



U.S. Citizenship
and Immigration
Services

(b)(6)

DATE: **JAN 10 2013**

OFFICE: ATHENS, GREECE

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)

ON BEHALF OF APPLICANT:

SELF-REPRESENTED

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,

A handwritten signature in black ink, appearing to read "Ron Rosenberg".

Ron Rosenberg
Acting Chief, Administrative Appeals Office

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DISCUSSION: The Form I-601, Application for Waiver of Grounds of Inadmissibility (Form I-601) was denied by the Acting Field Office Director, Athens, Greece, and an appeal of the denial was dismissed by the Administrative Appeals Office (AAO). The matter is now before the AAO on motion. The motion is granted and the underlying application is approved.

The applicant is a native and citizen of Egypt who was found to be inadmissible to the United States under 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 departure from this country.¹ The applicant is married to a U.S. citizen, and he is the beneficiary of an approved Form I-130, Petition for Alien Relative (Form I-130). He seeks a waiver of inadmissibility pursuant to section 212(a)(9)(B)(v) of the Act, 8 U.S.C. §1182(a)(9)(B)(v), in order to live in the United States with his U.S. citizen spouse and family.

In a decision dated August 5, 2011, the director concluded the applicant had failed to establish his wife would experience extreme hardship if he were denied admission into the United States. The waiver application was denied accordingly. The AAO determined in a decision dated December 5, 2011, that the applicant established his wife would experience extreme hardship if she relocated to Egypt to be with the applicant. However, the evidence in the record failed to establish that the applicant's wife would experience extreme hardship if remained in the United States. The appeal was dismissed accordingly.

In the present motion to reopen, the applicant asserts that new evidence establishes his wife will experience extreme emotional and physical hardship if he is denied admission, and she remains separated from him in the United States. In support of his assertions the applicant submits a letter from his wife, psychological evaluation evidence, and country-conditions information. The entire record was reviewed and considered in rendering a decision on the motion.

The regulations state in pertinent part at 8 C.F.R. § 103.5(a):

(a) Motions to reopen or reconsider

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¹ Though the applicant was granted voluntary departure in his immigration proceedings, an alternate order of removal went into effect after he did not depart within the time permitted. The applicant therefore also is inadmissible under section 212(a)(9)(A)(ii)(I) of the Act, 8 U.S.C. § 1182(a)(9)(A)(ii)(I), for having been ordered removed, and seeking admission within ten years of removal. There is no waiver available for an inadmissibility under section 212(a)(9)(A) of the Act, and the applicant must obtain permission to reapply for admission by filing Form I-212, Application for Permission to Reapply for Admission into the United States after Deportation or Removal (Form I-212). The record does not contain a Form I-212.

(2) Requirements for motion to reopen. A motion to reopen must state the new facts to be proved in the reopened proceeding and be supported by affidavits or other documentary evidence.

The applicant has presented new facts to be considered in a reopened proceeding, and the facts are supported by documentary evidence. The motion to reopen the December 5, 2011, AAO decision is therefore granted.

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

Waiver.- The Attorney General [now Secretary, Department of Homeland Security "Secretary"] has sole discretion to waive clause [212(a)(9)(B)](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 [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. No court shall have jurisdiction to review a decision or action by the [Secretary] regarding a waiver under this clause.

The AAO, in its December 5, 2011 decision, found that the record failed to establish the applicant's U.S. citizen wife would experience emotional, physical or financial hardship beyond that normally experienced upon inadmissibility or removal of a family member, if she remained in the United States, separated from the applicant. The AAO decision noted that although country-conditions reports reflected that sporadic political demonstrations led to violent clashes between police and protesters in Egypt, the evidence failed to corroborate the applicant's wife's fears for the applicant's safety, in that it did not demonstrate that he participated in demonstrations or that he faced a specific or country-wide risk of harm in Egypt. It was additionally noted that although a psychologist diagnosed the applicant's wife with adjustment disorder with anxiety and depressed mood, the value of the evaluation was diminished as conclusions were based on one therapy session, the therapist did not recommend care or treatment for the condition, and the record contained no evidence that the applicant's wife required or sought additional psychological treatment for her condition. It was further noted that evidence failed to demonstrate the applicant's wife was financially dependent upon her parents or that she would experience financial hardship due to her separation from the applicant.

The applicant's wife states in a letter submitted on motion that she is undergoing psychiatric treatment and counseling, and she is taking medication for depression and anxiety. Her psychiatrist diagnoses her with major depressive disorder and general anxiety disorder due to her separation from the applicant, and the evidence submitted with the applicant's motion reflects that his wife attends follow-up counseling sessions every 2 to 4 weeks. New medical evidence confirms the applicant's wife was prescribed medication for depression, anxiety, and insomnia. Therapy progress reports note also that the applicant's wife has resumed working, that she is overwhelmed by her role as a single parent to 2 young children, and that their 3 year-old has behavioral problems.

Country-conditions articles submitted on motion reflect an increase in criminal activity in Egypt and indicate Westerners have been targets of terrorist attacks. Previously submitted Department of State country-conditions reports confirm further that U.S. citizens are advised to exercise caution in Egypt, and the evidence reflects severe sexual harassment causes many women in Egypt to stay indoors. See http://travel.state.gov/travel/cis_pa_tw/cis/cis_1108.html.

Upon review, the AAO finds that the evidence in the record, when considered in the aggregate, establishes the applicant's wife would experience hardship that rises beyond the common results of removal or inadmissibility if the applicant is denied admission into the country and she remains in the United States. The evidence submitted on motion reflects the applicant's wife faces the threat of attack and sexual harassment if she visits the applicant in Egypt. Moreover, she is undergoing monthly psychological counseling due to her depression and anxiety resulting from her separation from the applicant, and she has been prescribed medication for these disorders.

The AAO finds that the applicant also 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(a)(9)(B)(v) of the Act relief is warranted in the exercise of discretion, the factors adverse to the alien include the nature and underlying circumstances of the inadmissibility 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 s/he is excluded and/or 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-Moralez*, 21 I&N Dec. 296, 301 (BIA 1996). The AAO must:

[B]alance 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 unfavorable factors in this matter are the applicant's unlawful presence in the United States between November 2001 and October 2004, and April and August 2009. The favorable factors are the hardship the applicant's wife and family would face if the applicant is denied admission into the United States, letters from family and friends attesting to his good character, and the applicant's lack of a criminal record. The AAO finds that the immigration violation committed by

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the applicant is serious in nature and cannot be condoned. Taken together, however, the favorable factors in the present case outweigh the adverse factors, such that a favorable exercise of discretion is warranted.

Upon review of the totality of the evidence, the AAO finds that the applicant has established extreme hardship to his U.S. citizen wife as required under section 212(a)(9)(B)(v) of the Act. It has also been established that the applicant merits a favorable exercise of discretion. The applicant has therefore met his burden of proving eligibility for a waiver of his ground of inadmissibility pursuant to section 212(a)(9)(B)(v) of the Act.²

ORDER: The motion is granted and the underlying waiver application approved.

² As previously noted, the applicant is also inadmissible under section 212(a)(9)(A)(ii)(I) of the Act. He must therefore request permission to reapply for admission, pursuant to section 212(a)(9)(A) of the Act, 8 U.S.C. section 1182(a)(9)(A), by filing Form I-212.