicated that they were able to obtain a basic letter, which is included in the record. *Id.* The applicant's wife cited incidents of harm to Christians in Egypt. *Id.* at 5-7. She recounted experiences she had in Egypt in which she felt targeted for harassment due to her western origin. *Id.* at 8. She described an incident in which she and the applicant were deprived of three months salary from a school where they taught, ostensibly due to her U.S. nationality. *Id.* at 9.

The applicant provided letters from acquaintances and his father-in-law attesting to the applicant's and the applicant's wife's hardship, and their closeness as a family.

Upon review, the applicant has established that his wife will suffer extreme hardship if he is prohibited from entering the United States. The applicant has shown that his wife will experience extreme hardship should she remain in Egypt to maintain family unity. The applicant's wife has cited incidents in which she has been the subject of negative attention in Egypt, ostensibly due to her western appearance and U.S. nationality. These incidents have involved physical risk including a dangerous encounter in an automobile, as well as financial consequences involving the deprivation of her and the applicant's earned wages. The applicant's wife explained that she has communication difficulties in Egypt, and she feels at risk of harm due to her Christian faith.

The AAO acknowledges that the applicant's wife wishes to reside in the United States, and that she is enduring emotional hardship due to separation from her family members there. The record contains approximately four letters from the applicant's father-in-law in which he expresses his concern for the applicant and the applicant's wife, and he indicates his desire to have them return to the United States. These letters serve as further evidence that the applicant's wife shares a close relationship with her relatives in the United States.

The applicant has not shown that his wife or his sons are experiencing health problems that cannot be treated in Egypt. Yet, it is reasonable that the applicant's wife is concerned for her health and that of her sons due to conditions in Egypt and their related ailments.

The applicant's wife explained that they have been unable to obtain clear documentation to support all of her assertions, in part due to the fact that medical documentation in Egypt is less common than in the United States. The AAO finds it reasonable that there is no documentation to reflect specific incidents of discrimination or harassment. The applicant has provided sufficient evidence to show the referenced medical treatment to his son.

Based on the foregoing, when considering all elements of hardship to the applicant's wife in aggregate, the applicant has shown by a preponderance of the evidence that his wife is experiencing extreme hardship in Egypt. As discussed above, this finding is based on a combination of factors

including incidents of personal harassment and discrimination, concern for free religious practice, health consequences, reasonable concern for her sons' well-being, a lack of language, cultural or other ties to Egypt, and emotional hardship due to separation from close family members in the United States.

The applicant has shown that his wife will experience extreme hardship should she return to the United States and endure family separation. As discussed above, the applicant's wife is residing in Egypt where she is experiencing extreme hardship. She is choosing to do so due to her desire to maintain family unity and due to her strong belief that she and her sons need to remain with the applicant. She stated that she has been advised to depart Egypt, yet she refuses to separate her family. The applicant's wife's decision to reside in Egypt despite extreme hardship reflects on the degree of emotional hardship she would endure should she return to the United States. The AAO notes that all Form I-601 applications must be evaluated individually based on the factors of hardship and evidence presented. The separation of spouses does not constitute extreme hardship in all cases. Yet, in the instant case, the applicant's wife's willingness to endure extreme hardship to maintain family unity shows that separation would cause her significant emotional difficulty. This fact distinguishes her hardship from that which is commonly expected when families are separated due to inadmissibility.

The applicant's wife cited other elements of hardship she would endure should she return to the United States, including economic difficulty. While the applicant has not shown that his wife would be unable to meet her and her sons' needs in his absence, it is reasonable that she would have economic challenges while attempting to work in her field as a teacher and act a single mother with two young children.

The applicant's wife stated that her sons would endure hardship if separated from the applicant. 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 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. As is possible in the present case, when a qualifying relative is left alone in the United States to care for an applicant's children, it is reasonable to expect that the children's emotional state due to separation from the applicant will create emotional hardship for the qualifying relative. Thus, the AAO gives due consideration to the additional hardship the applicant's wife would face due to her sons' loss of the applicant's daily presence.

Based on the foregoing, the applicant has shown by a preponderance of the evidence that his wife would experience extreme hardship should she return to the United States. Accordingly, the AAO finds that denial of the present waiver application will result in extreme hardship to the applicant's wife. Section 212(a)(9)(B)(v) of the Act.

In *Matter of Mendez-Morales*, 21 I&N Dec. 296 (BIA 1996), the BIA held that establishing extreme hardship and eligibility for a waiver of inadmissibility does not create an entitlement to that relief, and that extreme hardship, once established, is but one favorable discretionary factor to be considered. The Attorney General (now Secretary of the Department of Homeland Security) has the

authority to consider all negative factors in deciding whether or not to grant a favorable exercise of discretion. *See Matter of Cervantes-Gonzalez, supra*, at 12.

The negative factors in this case consist of the following:

The applicant remained in the United States without a legal immigration status for over four years.

The positive factors in this case include:

The applicant's wife will experience extreme hardship if the applicant is prohibited from returning to the United States; the applicant's U.S. citizen sons will experience hardship if the present waiver application is denied; the applicant has expressed remorse for violating U.S. immigration law; since the applicant's transgression of U.S. immigration law, he has shown a propensity to comply with necessary procedure to obtain a legal status; the applicant has shown an inclination to work and assist his family in the United States, and; the applicant has not been convicted of a crime.

While the applicant's violation of U.S. immigration law cannot be condoned, the positive factors in this case outweigh the negative factors.

In proceedings for an application for waiver of grounds of inadmissibility under section 212(a)(9)(B)(v) of the Act, the burden of establishing that the application merits approval remains entirely with the applicant. Section 291 of the Act, 8 U.S.C. § 1361. In this case, the applicant has met his burden that he merits approval of his application.

ORDER: The appeal is sustained.