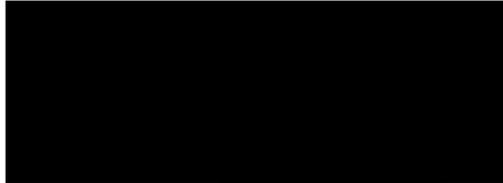




U.S. Citizenship  
and Immigration  
Services

Identifying data deleted to  
prevent clearly unwarranted  
invasion of personal privacy



H4

FILE:

Office: ATHENS, GREECE Date:

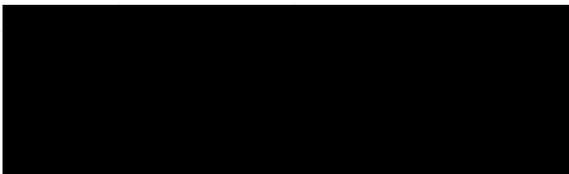
AUG 16 2006

IN RE:



APPLICATION: Application for Waiver of Grounds of Inadmissibility under Section 212(a)(9)(B) of the Immigration and Nationality Act (INA), 8 U.S.C. § 1182(a)(9)(B)

ON BEHALF OF APPLICANT:



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.

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

Robert P. Wiemann, Chief  
Administrative Appeals Office

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

The applicant [REDACTED] is a native and citizen of Lebanon 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 (INA, 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. [REDACTED] 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 reside in the United States with his wife and son, both of whom are U.S. citizens.

The OIC concluded that the applicant had failed to establish that extreme hardship would be imposed on his qualifying relative, in this case, his wife [REDACTED], and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) accordingly. *Decision of the OIC*, dated May 25, 2006.

On appeal, counsel for the applicant states that the OIC erred (1) by not considering the claimed hardships in the aggregate; (2) by finding that the hardship suffered by the applicant's child is irrelevant; (3) by requiring the applicant's wife to provide corroborating evidence of statements made in her affidavit; and (4) by assessing "extreme hardship" in the context of applicants seeking "suspension of deportation." *Form I-290B*, dated June 17, 2006; *Brief in Support of Appeal*, dated July 14, 2006. These assertions will be addressed below in a review of the merits of the case.

The record includes, but is not limited to, a Psychiatric Evaluation of [REDACTED] stating that she is currently pregnant, unemployed and living with her mother; that during her two-year stay in Lebanon with her husband she could not tolerate living there because of cultural differences; that she found it difficult to be separated from her parents in the United States; that the unstable political and economic situation in Lebanon made it impossible for her to work there; and that she "wanted to terminate her suffering by giving her husband the ability to enter the US legally, and join her family in taking care of her and their children during her pregnancy." *Psychiatric Evaluation by Milad M. Hanna, M.D., PC*, dated July 5, 2006. The accompanying Mental Status Examination noted "[s]he is anxious, restless, [has] depressed mood, episodes of panic attacks, crying spells, insomnia." *Id.* The record also includes a statement by [REDACTED] in which she describes, *inter alia*, the financial and social hardships of living in Lebanon with her husband and baby, away from her supportive family in the United States and away from the language and culture of the United States to which she is accustomed. *Statement by Majeda Majed*, undated, submitted along with a Brief in Support of I-601 Application, dated December 29, 2004. Also included are numerous reports, including from the U.S. Department of State, regarding the unstable security situation and escalating violence in Lebanon during July 2006. The entire record was reviewed and considered in rendering this decision.

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.

Regarding the District Director's finding that the applicant is inadmissible, the record reflects that the applicant entered the United States in May 2000 without inspection and remained in the United States unlawfully until he returned to Lebanon in December 2002, a period of more than one year. The applicant is seeking admission within 10 years of his departure from the United States and is, therefore, inadmissible 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 under section 212(a)(9)(B)(i)(II) of the Act is dependent first upon a showing that the bar imposes an extreme hardship to a U.S. citizen or lawfully resident spouse or parent of the applicant. 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 concept of extreme hardship to a qualifying relative "is not . . . fixed and inflexible," and whether extreme hardship has been established is determined based on an examination of the facts of each individual case. *Matter of Cervantes-Gonzalez*, 22 I&N Dec. 560, 565 (BIA 1999). In *Matter of Cervantes-Gonzalez*, the Board of Immigration Appeals set forth a list of non-exclusive factors relevant to determining whether an applicant has established extreme hardship to a qualifying relative pursuant to section 212(i) of the Act. These factors include, with respect to the qualifying relative, the presence of family ties to U.S. citizens or lawful permanent residents in the United States, family ties outside the United States, country conditions where the qualifying relative would relocate and family ties in that country, the financial impact of departure, and significant health conditions, particularly where there is diminished availability of medical care in the

country to which the qualifying relative would relocate. *Id.* at 566. In examining whether extreme hardship has been established, the BIA has held:

Relevant factors, though not extreme in themselves, must be considered in the aggregate in determining whether extreme hardship exists. In each case, the trier of fact must consider the entire range of factors concerning hardship in their totality and determine whether the combination of hardships takes the case beyond those hardships ordinarily associated with deportation. *Matter of O-J-O*, 21 I&N Dec. 381, 383 (BIA 1996). (Citations omitted).

Hardship [redacted] experiences is not relevant to 212(a)(9)(B) waiver proceedings. Moreover, U.S. citizen children are not qualifying relatives under section 212(a)(9)(B)(v) of the Act. Hardship suffered by Mr. [redacted] or the couple's child, however, will be considered insofar as it results in hardship to a "qualifying relative" in the application, in this case, the applicant's U.S. citizen wife [redacted].

An analysis under *Matter of Cervantes-Gonzalez* is appropriate in this case, even though, unlike this case, at issue in *Cervantes-Gonzalez* was a waiver under section 212(i) of the Act. To clarify, the BIA held "[a]lthough it is, for the most part, prudent to avoid cross application between different types of relief of particular principles or standards, we find the factors articulated in cases involving suspension of deportation and other waivers of inadmissibility to be helpful, given that both forms of relief require extreme hardship and the exercise of discretion." *Cervantes-Gonzalez, supra*, at 565, citing *Matter of Mendez, supra* ("applying discretionary factors articulated in a section 212(c) case to a waiver of inadmissibility under section 212(h)(1)(B) of the Act"); *Hassan v. INS*, 927 F.2d 465, 467 (9<sup>th</sup> Cir. 1991) ("noting that suspension cases interpreting extreme hardship are useful for interpreting extreme hardship in section 212(h) cases.") As in the analysis in *Cervantes*, these factors relate to the level of extreme hardship which [redacted] qualifying relative, his wife, would experience if he were not granted admission to the United States.

The AAO notes that extreme hardship to [redacted] wife must be established in the event that she joins him in Lebanon or in the event that she remains in the United States, as neither she nor her U.S. citizen son is required to reside outside of the United States based on the denial of the applicant's waiver request.

The first part of the analysis requires [redacted] to establish extreme hardship to [redacted] in the event she relocates to Lebanon. The record in this case reflects that [redacted] was born in Lebanon in 1971; he entered the United States without inspection in May 2000; he and [redacted], a U.S. citizen, were married in the United States in 2002; and he returned to Lebanon later that year and applied for a K-3 visa because he was not able to adjust status to permanent resident in the United States. His wife joined him in Lebanon but returned to the United States to give birth to their son in November 2003; she returned with their child to Lebanon and lived there for approximately two years with her husband and his parents. [redacted] was born in Michigan in 1986; she grew up there, went to school there, and her parents and siblings, all of whom are U.S. citizens, live in the United States. There is no evidence in the record as to the couple's income, though [redacted] states that her husband worked in the United States and also worked intermittently in Lebanon, and that she could not find work in Lebanon. She also states that they could not afford a home of their own in Lebanon and lived with [redacted] parents; a statement provided pursuant to a psychiatric evaluation of Ms. [redacted] in July 2006 notes that [redacted] now lives with her mother in Dearborn, Michigan and is

unemployed. See *Brief in Support of Appeal, supra; Majeda Majed's Statement, supra; Psychiatric Evaluation, supra.*

The AAO recognizes that [REDACTED] and her family would suffer economic detriment and their wage-earning potential would be diminished if they resided in Lebanon, and that the standard of living for the couple and their child would be reduced. In light of the recent conflict and well documented destruction in parts of Lebanon, advisories against travel to Lebanon, and political uncertainty in the region, [REDACTED] concerns about living in Lebanon are well founded. The BIA has generally not found financial hardship alone to amount to extreme hardship. *Matter of Cervantes-Gonzalez, supra*, at 568 (citations omitted). It is one of the relevant factors to be considered, however, in the analysis of extreme hardship; and in this case, the difficulties of supporting a family in Lebanon during a time of political, social and economic uncertainty increases [REDACTED] hardship. In addition, if [REDACTED] chose to join her husband in Lebanon, though she would have the support of her husband's family, she would be separated from her parents and siblings and extended family, and would lose the support network and friendships she has always enjoyed. Her opportunities for employment and education would also be limited in Lebanon. These factors, considered in the aggregate, lead to a conclusion that [REDACTED] would indeed suffer extreme hardship if she chose to move to Lebanon to avoid her and her child's separation from [REDACTED].

The second part of the analysis requires the applicant to establish extreme hardship to his qualifying relative in the event that she remains in the United States separated from the applicant. [REDACTED] statement and the Psychiatric Evaluation in the record indicate that [REDACTED] has a strong attachment to her husband and that she wants her husband to help support and raise their child. [REDACTED] has also stated, "If my husband is not able to join me and my son, life is going to be very hard because there is no way two married people can live in separate countries . . . I need my husband . . . to support us, and take care of us, like any other family." See *Majeda Majed's Statement, supra*. She also noted that she is not comfortable with the lifestyle in Lebanon and wants her son to enjoy a happy, healthy childhood that he can have in the United States, but not in Lebanon. *Id.* [REDACTED] Psychiatric Evaluation notes that [REDACTED] shows signs of stress and anxiety and indicated that she was unable to cope with her stressful situation, but did not specifically indicate the significance of [REDACTED] absence as a source of these symptoms.

[REDACTED] is a young mother, pregnant, unemployed and living with her mother. She clearly misses her husband and does not want to raise her children without his support and care. She is apparently having a difficult time dealing with the stress of separation and other difficulties in her life. Nevertheless, [REDACTED] states that she has a supportive family and a good life in the United States, giving the example that she can go out and is able to leave her son in the care of her family while she goes to school. There is no indication that she would be unable to find employment in the United States; nor is there any indication that her husband's income has been a source of support which has been affected by his inadmissibility.<sup>1</sup> It is clear that if she

---

<sup>1</sup> An applicant must establish eligibility for a requested immigration benefit. 8 C.F.R. § 103.2(b)(1). Financial records, such as income tax returns or paychecks, are generally available as primary evidence in support of eligibility; in their absence, an affidavit is not necessarily given the same evidentiary weight. The unavailability of required evidence creates a presumption of ineligibility; secondary evidence must overcome the unavailability of primary evidence, and affidavits must overcome the unavailability of both primary and secondary evidence. 8 C.F.R. § 103.2(b)(2).

chooses to remain in the United States, she will suffer because she and her child do not have the companionship and care of [REDACTED] and she is faced with the challenge and stress of raising her child and coping with the absence of her husband. These are hardships normally associated with family separation. There is no evidence in the record, however, to show additional hardship [REDACTED] would suffer if the applicant were denied a waiver of inadmissibility. Her situation, based on the record, is typical of individuals separated as a result of removal or inadmissibility and does not rise to the level of extreme hardship.

The record, reviewed in its entirety and in light of the *Cervantes-Gonzalez* factors, cited above, does not support a finding that [REDACTED] faces extreme hardship if [REDACTED] is refused admission and she chooses to remain 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) (upholding the BIA's decision in a case which addressed, *inter alia*, claims of emotional and financial hardship that [REDACTED] deportation would cause to his spouse and children). In addition *Perez v. INS*, 96 F.3d 390 (9th Cir. 1996), defined extreme hardship as hardship that was unusual or beyond that which would normally be expected upon deportation. *Hassan v. INS* held further, "while the claim of emotional hardship was 'relevant and sympathetic . . . it is not conclusive of extreme hardship, and is not of such a nature which is unusual or beyond that which would normally be expected from the respondent's bar to admission.'" *Hassan v. INS, supra*, at 468.

The AAO recognizes that [REDACTED] will endure hardship as a result of separation from her husband. In this case, the record does not contain sufficient evidence to show that the hardship she faces rises beyond the common results of removal or inadmissibility to the level of extreme hardship. The AAO therefore finds that the applicant failed to establish extreme hardship to his U.S. citizen spouse as required under section 212(a)(9)(B)(v) of the Act. 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)(v) of the Act, the burden of proving eligibility rests 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.