identifying data deleted to prevent clearly unwarranted invasion of personal privacy

PUBLIC COPY

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

U.S. Citizenship and Immigrationn Services

#5

[redacted]

FILE: [redacted] Office: ATHENS, GREECE Date: APR 2 8 2011

IN RE: Applicant: [redacted]

APPLICATION: Application for Waiver of Grounds of Inadmissibility under section 212(i) of the Immigration and Nationality Act, 8 U.S.C. § 1182(i).

ON BEHALF OF APPLICANT:

[redacted]

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.

If you believe the law was inappropriately applied by us in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of $630. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

Perry Rhew
Chief, Administrative Appeals Office

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

The record reflects that the applicant is a 36-year-old native and citizen of Syria who was found to be inadmissible to the United States pursuant to section 212(a)(6)(C)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C.§ 1182(a)(6)(C)(i), for attempting to procure entry into the United States by fraud or the willful misrepresentation of a material fact. The record indicates that the applicant is married to a United States citizen and is the beneficiary of an approved Petition for Alien Relative (Form I-130). The applicant seeks a waiver of inadmissibility pursuant to section 212(i) of the Act, in order to reside in the United States with his United States citizen spouse.

The Officer-in-Charge (OIC) found that the applicant failed to establish extreme hardship to a qualifying relative and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) accordingly. *Decision of the Office-in-Charge,* dated June 9, 2008.

On appeal, counsel asserts that the OIC erred in denying the waiver because she failed to consider all the factors under the extreme hardship standard. *See Form I-290B,* dated July 3, 2008, and the accompanying letter brief in support of the appeal.

The record includes, but is not limited to, an affidavit from the applicant's spouse, dated May 24, 2007, counsel's brief in support of the appeal, dated July 3, 2008, a copy of a psychological evaluation of the applicant's spouse by [redacted] dated March 27, 2007, and copies of country condition reports on Syria. The entire record was reviewed and considered in rendering this decision on the appeal.

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 [Secretary], waive the application of clause (i) of subsection (a)(6)(C) in the case of an immigrant 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 [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....

In the present case, the record reflects that on June 24, 2001, the applicant attempted to procure entry into the United States by presenting a Syrian Passport and a counterfeit temporary Form I-551, lawful permanent resident stamp in the passport. The applicant was processed for Expedited Removal under section 235(b)(1) of the Act. He was issued a Notice to Appear (NTA) and was referred to an immigration judge for further proceedings following a credible fear interview. The applicant applied for asylum before the immigration judge. On May 20, 2003, the immigration judge denied the asylum request and ordered the applicant removed from the United States to Syria. The applicant appealed the decision to the Board of Immigration Appeals (BIA), and on October 25, 2004, the BIA affirmed the decision of the immigration judge. The applicant appealed the decision to the United States Court of Appeals for the 9th Circuit, which dismissed the appeal on April 20, 2006. The applicant departed the United States on June 8, 2006. On March 18, 2005, the applicant's United States citizen spouse filed a Petition for Alien Relative (Form I-130) on the applicant's behalf, which was approved on August 9, 2005. On August 2, 2007, the applicant filed a Form I-601 waiver and a Form I-212, Application for Permission to Reapply for Admission into the United States After Deportation or Removal. On June 9, 2008, the OIC denied the Form I-601, finding that the applicant failed to demonstrate extreme hardship to a qualifying relative. The OIC did not make a determination on the Form I-212 application.

A waiver of inadmissibility under section (212)(i) of the Act is dependent on a showing that the bar to admission imposes extreme hardship on a qualifying relative, which includes the U.S. citizen or lawfully resident spouse or parent of the applicant. Hardship to the applicant can be considered only insofar as it results in hardship to a qualifying relative. The applicant's spouse is the only qualifying relatives in this case. If extreme hardship to a qualifying relative is established, the applicant is statutorily eligible for a waiver, and USCIS then assesses whether a favorable exercise of discretion is warranted. *See Matter of Mendez-Moralez,* 21 I&N Dec. 296, 301 (BIA 1996).

As a qualifying relative is not required to depart the United States as a consequence of an applicant's inadmissibility, two distinct factual scenarios exist should a waiver application be denied: either the qualifying relative will join the applicant to reside abroad or the qualifying relative will remain in the United States. Ascertaining the actual course of action that will be taken is complicated by the fact that an applicant may easily assert a plan for the qualifying relative to relocate abroad or to remain in the United States depending on which scenario presents the greatest prospective hardship, even though no intention exists to carry out the alleged plan in reality. *Cf. Matter of Ige,* 20 I&N Dec. 880, 885 (BIA 1994) (addressing separation of minor child from both parents applying for suspension of deportation). Thus, we interpret the statutory language of the various waiver provisions in section 212 of the Act to require an applicant to establish extreme hardship to his or her qualifying relative(s) under both possible scenarios. To endure the hardship of separation when extreme hardship could be avoided by joining the applicant abroad, or to endure the hardship of relocation when extreme hardship could be avoided by remaining in the United States, is a matter of choice and not the result of removal or inadmissibility. As the Board of Immigration Appeals stated in *Matter of Ige*:

[W]e consider the critical issue . . . to be whether a child would suffer extreme hardship if he accompanied his parent abroad. If, as in this case, no hardship would ensue, then the fact that the

child might face hardship if left in the United States would be the result of parental choice, not the parent's deportation. *Id. See also Matter of Pilch*, 21 I&N Dec. 627, 632-33 (BIA 1996)

Extreme hardship is "not a definable term of fixed and inflexible content or meaning," but "necessarily depends upon the facts and circumstances peculiar to each case." *Matter of Hwang*, 10 I&N Dec. 448, 451 (BIA 1964). In *Matter of Cervantes-Gonzalez,* the Board provided a list of factors it deemed relevant in determining whether an alien has established extreme hardship to a qualifying relative. 22 I&N Dec. 560, 565 (BIA 1999). 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.* The Board added that not all of the foregoing factors need be analyzed in any given case and emphasized that the list of factors was not exclusive. *Id.* at 566.

The Board has also held that the common or typical results of deportation, removal and inadmissibility do not constitute extreme hardship, and has listed certain individual hardship factors considered common rather than extreme. These factors include: economic disadvantage, loss of current employment, inability to maintain one's present standard of living, inability to pursue a chosen profession, separation from family members, severing community ties, cultural readjustment after living in the United States for many years, cultural adjustment of qualifying relatives who have never lived outside the United States, inferior economic and educational opportunities in the foreign country, or inferior medical facilities in the foreign country. *See generally Matter of Cervantes-Gonzalez*, 22 I&N Dec. at 568; *Matter of Pilch*, 21 I&N Dec. at 631-32; *Matter of Ige*, 20 I&N Dec. at 883; *Matter of Ngai*, 19 I&N Dec. 245, 246-47 (Comm'r 1984); *Matter of Kim*, 15 I&N Dec. 88, 89-90 (BIA 1974); *Matter of Shaughnessy*, 12 I&N Dec. 810, 813 (BIA 1968).

However, though hardships may not be extreme when considered abstractly or individually, the Board has made it clear that "[r]elevant factors, though not extreme in themselves, must be considered in the aggregate in determining whether extreme hardship exists." *Matter of O-J-O-,* 21 I&N Dec. 381, 383 (BIA 1996) (quoting *Matter of Ige*, 20 I&N Dec. at 882). The adjudicator "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." *Id.*

We observe that the actual hardship associated with an abstract hardship factor such as family separation, economic disadvantage, cultural readjustment, et cetera, differs in nature and severity depending on the unique circumstances of each case, as does the cumulative hardship a qualifying relative experiences as a result of aggregated individual hardships. *See, e.g., In re Bing Chih Kao and Mei Tsui Lin*, 23 I&N Dec. 45, 51 (BIA 2001) (distinguishing *Matter of Pilch* regarding hardship faced by qualifying relatives on the basis of variations in the length of residence in the United States and the ability to speak the language of the country to which they would relocate).

Family separation, for instance, has been found to be a common result of inadmissibility or removal in some cases. *See Matter of Shaughnessy*, 12 I&N Dec. at 813. Nevertheless, family ties are to be considered in analyzing hardship. *See Matter of Cervantes-Gonzalez,* 22 I&N Dec. at 565-66. The question of whether family separation is the ordinary result of inadmissibility or removal may depend on the nature of family relationship considered. For example, in *Matter of Shaughnessy*, the Board considered the scenario of parents being separated from their soon-to-be adult son, finding that this separation would not result in extreme hardship to the parents. *Id.* at 811-12; *see also U.S. v. Arrieta*, 224 F.3d 1076, 1082 (9th Cir. 2000) ("Mr. Arrieta was not a spouse, but a son and brother. It was evident from the record that the effect of the deportation order would be separation rather than relocation."). In *Matter of Cervantes-Gonzalez*, the Board considered the scenario of the respondent's spouse accompanying him to Mexico, finding that she would not experience extreme hardship from losing "physical proximity to her family" in the United States. 22 I&N Dec. at 566-67.

The decision in *Cervantes-Gonzalez* reflects the norm that spouses reside with one another and establish a life together such that separating from one another is likely to result in substantial hardship. It is common for both spouses to relocate abroad if one of them is not allowed to stay in the United States, which typically results in separation from other family members living in the United States. Other decisions reflect the expectation that minor children will remain with their parents, upon whom they usually depend for financial and emotional support. *See, e.g., Matter of Ige*, 20 I&N Dec. at 886 ("[I]t is generally preferable for children to be brought up by their parents."). Therefore, the most important single hardship factor may be separation, particularly where spouses and minor children are concerned. *Salcido-Salcido*, 138 F.3d at 1293 (quoting *Contreras-Buenfil v. INS,* 712 F.2d 401, 403 (9th Cir. 1983)); *Cerrillo-Perez*, 809 F.2d at 1422.

Regardless of the type of family relationship involved, the hardship resulting from family separation is determined based on the actual impact of separation on the qualifying relative, and all hardships must be considered in determining whether the combination of hardships takes the case beyond the consequences ordinarily associated with removal or inadmissibility. *Matter of O-J-O-,* 21 I&N Dec. at 383. Nevertheless, though we require an applicant to show that a qualifying relative would experience extreme hardship both in the event of relocation and in the event of separation, in analyzing the latter scenario, we give considerable, if not predominant, weight to the hardship of separation itself, particularly in cases involving the separation of spouses from one another and/or minor children from a parent. *Salcido-Salcido*, 138 F.3d at 1293.

In this case, the record reflects that the applicant's spouse, [redacted] is a 24-year-old citizen of the United States. The applicant and his spouse were married in Sherman Oaks, California, on November 16, 2004, and they do not have any children. The applicant's spouse states that she is suffering extreme emotional and financial hardship as a result of family separation and the denial of the applicant's waiver request.

Regarding the emotional and financial hardship of separation, the applicant's spouse states that the applicant is her best friend, that he always cheers her up, and that he constantly motivates her. The applicant's spouse states that she is "incredible depressed" because she cannot be with the applicant,

that she misses him, that she has trouble eating and sleeping, and that she cannot look at photos that remind her of the applicant or talk about him with other people. *Affidavit from* [redacted] dated May 24, 2007. The applicant's spouse also states that she cannot begin her life without the applicant, that she needs the applicant to support her financially so that she can continue her education and that she cannot imagine her future without the applicant. *Id.* Counsel states that the applicant's spouse has come to depend on the applicant as her anchor, that the applicant's spouse has been stressed and depressed because of separation from the applicant and that "denying the waivers will effectively destroy the existing family structure of this family." *Counsel's Brief in Support of the Appeal,* dated July 3, 2008.

The AAO acknowledges that separation from the applicant may cause some challenges for the applicant's spouse, however, it does not find the evidence in the record sufficient to demonstrate that the challenges she encounters meet the extreme hardship standard. The record contains a report from [redacted] who diagnosed the applicant's spouse with Major Depressive Disorder, Single Episode. [redacted] states that the applicant's spouse's response and behavior is a direct reflection of her separation from the applicant. [redacted] lists the psychosocial stressors as disruption of marriage, not being able to start a family, and financial hardship. *Id.* [redacted] then recommends that the applicant be favorably considered for a visa to enter the United States.

The AAO notes that while the input of any mental health professional is respected and valuable, the submitted assessment by [redacted] is based on one interview with the applicant's spouse on March 8, 2007. In that the conclusions reached in the submitted assessment are based solely on this single interview, the AAO does not find the report to reflect the insight and elaboration commensurate with an established relationship with a mental health professional, thereby rendering the report speculative and diminishing its value to a determination of extreme hardship. As to the claim of financial hardship, the record does not contain any information on the family's income and expenses. Without such documentation, the AAO cannot conclude that family separation has caused extreme financial hardship to the applicant's spouse. Therefore, the AAO finds that the applicant has failed to demonstrate that the challenges his spouse faces are unusual or beyond the common results of removal or inadmissibility and rise to the level of extreme hardship.

Regarding relocation, the applicant's spouse states that she does not want to relocate to Syria because she was born in the United States and has lived her entire life here, her whole family is in the United States, she would be separated from her family indefinitely and she could not survive without the support of her close-knit relatives and friends, and she does not read or write Arabic and would have difficulty finding a job in Syria. *Affidavit from* [redacted] dated May 24, 2007. Counsel asserts that due to economic concerns, the applicant's spouse is uncertain of her ability to continue her education and find employment if she were to go to Syria. *Counsel's Brief in Support of the Appeal,* dated July 3, 2008. The record contains various country condition reports and travel warnings to Syria, issued by the U.S. Department of State, alerting U.S. citizens to the ongoing safety and security concerns in Syria. The AAO notes that U.S. Department of State recently issued a travel alert warning U.S. citizens of the potential for ongoing political and civil unrest in Syria, urging U.S. citizens to defer non-essential travel to Syria and that U.S. citizens currently in Syria should consider departing the country. The alert further states "Syrians efforts to attribute the

current civil unrest to external influences may lead to an increase in anti-foreigner sentiment. Detained U.S. citizens may find themselves subject to allegations of incitement or espionage." *Travel Warning – Syria, U.S. Department of State, Bureau of Consular Affairs,* March 31, 2011.

The AAO notes that given the applicant's spouse's significant ties in the United States, no known family ties in Syria, and the ongoing safety and security concerns in Syria for U.S. citizens, the applicant's spouse would suffer extreme hardship if she were to relocate to Syria to live with the applicant.

In sum, although the applicant's spouse has established that she would suffer extreme hardship if were to relocate to Syria, the evidence in the record does not support a finding that the difficulties she faces as a result of family separation, considered in the aggregate, rise beyond the common results of removal or inadmissibility to the level of extreme hardship. *See Perez,* 96 F.3d at 392; *Matter of Pilch*, 21 I&N Dec. at 631. Although the distress caused by separation from one's family is not in question, a waiver of inadmissibility is only available where the resulting hardship would be unusual or beyond that which would normally be expected upon removal. *See id.* The AAO therefore finds that the applicant has failed to establish extreme hardship to his spouse, as required for a waiver of inadmissibility under section 212(i) of the Act.

Section 291 of the Act, 8 U.S.C. § 1361, provides that the burden of proof is on the applicant to establish eligibility for the benefit sought. Here, the applicant has not met that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.