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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090
**U.S. Citizenship
and Immigration
Services**



H6

DATE: **JUN 27 2012** Office: ATHENS, GREECE

FILE:

IN RE:

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) and under Section 212(i) of the Immigration and Nationality Act, 8 U.S.C. § 1182(i)

ON BEHALF OF APPLICANT:

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

Thank you,

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Field Office Director, 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 Syria 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 a period of one year or more and seeking readmission within ten years of his last departure from the United States, and pursuant to section 212(a)(6)(C)(i) of the Act, 8 U.S.C. § 1182(a)(6)(C)(i), for attempting to procure admission to the United States by fraud or willful misrepresentation. The applicant's spouse and three children are U.S. citizens. The applicant seeks a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i), and section 212(a)(9)(B)(v) of the Act, 8 U.S.C. § 1182(a)(9)(B)(v), in order to reside in the United States with his spouse and children.

The field office director found that the applicant established extreme hardship to his U.S. citizen spouse, but that a favorable exercise of discretion was not warranted; and the application was denied accordingly. *Field Office Director's Decision*, dated January 25, 2012.

On appeal, counsel asserts that the field office director abused his discretion in failing to consider hardship to the applicant or his children in his decision. *Form I-290B*, received February 23, 2010.

The record includes, but is not limited to, counsel's brief, the applicant's spouse's and daughter's medical records, photographs of the applicant, statements from the applicant and his spouse, country conditions information on Syria and the applicant's immigration records.

The record reflects that the applicant entered the United States without inspection on or about November 26, 1995; he departed the United States on January 24, 1996; he misrepresented his identity upon attempting to enter the United States on January 27, 1996; he was ordered deported from the United States *in absentia* under his true name on January 30, 1996; he was granted voluntary departure under his alias on May 2, 1996; he remained in the United States past his July 2, 1996 voluntary departure grant date; he filed Form I-485, Application to Register Permanent Residence or Adjust Status, on June 19, 2007; his request for a stay of deportation was denied on February 25, 2008; his motion to reopen his *in absentia* removal order was denied on April 10, 2008; and he was removed from the United States on January 11, 2010.

Therefore, the applicant accrued unlawful presence from April 1, 1997, the effective date of unlawful presence provisions under the Act, until June 19, 2007, the date he filed his Form I-485 application. The applicant is inadmissible to the United States under section 212(a)(9)(B)(i)(II) of the Act for being unlawfully present for a period of one year or more and seeking readmission within ten years of his January 11, 2010 departure from the United States. The applicant is also inadmissible to the United States under section 212(a)(6)(C)(i) of the Act for willfully misrepresenting his identity in attempting to procure admission to the United States.

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.

Section 212(a)(6)(C) of the Act provides, in pertinent part, that:

(i) Any alien who, by fraud or willfully misrepresenting a material fact, seeks to procure (or has sought to procure or has procured) a visa, other documentation, or admission into the United States or other benefit provided under this Act is inadmissible.

Section 212(i) of the Act provides that:

(1) The Attorney General [now the Secretary of Homeland Security (Secretary)] may, in the discretion of the Attorney General [Secretary], waive the application of clause (i) of subsection (a)(6)(C) in the case of an alien who is the spouse, 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 the United States of such immigrant alien would result in extreme hardship to the citizen or lawfully resident spouse or parent of such an alien.

The applicant requires waivers under sections 212(a)(9)(B)(v) and 212(i) of the Act. These waivers are dependent first upon a showing that the bars impose an extreme hardship to the U.S. citizen or lawfully resident spouse or parent of the applicant. Hardship to the applicant or his children is not

considered in sections 212(a)(9)(B)(v) and 212(i) waiver proceedings unless it causes hardship to a qualifying relative, in this case the applicant's spouse. 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).

The field office director found that the applicant established that a qualifying relative would experience extreme hardship. The AAO has conducted a full review of the evidence of record and agrees that the applicant's spouse would suffer extreme hardship upon denial of the waiver application, whether she remains in the United States or relocates abroad.

The AAO additionally finds that the applicant merits a waiver of inadmissibility as a matter of discretion. In discretionary matters, the alien bears the burden of proving eligibility in terms of equities in the United States which are not outweighed by adverse factors. *See Matter of T-S-Y-*, 7 I&N Dec. 582 (BIA 1957).

In evaluating whether section 212(h)(1)(B) relief is warranted in the exercise of discretion, the factors adverse to the alien include the nature and underlying circumstances of the exclusion ground at issue, the presence of additional significant violations of this country's immigration laws, the existence of a criminal record, and if so, its nature and seriousness, and the presence of other evidence indicative of the alien's bad character or undesirability as a permanent resident of this country. The favorable considerations include family ties in the United States, residence of long duration in this country (particularly where alien began residency at a young age), evidence of hardship to the alien and his family if he is excluded and deported, service in this country's Armed Forces, a history of stable employment, the existence of property or business ties, evidence of value or service in the community, evidence of genuine rehabilitation if a criminal record exists, and other evidence attesting to the alien's good character (e.g., affidavits from family, friends and responsible community representatives).

See Matter of Mendez-Morales, 21 I&N Dec. 296, 301 (BIA 1996). The AAO must then, "balance the adverse factors evidencing an alien's undesirability as a permanent resident with the social and humane considerations presented on the alien's behalf to determine whether the grant of relief in the exercise of discretion appears to be in the best interests of the country." *Id.* at 300 (citations omitted).

The adverse factors in the present case include the applicant's entry without inspection, failure to attend his deportation hearing, his deportation order, his identity misrepresentation, his unauthorized employment, his failure to comply with his voluntary departure order and his unauthorized period of stay in the United States.

The favorable factors for the applicant include his U.S. citizen spouse and three children, lack of a criminal record, extreme hardship to his spouse, hardship to his children including one who has seizures, an approved Form I-130 petition on the applicant's behalf, and threats to his safety in Syria.

The record includes documentation, including photographs, reflecting that the applicant has been subjected to very serious physical and psychological harm upon returning to Syria which weighs strongly in favor of approving the application. The AAO notes that many of the applicant's favorable factors are after-acquired equities and are therefore given less weight than would otherwise be accorded.

The AAO finds that the violations committed by the applicant are serious in nature and cannot be condoned. Nevertheless, the AAO finds that taken together, the favorable factors in the present case outweigh the adverse factors, such that a favorable exercise of discretion is warranted. Accordingly, the appeal will be sustained. The waiver application will be approved.

ORDER: The appeal is sustained. The waiver application is approved.