U.S. Department of Homeland Security
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Washington, DC 20529

U.S. Citizenship
and Immigration
Services

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[redacted]

FILE: [redacted] Office: ATHENS, GREECE Date: MAR 10 2008

IN RE: Applicant: [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:

SELF-REPRESENTED

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, Chief
Administrative Appeals Office

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

The applicant, [redacted], is a native and citizen of Jordan 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. The applicant is married to [redacted], who is a naturalized citizen of the United States. 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 Officer-in-Charge denied, finding that the applicant failed to establish hardship to a qualifying relative. *Decision of the Officer-in-Charge, dated January 19, 2006.* The applicant submitted a timely appeal.

The AAO will first address the finding of inadmissibility.

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.[1] For purposes of section 212(a)(9)(B) of the Act, time in unlawful presence begins to accrue on April 1, 1997.[2]

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). With regard to an adjustment applicant who had 180 days of unauthorized stay in the United States before filing an adjustment of status application, his or her return on an advance parole will trigger the three- and ten-year bar. Memo, Virtue, Acting Exec. Comm., INS, HQ IRT 50/5.12, 96 Act. 068 (Nov. 26, 1997).

The record reflects that the applicant entered the United States on June 16, 1996 on a tourist visitor visa, and voluntarily departed from the United States on May 9, 2003. 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 April 1,

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[1] 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).

[2] *See* DOS Cable, note 1; and IIRIRA Wire #26, HQIRT 50/5.12.

1997. From April 1, 1997 to May 9, 2003, he accrued six years of unlawful presence. When the applicant voluntarily departed from the country, he triggered the ten-year-bar. Consequently, the Officer-in-Charge was correct in finding him inadmissible under section 212(a)(9)(B)(i)(II) of the Act, 8 U.S.C. § 1101(a)(9)(B)(i)(II).

The AAO will now address the finding that the grant of 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 the applicant and his child is 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) of the Act. Thus, hardship to the applicant and his children will be considered only to the extent that it results in hardship to a qualifying relative. The qualifying relative in this case is the applicant's wife. If extreme hardship to the qualifying relative is established, the Secretary then assesses whether an exercise of discretion is warranted. *See Matter of Mendez-Moralez,* 21 I&N Dec. 296 (BIA 1996).

The record contains photographs, letters, birth and marriage certificates, invoices for prescriptions, and other documents.

[redacted] states that giving birth without her husband present was very difficult, and that she will have a nervous breakdown without him. She states that she cannot take her baby to Jordan, where suicide bombings happen any time. She conveys that the house where she would live in Jordan does not have heat during the winter, and water comes once a week, which is not enough to keep the baby clean. She states that they do not have a car in Jordan, which requires her to stand in the cold for an hour until a taxi arrives. [redacted] indicates that the area where she stays in Jordan is isolated and not modern. She states that her infant's formula is not available in Jordan, and that she was not able to breast feed because of the antidepressants she took while pregnant. She states that she took the medication because she could not cope without her husband. [redacted] states that her husband lives with his family in Jordan because he cannot find a job and that he has two job offers in the United States.

The record shows that the [redacted]s son was born in the State of California on November 20, 2006.

The April 12, 2006 letter by [redacted], Department of Behavioral Health, with Kaiser Permanente, conveys that [redacted] has been under his care for the last two months as a referral from her

primary care physician to help treat her "Generalized Anxiety Disorder" with "Panic Attacks," which she has had for many years. [redacted] states that because [redacted] is pregnant, her psychiatric condition, previously controlled with medication, regressed because the medications controlling her symptoms were changed to minimize risk to the fetus. He states that her present psychiatric condition is unstable and that she is pregnant and overwhelmed and has only some support from her family in the United States. He conveys that [redacted]'s support would be invaluable in helping his wife during her pregnancy.

The November 28, 2005 letter by [redacted]., Internal Medicine, with Kaiser Permanent conveys that Ms. Haddad has been his patient for 17 years and that she has severe panic attacks, depression, migraine headaches, and allergies.

The February 1, 2006 letter by [redacted], Pastor, with St. Anne Melkit Green Catholic Church, states that [redacted] **is an active member of his church.**

The record contains a September 21, 2005 letter from parents, in which they convey their desire to have their daughter and her husband together in the United States. They indicate that their daughter has lived with them her entire life and will continue to live with them when her husband comes to the United States. In the September 21, 2005 letter, [redacted]'s parents state that they were robbed at gunpoint in their house on July 19, 2005 and their house was burglarized on June 10, 2005. They state that they are afraid to live alone.

In the September 19, 2005 letter [redacted] conveys that she was in Jordan on May 11, 2005 and when the June 10, 2005 burglary happened she suffered trauma because she was not there to support her parents. She states that she returned home after the robbery.

In the October 21, 2005 letter, states that her siblings are not able to care for her parents.

In the November 15, 2002 letter, states that she suffers from depression and severe panic attacks and takes 200mg of Zoloft for depression and 4mg of Ativan for panic attacks. She states that separation from her husband has caused her anxiety and depression to worsen. [redacted] conveys that she needs to be in the United States, where her doctors are nearby and know how to treat her. She states that the medication she gets every month, which is every expensive and paid by her insurance, is not available in Jordan. [redacted] **states that she has asthma and migraine headaches that were severe in Jordan, requiring** the use of an inhaler. She states that she helps her parents, who have health problems. conveys that she cannot afford to continue to travel to Jordan, which is draining her mentally and physically. She states that she is a Christian and that being a Christian in a Muslim country is not good because Muslims hate Christians. She states that while in Jordan she was cursed at for being a Christian and not having her hair covered. [redacted] **described the Holmes-Rahe Social Readjustment Rating Scale and its applicability.**

The November 18, 2005 letter from Kaiser Permanente conveys that [redacted] has been advised to have repeat pap smears every six months.

The invoices for medication reflect the cost of $570.77 for 100 Zoloft tablets and $122.76 for 30 Maxalt-Nkt tablets.

The record contains police records relating to the aforementioned robbery and burglary.

The AAO has carefully considered all of the submitted evidence in rendering this decision.

"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 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 wife must be established in the event that she joins the applicant, and in the alternative, that she remains in the United States. A qualifying relative is not required to reside outside of the United States based on the denial of the applicant's waiver request.

The record fails to establish that would experience extreme hardship if she were to remain in the United States without her husband.

Courts in the United States have stated that "the most important single hardship factor may be the separation of the alien from family living in the United States," and also, "[w]hen the BIA fails to give considerable, if not predominant, weight to the hardship that will result from family separation, it has abused its discretion." *Salcido-Salcido v. INS,* 138 F.3d 1292, 1293 (9th Cir. 1998) (citations omitted); *Cerrillo-Perez v. INS,* 809 F.2d 1419, 1424 (9th Cir. 1987) (remanding to BIA) ("We have stated in a series of cases that the hardship to the alien resulting from his separation from family members may, in itself, constitute extreme hardship.") (citations omitted).

However, in *Hassan v. INS,* 927 F.2d 465, 468 (9th Cir. 1991), the Ninth Circuit upheld the BIA's finding that deporting the applicant and separating him from his wife and child was not conclusive of extreme hardship as it "was not of such a nature which is unusual or beyond that which would normally be expected

from the respondent's bar to admission." (citing *Patel v. INS,* 638 F.2d 1199, 1206 (9th Cir.1980) (severance of ties does not constitute extreme hardship). In *Shooshtary v. INS*, 39 F.3d 1049 (9th Cir. 1994), the court upheld the finding of no extreme hardship if Shooshtary's lawful permanent resident wife and two U.S. citizen children are separated from him. As stated in *Perez v. INS,* 96 F.3d 390 (9th Cir. 1996), "[e]xtreme hardship" is hardship that is "unusual or beyond that which would normally be expected" upon deportation and "[t]he common results of deportation or exclusion are insufficient to prove extreme hardship." (citing *Hassan v. INS,* 927 F.2d 465, 468 (9th Cir.1991)). In *Sullivan v. INS*, 772 F.2d 609, 611 (9th Cir. 1985), the Ninth Circuit stated that deportation is not without personal distress and emotional hurt; and that courts have upheld orders of the BIA that resulted in the separation of aliens from members of their families.

The record shows that [redacted] takes medication such as Zoloft and Maxalt-Nkt tablets for "Generalized Anxiety Disorder" and "Panic Attacks" and receives treatment for her disorders. However, the applicant has not submitted any documentation to establish that his wife's disorders are caused by separation from him. It seems that [redacted] was on medications for an unknown time prior to the birth of her child, and that her disorders had been controlled by medications. The applicant provided no real analysis of what is causing his wife's generalized anxiety disorder and panic attacks or how long she has had them. There is not enough documentation to conclude that the applicant's absence caused [redacted]'s disorders or that his presence would resolve them.

After a careful and thoughtful consideration of the record, the AAO finds that the situation of the applicant's wife, if she remains in the United States and is separated from her husband as a result of removal, fails to rise to the level of extreme hardship as required by the Act. The record before the AAO is not sufficient to show that the emotional hardship, which would be experienced by the applicant's wife, is unusual or beyond that which is normally to be expected upon removal. *See Hassan, Shooshtary, Perez,* and *Sullivan, supra.*

The applicant has failed to establish that his wife would experience extreme hardship if she were to join him to live in Jordan.

The conditions in the country where the applicant's wife would live if she joined him, 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 applicant submitted no documentation in support of his wife's assertions about conditions in Jordan. The letters from [redacted]s doctors are short and vague, and fail to describe in any detail [redacted] disorders. It is noted that [redacted] has been under the care of [redacted]n for only two months, as a referral from her primary care physician, to help treat her "Generalized Anxiety Disorder" with "Panic Attacks." The lack of specificity in the letters diminishes their value in determining hardship. Furthermore, the AAO notes that the credibility of the letter by [redacted] is questionable in that the letter states that the applicant's husband was an active member of the church in 2006; the record shows that the applicant's husband has not been living in the United States since 2003.

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.

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). The record fails to support a finding of significant hardships over and above the normal economic and social disruptions.

In proceedings for application for waiver of grounds of inadmissibility under section 212(i) 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.