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U.S. Citizenship  
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[REDACTED]

FILE: [REDACTED] Office: ATHENS, GREECE

Date: JUL 02 2008

IN RE: [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 APPLICANT:

[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.

A handwritten signature in black ink, appearing to read "Robert P. Wiemann".

Robert P. Wiemann, Chief  
Administrative Appeals Office

**DISCUSSION:** The Officer-in-Charge (OIC), Athens, Greece, denied the waiver application. The matter is now on appeal before the Administrative Appeals Office (AAO) in Washington, DC. The appeal will be dismissed.

The applicant, [REDACTED] is a native and citizen of Egypt who was found 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. The applicant sought a waiver of inadmissibility pursuant to section 212(a)(9)(B)(v) of the Act, 8 U.S.C. § 1182(a)(9)(B)(v), which the OIC denied, finding that the applicant failed to establish hardship to a qualifying relative. *Decision of the OIC, dated April 26, 2006.* The applicant submitted a timely appeal.

The AAO will first address the finding of inadmissibility pursuant to section 212(a)(9)(B)(i)(II) of the Act, 8 U.S.C. § 1182(a)(9)(B)(i)(II).

Section 212(a)(9)(B)(i)(II) of the Act provides that any alien (other than an alien lawfully admitted for permanent residence) who has been unlawfully present in the United States for one year or more, and again seeks admission within 10 years of the date of such alien's departure or removal, is inadmissible.

Unlawful presence accrues when an alien is present in the United States after the expiration of the period of stay authorized by the Attorney General or is present in the United States without being admitted or paroled. Section 212(a)(9)(B)(ii) of the Act, 8 U.S.C. § 1182(a)(9)(B)(ii). The periods of unlawful presence under sections 212(a)(9)(B)(i)(I) and (II) are not counted in the aggregate.<sup>1</sup> For purposes of section 212(a)(9)(B) of the Act, time in unlawful presence begins to accrue on April 1, 1997.<sup>2</sup>

The three- and ten-year bars of sections 212(a)(9)(B)(i)(I) and (II) of the Act, 8 U.S.C. § 1182(a)(9)(B)(i)(I) and (II), are triggered by a departure from the United States following accrual of the specified period of unlawful presence. If someone accrues the requisite period of unlawful presence but does not subsequently depart the United States, then sections 212(a)(9)(B)(i)(I) and (II) of the Act, 8 U.S.C. § 1182(a)(9)(B)(i)(I) and (II), would not apply. *See* DOS Cable, note 1. *See also Matter of Rodarte*, 23 I&N Dec. 905 (BIA 2006)(departure triggers bar because purpose of bar is to punish recidivists).

The record reflects that the applicant was admitted into the United States as a visitor for pleasure on September 2, 1999, with authorization to remain in the country until March 1, 2000. The applicant remained in the United States until September 21, 2002, at which time she voluntarily departed from the country. For purposes of calculating unlawful presence under section 212(a)(9)(B) of the Act, the applicant began to accrue time in unlawful presence on March 2, 2000. From that date until September 21, 2002, she accrued over one year of unlawful presence, and when she departed from the United States she triggered the ten-year-

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<sup>1</sup> Memo, Virtue, Acting Assoc. Comm. INS, Grounds of Inadmissibility, Unlawful Presence, June 17, 1997 INS Memo on Grounds of Inadmissibility, Unlawful Presence (96Act.043); and Cable, DOS, No. 98-State-060539 (April 4, 1998).

<sup>2</sup> *See* DOS Cable, note 1; and IIRIRA Wire #26, HQIRT 50/5.12.

bar. Consequently, the finding of inadmissibility under section 212(a)(9)(B)(i)(II) of the Act, 8 U.S.C. § 1101(a)(9)(B)(i)(II), is correct.

The AAO will now address the finding that a waiver of inadmissibility is not warranted.

Section 212(a)(9)(B) of the Act provides that:

- (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.

A waiver of inadmissibility under section 212(a)(9)(B)(v) is dependent upon a showing that the bar to admission imposes an extreme hardship on a qualifying relative, *i.e.*, the U.S. citizen or lawfully resident spouse or parent of the applicant. Hardship to an applicant and to his or her child are not a consideration under the statute, and unlike section 212(h) of the Act where a child is included as a qualifying relative, they are not included under section 212(a)(9)(B)(v) of the Act. Thus, hardship to the applicant and her U.S. citizen child will be considered only to the extent that it results in hardship to a qualifying relative, who in this case is the applicant’s naturalized citizen spouse. Once extreme hardship is established, it is but one favorable factor to be considered in determining whether the Secretary should exercise discretion. *See Matter of Mendez-Morales*, 21 I&N Dec. 296, 301 (BIA 1996).

“Extreme hardship” is not a definable term of “fixed and inflexible meaning”; establishing extreme hardship is “dependent upon the facts and circumstances of each case.” *Matter of Cervantes-Gonzalez*, 22 I&N Dec. 560, 565 (BIA 1999). The Board of Immigration Appeals (BIA) in *Matter of Cervantes-Gonzalez* lists the factors it considers relevant in determining whether an applicant has established extreme hardship pursuant to section 212(i) of the Act. The 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. *Id.* at 565-566. The BIA indicated that these factors relate to the applicant’s “qualifying relative.” *Id.* at 565-566.

In *Matter of O-J-O-*, 21 I&N Dec. 381, 383 (BIA 1996), the BIA stated that the factors to consider in determining whether extreme hardship exists “provide a framework for analysis,” and that the “[r]elevant factors, though not extreme in themselves, must be considered in the aggregate in determining whether extreme hardship exists.” It further stated that “the trier of fact must consider the entire range of factors concerning hardship in their totality” and then “determine whether the combination of hardships takes the case beyond those hardships ordinarily associated with deportation.” (citing *Matter of Ige*, 20 I&N Dec. 880, 882 (BIA 1994).

Applying the *Cervantes-Gonzalez* here, extreme hardship to the applicant's husband must be established in the event that he remains in the United States, and in the alternative, that joins the applicant to live in Egypt. A qualifying relative is not required to reside outside of the United States based on the denial of the applicant's waiver request.

On appeal, counsel states that extreme hardship was found in *Matter of Piggott*, 15 I&N Dec. 129 (BIA 1974); *Matter of McCarthy*, 10 I&N Dec. 227 (BIA 1963); and *Matter of Recinas*, 23 I&N Dec. 467 (BIA 2002). Counsel states that in *Matter of Piggott* the immigration judge found the respondents would not be able to provide for their own necessities in Antigua or that of their U.S. citizen children, and that their daughter had rheumatic fever and was under physician's care and equal medical care was unavailable in Antigua. Counsel states that in *Matter of McCarthy* the extreme hardship requirement was met for an alien who had presence in the United States spanning 40 years, and a lawful permanent resident spouse and three U.S. citizen children. Counsel states that in *Matter of Recinas*, the BIA found exceptional and extremely unusual hardship where a Mexican woman was the sole support of six children, four of whom were U.S. citizens. Counsel states that *Matter of Recinas* is distinguished by the BIA's prior ruling in *Matter of Andazola*, 23 I&N Dec. 319 (BIA 2002), where the BIA did not find hardship to a single Mexican mother of two U.S. citizen children.

Counsel states that the applicant's U.S. citizen daughter, [REDACTED] has gastroesophageal reflux disease (GERD). She states that two days after [REDACTED]'s birth she was taken to emergency because she stopped breathing, and was later diagnosed with GERD. Counsel states that [REDACTED] requires constant observation and treatment by a specialist. According to counsel, on May 19, 2006, [REDACTED] had a severe attack in Egypt and was treated at a specialized hospital where the doctors recommended she be taken to the United States for proper monitoring, treatment, and possibly an operation. Counsel states that the applicant's husband is accustomed to U.S. culture and will not be able to live in Egypt or financially support his family if he lived there. She states that [REDACTED] would not have access to adequate healthcare facilities and services in Egypt. Counsel states that [REDACTED] requires her mother's presence 24 hours a day because of her medical condition. Counsel states that separation has caused the applicant's husband to develop signs of severe depression, anxiety, and migraines. Counsel states that if the application were denied, [REDACTED]'s education and quality of life will suffer.

The content in the statement by the applicant's husband is substantially similar in nature to the statements made by counsel on appeal. Additionally, the applicant's husband indicated that his wife is very close to [REDACTED], and had taken her to Egypt when she was six months old. He stated that he has a difficult time explaining to his children why their mother is not with them in the United States. He indicated that he is worried about his daughter having another GERD attack while he is not present. He stated that without his wife, he may be forced to stay with his daughter at home, preventing him from working. He stated that he cannot afford childcare for his daughter. He stated that he would not be able to find employment in Egypt and is accustomed to life in the United States. He stated that separating his daughter from her mother will affect his daughter for the rest of her life.

The undated letter by Al KODS Specialized Hospital is summarized as follows. Soon after the applicant's wife arrived in Egypt, she sought medical advice for her daughter's attacks, which have caused her daughter to lose her appetite and have made her unable to sleep deeply or fear an attack of choking and vomiting. The

attacks were recurrent, three to four times a month, during the past three and one-half years, and the applicant's daughter was under close observation by a specialized medical team who diagnosed her condition as GERD. On May 19, 2006, the applicant's daughter had an attack that amounted to an acute life threatening condition; she had a breathing tube and the hap-lock IV applied for emergency access. The parents were recommended to have their daughter transported to a more advanced medical facility where she could be closely monitored for any sign of recurrence of the GERD attacks. The applicant's husband indicated that his daughter will be traveling to the United States on May 23, 2006, where she will be closely observed, treated, and possibly operated on by a specialist.

The Discharge Summary by St. Luke's Hospital in Pennsylvania indicated that the applicant's child was born on March 23, 2002 and was sent home from the newborn nursery on March 25, 2002. It stated that the baby came back to emergency on the day of discharge, with a history of six minutes of being blue, stiff with hands extended, and not breathing or crying. **The mother had called 911. It stated that the five-channel pneumogram was reviewed by a physician with a sleep laboratory physician.** "The sleep study showed multiple episodes of reflux with a drop of esophageal pH down to 3, associated with bradycardia with heart rate down to 80, and apnea of 20 to 15 seconds in duration." The applicant's daughter was discharged with medication, Zantac and Regal, and with reflux precautions. She was sent home on a home apnea monitor and the applicant's wife was to receive cardiopulmonary resuscitation training prior to discharge.

An undated letter by Kods Specialized Hospital stated that the applicant was admitted to the hospital one and one-half years ago in labor and after labor developed complicated umbilical hernia with severe backache. It stated that she underwent a surgical operation for repair of hernia and hernioplasty with mesh and magnetic resonant imaging revealed disc prolapse L4-L5. It stated that she cannot do vigorous exercise or lift heavy things as her disc may be complicated by neurological problems and her hernia may recur in a short time. The letter stated that the social worker reviewed her case and found that applicant's wife cannot carry on her life as she lives alone with three children who are totally dependent on her because her husband lives abroad.

In a letter dated June 7, 2005, the applicant's husband stated that he has been separated from his family for 18 months and cannot return to Egypt because he needs to keep working to support his family. He stated that he worries about harm to his children as his wife's medical condition is not good enough to provide care for the children. He stated that separation is affecting his relationship with his wife.

It is noted that the record reveals that the applicant has three children, her U.S. citizen daughter and two children who were born in Egypt. The I-130 Form shows the applicant has having a son born on September 17, 1998.

The AAO notes that the invoices for \$6,425.10 and \$4,797.14 by St. Luke's Hospital reflects that charges were paid by the State of Pennsylvania medical assistance and by Medicaid.

The Biographic Information shows the applicant's husband as having been employed in the United States as a sales representative with Royal Express Travel and as a manager with U-Haul Moving.

The record establishes that the applicant's husband would endure extreme hardship if he remains in the United States without the applicant.

The documentation in the record indicates that the applicant's U.S. citizen daughter is now living with her father in the United States, and that because of his daughter's medical condition the applicant's husband is concerned about not having his wife provide care for his daughter while he is at work. It is noted that since the invoiced charges by St. Luke's Hospital were paid by Medicaid and the State of Pennsylvania, the record suggests that the applicant's husband is not able to afford childcare for his daughter. Furthermore, because the record indicates that the applicant's daughter has recurrent attacks of GERD, the AAO finds that the applicant's husband would experience extreme emotional hardship if he were to remain in the United States with his daughter without the assistance of his wife.

The record is insufficient to establish that the applicant's husband will endure extreme hardship if he joined the applicant in Egypt.

The conditions in the country where the applicant's husband would live if he joined his wife are a relevant hardship consideration. While political and economic conditions in an alien's homeland are relevant, they do not justify a grant of relief unless other factors such as advanced age or severe illness combine with economic detriment to make deportation extremely hard on the alien or his qualifying relatives. *Matter of Ige*, 20 I&N Dec. 880 (BIA 1994)(citations omitted).

The record reflects that in Egypt the applicant's daughter been to Al KODS Specialized Hospital over a three year period for GERD attacks. On May 19, 2006, the applicant's daughter had an acute GERD attack for which she was taken by ambulance to Al KODS Specialized Hospital. Al KODS Specialized Hospital recommended that the applicant's daughter be transported to a more advanced medical facility for close monitoring for any recurrent GERD attacks. The letter does not state that Egypt lacks advanced medical facilities for monitoring GERD attacks; but states that the applicant's daughter needed to be transported to a medical facility that is more advanced than Al KODS Specialized Hospital. The AAO notes that the record does not contain evidence to show that Egypt lacks medical facilities capable of monitoring GERD attacks. 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 applicant's husband claims that he will be unable to find employment in Egypt to support his family. But the record does not contain any documentation in support of his claim. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici, supra*.

In considering the hardship factors raised here, the AAO examines each of the factors, both individually and cumulatively, to determine whether extreme hardship has been established. It considers whether the cumulative effect of claims of economic and emotional hardship would be extreme, even if, when considered separately, none of them would be. It considers the entire range of factors concerning hardship in their totality and then determines whether the combination of hardships takes the case beyond those hardships ordinarily associated with removal.

The record fails to support a finding of significant hardships over and above the normal economic and social disruptions involved in removal so as to warrant a finding of extreme hardship. Having carefully considered each of the hardship factors raised, both individually and in the aggregate, it is concluded that these factors do not in this case constitute extreme hardship to a qualifying family member for purposes of relief under 212(a)(9)(B)(v) of the Act, 8 U.S.C. § 1182(a)(9)(B)(v).

Having found the applicant statutorily ineligible for relief, no purpose would be served in discussing whether she 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. *See* Section 291 of the Act, 8 U.S.C. § 1361. The applicant has not met that burden. Accordingly, the appeal will be dismissed.

**ORDER:** The appeal is dismissed.