



U.S. Citizenship
and Immigration
Services

H/4

[REDACTED]

FILE: [REDACTED]

Office: ATHENS, GREECE

Date: AUG 19 2005

IN RE: [REDACTED]

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:

[REDACTED]

PUBLIC COPY

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.

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Acting 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 10 years of his last departure from the United States. The applicant's spouse is a U.S. citizen and the applicant is seeking a waiver of inadmissibility in order to reside in the United States with his spouse.

The acting officer-in-charge found that based on the evidence in the record, the applicant failed to establish extreme hardship to his U.S. citizen spouse. The Form I-601, Application for Waiver of Grounds of Excludability, was denied accordingly. *Decision of the Acting Officer-in-Charge*, dated January 4, 2005.

On appeal, counsel asserts that the appeal is timely filed, the applicant's spouse will suffer extreme hardship, the waiver is not based on an "after-acquired" family relationship, the applicant made attempts to adjust his status in the United States and the applicant timely departed pursuant to his voluntary departure order. *See Brief in Support of Appeal*, undated.

Counsel submits the aforementioned brief, affidavits from the applicant's spouse and the parents of the applicant's spouse, credit card statements for the applicant's spouse, voluntary departure records for the applicant, a psychologist's letter, letters from colleagues and the employer of the applicant's spouse, Egypt country analysis briefs, a local wedding announcement and insurance records. The entire record was reviewed and considered in rendering a decision on the appeal.

Counsel's asserts that the appeal was timely filed. The waiver application was denied on January 4, 2004 and the Form I-290B, Notice of Appeal to the AAO, was properly received and fee receipted on February 24, 2005. The applicant is required to submit the waiver application within 30 days of receipt of the denial letter, or 33 days if the decision was received by mail. However, counsel has submitted documentation verifying significant delays in the postal service delivery to the applicant and the AAO will consider the appeal to be timely filed. The AAO notes that part of the delay in filing resulted from counsel initially filing the appeal with the AAO. The Form I-292, Notice of Decision, clearly states in bold print that the appeal should be filed with the Athens USCIS Office and not with the AAO (formerly the AAU).

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 the present application, the record indicates that the applicant entered the United States in lawful B-1 status on May 26, 1991 with an I-94 expiration date of June 26, 1991. The applicant fell out of status upon the B-1 expiration date and left the United States on August 26, 2003 pursuant to an order of voluntary departure. Therefore, the applicant accrued unlawful presence from April 1, 1997, the date of enactment of unlawful presence provisions under the Act, until May 1, 2003, the date that voluntary departure was granted. The 10 year bar was triggered by the applicant's departure from the United States. Therefore, the applicant is inadmissible to the United States under section 212(a)(9)(B)(i)(II) of the Act 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. Hardship the alien himself experiences due to separation is irrelevant to section 212(a)(9)(B)(v) waiver proceedings. 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 Bureau 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 lawful permanent resident or U.S. citizen family ties to 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.

An analysis under the factors of *Matter of Cervantes-Gonzalez* is appropriate in this case. The record reflects that the parents of the applicant's spouse are United States citizens. Counsel asserts that the applicant's spouse is the caretaker of her parents and that choosing between caring for her parents and living with her husband has given her much stress and grief. *Brief in Support of Appeal*, at 6. The applicant's spouse details a wide variety of medical problems that her parents have although no medical records are submitted to verify

these statements. *See Affidavit of Applicant's Spouse*, at 6, dated February 16, 2005. The AAO notes that the parents of the applicant's spouse are not qualifying relatives for extreme hardship analysis and hardship to the parents is irrelevant to the instant waiver application. Furthermore, counsel has not provided sufficient documentation verifying that the inability of the applicant's spouse to care for her parents will contribute to her extreme hardship.

The record does not indicate if the applicant's spouse has any family ties outside of the United States besides the applicant. The record does not mention the extent, if any, of the applicant's spouse's ties to Egypt.

Counsel contends that the applicant's spouse will suffer severe financial hardship. *Brief in Support of Appeal*, at 8. Counsel submits two credit card statements for the applicant's spouse with large balances and states that she has incurred expenses in traveling to Egypt, maintaining two households and paying for medical and health insurance and legal expenses. The record does not contain documentation of the actual source of the large balances and on the cost of travel, maintaining the two households, insurance and legal expenses. Counsel states that the applicant's spouse's expenses have put her \$27,000 in debt, but there is no evidence that this number is accurate nor of whether her debt is related to the applicant's denial of admission to the United States. Counsel states that the applicant has been unable to find employment in Egypt and the unemployment rate in Egypt is 15% to 25%. *Id.* However, counsel does not indicate what type of positions the applicant has applied for, nor does counsel provide documentation to verify that the applicant has been denied employment. The applicant's spouse is currently employed, but her employer states that she is having difficulty handling her job, she was offered a promotion which may be revoked and that her decline in job performance is related to the applicant's visa denial. *See Employer Letter for Applicant's Spouse*, dated February 16, 2005. Upon review of the entire record, the AAO finds that the record does not support counsel's contention of severe financial hardship.

Counsel asserts that the applicant's spouse had a nervous breakdown due to stress caused by separation and the denial of the applicant's waiver and that she is clearly suffering from depression. *Brief in Support of Appeal*, at 7. The record includes a brief psychologist's letter which does not state that the applicant's spouse had a nervous breakdown, but indicates that she presented with depressive symptoms and excessive anxiety. *Psychologist's Letter*, dated February 9, 2005. Counsel states that the applicant's spouse has been placed on anti-depressants and anxiety medication, but there is no documentation to verify this point. The applicant's spouse states that she has suffered from rashes, nausea, sleep deprivation and carpal tunnel syndrome. *Affidavit of Applicant's Spouse*, at 3, 6. The record does not provide documentation of whether the applicant's spouse has an ongoing relationship with a health professional and whether she is receiving any treatment for her problems. The record does not include information on the unavailability of suitable medical care in Egypt.

The acting officer-in-charge stated that courts give far less weight to "after-acquired" family ties, referring to the marriage of the applicant and his spouse after he left the United States. *Decision of the Acting Officer-in-Charge*, at 3. The court in *Matter of Cervantes-Gonzalez* dealt with a respondent who married his spouse while he was in removal proceedings, therefore undermining a claim of extreme hardship for the spouse as she had an expectation that she may have to leave or remain in the United States without the respondent. *Matter of Cervantes-Gonzalez*, at 566, 567. Counsel asserts that the applicant and his spouse met prior to the applicant's "deportation" order. *Brief in Support of Appeal*, at 10. Therefore, there would have been an

expectation of potential relocation or separation for the applicant's spouse if they were married during removal proceedings. In this case, however, the applicant and his spouse were married after the applicant was granted an order of voluntary departure. As the applicant was not ordered removed from the United States, the AAO disagrees with the statement of the acting officer-in-charge.

The record reflects that the applicant's spouse will face difficulties if the applicant is denied admission to the United States. However, extreme hardship has not been shown in the event that the applicant's spouse relocates to Egypt or in the event that she remains in the United States.

U.S. court decisions have repeatedly 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, *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. *Hassan v. INS*, *supra*, held further 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. The AAO recognizes that the applicant's spouse will endure hardship as a result of separation from the applicant and is sympathetic to her situation. However, her situation, if she remains in the United States, is typical to individuals separated as a result of deportation or exclusion and does not rise to the level of extreme hardship.

A review of the documentation in the record fails to establish the existence of extreme hardship to the applicant's spouse 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 he merits a waiver as a matter of discretion. The AAO notes that the applicant's immigration history is relevant to the discretionary phase of the waiver, therefore, counsel's contentions on this matter will not be addressed. As the acting officer-in-charge determined that extreme hardship was not present, there was no need for a discretionary analysis in the initial decision.

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