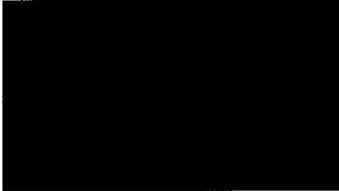


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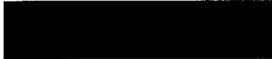
FILE:



Office: ATHENS, GREECE

Date: **AUG 31 2005**

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:



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 Turkey 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 June 9, 2005 (decision faxed to counsel on June 20, 2005).

On appeal, counsel asserts that the acting officer-in-charge failed to properly consider the submitted documentation and that the applicant's spouse has met the standard of extreme hardship. *Brief in Support of Appeal*, dated July 18, 2005.

Counsel submits the aforementioned brief, a psychological evaluation and an affidavit from the applicant's spouse. Previously submitted documents include a statement from the applicant's spouse, physician letters for the applicant's spouse, medical records for the applicant's spouse, an employer letter for the applicant and information on Turkey. 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.

In the present application, the record indicates that the applicant entered the United States without inspection on or about September 15, 1997. The AAO notes that the applicant claims to have entered the United States as a crew member, however, there is no documentation evidencing entry on a C or D visa. The applicant was granted voluntary departure on June 15, 2004 with a departure date no later than October 13, 2004. Therefore, the applicant accrued unlawful presence from September 15, 1997 (or 30 days thereafter, if he entered as a crewman) until June 15, 2004, the date that voluntary departure was granted. The 10-year bar was triggered by the applicant's departure from the United States on October 11, 2004. 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 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, which are applicable to section 212(a)(9)(B)(v) waiver proceedings, 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 applicant's spouse has four U.S. citizen children, two of whom are minors, and one grandchild. The record does not indicate if the applicant's spouse has any family ties outside of the United States besides the applicant. The record includes a U.S. Department of State Consular Information Sheet on Turkey, which states that there is potential for violence and terrorist actions against U.S. citizens and that Americans should exercise caution and keep a low profile with regard to their personal security. *U.S. Department of State Consular Information Sheet on Turkey*, at 2, dated June 3, 2005. The record does not mention the extent, if any, of the applicant's spouse's ties to Turkey. Counsel states that the applicant's spouse does not speak Turkish and feels unsafe living in a predominantly Muslim country, as she is a Christian. *Brief in Support of Appeal*, at 2.

The record includes numerous documents regarding the medical problems of the applicant's spouse. She is currently taking lipitor for high cholesterol, paxil for panic attacks, nexium for acid reflux, plavix and toprol for coronary artery disease and clonazepam for anxiety. *Letter from [REDACTED]* dated January 31, 2005. The record includes medical records dating back to early 2002 which detail cardiac catheterizations,

the aforementioned medications, coronary artery disease, unstable angina, hypertension, anxiety and hyperlipidemia. The psychologist's report states that the applicant's spouse is at an increased risk for cardiac complications due to the ongoing stress of separation from the applicant. *Psychological Report*, at 6, dated July 11, 2005. The psychologist's report details the difficult life that the applicant's spouse has lead and the negative emotional effects of separation from the applicant. *Id.* at 4. However, there is no documentation from a medical doctor that her medical problems would increase due to separation from the applicant or that they would be alleviated with his presence in the United States. The record includes psychiatric notes that indicate that the applicant's spouse stated that she was thinking of leaving the applicant, as he was inebriated when coming home. *Catholic Charities Intake Notes*, dated March 22, 2004. This is inconsistent with the psychologist's report, which states that the applicant's spouse has a sense of inner peace and joy due to her relationship with the applicant. *See Psychological Report*, at 3.

The acting officer-in-charge states that an embassy medical officer found that the applicant's spouse has no cardiac factors that would make her disabled, has not documented her anxiety and has submitted a date altered psychiatric report. *Decision of the Acting Officer-in-Charge*, at 3. The AAO finds the first two of these statements to be inaccurate based on the voluminous records presented, including a finding by the Social Security Administration that the applicant's spouse is disabled based on her coronary artery disease, anxiety, depression and hypertension. *See Disability Insurance Benefits Letter*, at 3, undated. The AAO notes that the disability claim was made before the applicant met his spouse. The reason for the altered date on the psychiatric report is unclear, however, the record includes psychiatric reports from 2002 until 2004 with unaltered dates. The record includes a psychiatric plan of care and course of treatment dated June 17, 2004. Furthermore, the applicant's spouse claims that the embassy medical officer did not examine her personally. *Statement of Applicant's Spouse*, at 2, dated July 18, 2005. However, the record does not establish that her medical problems would increase due to separation from the applicant or that they would be alleviated with his presence in the United States.

In regard to the availability of medical care in Turkey, the consular information states that Turkish hospitals vary greatly, that nursing care is not up to American standards and that new hospitals have modern facilities and U.S. trained specialists who may be unable to treat serious medical conditions.

In regard to the financial impact of departure, the record indicates that the applicant was employed with a fencing company and has a position available upon his return to the United States. *Letter from* [REDACTED] February 1, 2005. Counsel asserts that the applicant was the breadwinner in the family and that the applicant's spouse will likely lose her home in the applicant's absence. *Brief in Support of Appeal*, at 2. Counsel asserts that the applicant has health insurance in the United States and would not be able to afford medical treatment in Turkey. *Id.* The record does not include any documentation to verify these assertions. Furthermore, there is no documentation that the applicant cannot find employment in Turkey.

The acting officer-in-charge cites case law that states that less weight is given to a spouse's hardship if the parties were married after the commencement of proceedings and that less weight is given to equities acquired after a deportation order has been entered. *Decision of the Acting Officer-in-Charge*, at 2. Counsel asserts that the applicant and his spouse were married before he was put in proceedings and that the applicant was not ordered deported rather he was granted voluntary departure. *Brief in Support of Appeal*, at 2. The AAO agrees with counsel's assertions regarding these two issues.

Based on the record presented, the AAO does not find that the applicant's spouse will suffer extreme hardship in the event that the applicant is denied admission to 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 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.

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.