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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

PUBLIC COPY

[redacted]

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Date: MAY 13 2011 Office: ATHENS, GREECE FILE: [redacted]

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:

[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 Field Office Director, Athens, Greece, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The record reflects that the applicant is a native of Kuwait 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 and seeking readmission within ten years of his last departure from the United States. The applicant is the son of a United States citizen and the father of three United States citizen children. He is the beneficiary of an approved Petition for Alien Relative (Form I-130). The applicant 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 mother, spouse, and children.

The Field Office Director found that the applicant had failed to establish that extreme hardship would be imposed on a qualifying relative and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) accordingly. *Decision of the Field Office Director*, dated April 7, 2008.

On appeal, the applicant, through counsel asserts that the decision by United States Citizenship and Immigration Services (USCIS) "did not consider the evidence filed with the AAO." *Appeal Brief*, dated April 30, 2008. Counsel contends that USCIS "has applied the wrong standard in adjudicating the hardship waiver." Additionally, counsel claims that the applicant's appeal "addressed both the denial of the [Application for Permission to Reapply for Admission After Deportation or Removal, "Form I-212"] and the I-601," which the AAO remanded to the Field Office Director. Counsel states that the Field Office Director failed "to address the I-212, which had also been remanded to him by the AAO decision." The AAO notes that the decision by the AAO only addressed the I-601 appeal. Additionally, the Form I-290B filed on May 7, 2008 states the appeal is only for the denial of the I-601. Further, the AAO notes that the appeal on the applicant's Form I-212 denial was rejected on February 7, 2005. Therefore, since the AAO only received one Form I-290B with a filing fee, it will only adjudicate one appeal (Form I-601 appeal).[1]

The record includes, but is not limited to, counsel's appeal brief; statements from the applicant and his mother; letters of support; medical documents for the applicant's mother, mother-in-law, and children; a letter from Professor Nizam Abu-Hijleh regarding the mental health of the applicant's two eldest children; and documents for the applicant's removal proceeding. The entire record was reviewed and considered in arriving at a decision on the appeal.

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[1] The Adjudicator's Field Manual provides guidance on adjudicating Forms I-601 and I-212 that are filed together.

43.2 Adjudication Processes.

> (c) Of course, an alien might be applying for both consent to reapply and a waiver of inadmissibility, provided the particular ground(s) of inadmissibility applying to the alien are waivable. If the alien has filed both applications (Forms I-212 and I-601), adjudicate the waiver application first. If the Form I-601 waiver is approved, then consider the Form I-212 on its merits; if the Form I-601 is denied (and the decision is final), deny the Form I-212 since its approval would serve no purpose.

Section 212(a)(9)(B) of the Act provides, in pertinent part:

> (B) Aliens Unlawfully Present.-
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> (i) In general.-Any alien (other than an alien lawfully admitted for permanent residence) who-
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> . . . .
>
> (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.
>
> . . . .
>
> (iii) Exceptions.-
>
> . . . .
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> (II) Asylees.-No period of time in which an alien has a bona fide application for asylum pending under section 208 shall be taken into account in determining the period of unlawful presence in the United States under clause (i) unless the alien during such period was employed without authorization in the United States.
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> . . . .
>
> (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 [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.

In the present case, the record indicates that the applicant entered the United States on August 14, 1990 as a B-2 nonimmigrant visitor for pleasure with authorization to remain in the United States until February 13, 1991. The applicant's immigration status was then changed from B-2 visitor for pleasure to an F-1 student. On or about December 10, 1991, the applicant filed a Request for Asylum in the United States (Form I-589). On February 2, 1994, an immigration judge ordered the applicant removed from the United States *in absentia*. On March 29, 2002, the applicant filed a motion to reopen the immigration judge's decision. On April 17, 2002, an immigration judge denied the applicant's motion to reopen. On or about May 1, 2002, the applicant filed an appeal with the Board of Immigration Appeals (Board), which the Board dismissed on January 29, 2003. On or about February 27, 2003, the applicant filed a motion for stay of deportation with the Ninth Circuit Court of Appeals (Ninth Circuit). On or about April 8, 2003, the applicant requested a withdrawal of his motion for stay of deportation, which the Ninth Circuit granted. On April 24, 2003, the applicant was removed from the United States.

The applicant accrued unlawful presence from April 1, 1997, the date of enactment of unlawful presence provisions under the Act, until April 24, 2003, when he was removed from the United States. The applicant is seeking admission into the United States within ten years of his April 24, 2003 departure. The applicant is, therefore, inadmissible to the United States 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 waiver of inadmissibility under section 212(a)(9)(B)(v) 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 or his children can be considered only insofar as it results in hardship to a qualifying relative. The applicant's mother is the only qualifying relative 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 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 a 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.

The first prong of the analysis addresses hardship to the applicant's mother if she relocates to Jordan. Counsel claims that "[i]n this case there is no question that [the applicant's mother] would accompany [the applicant] because she has indeed done so and lived abroad for the past five years." Counsel states that when the applicant was removed from the United States, the applicant's mother joined him "to support him as there is no other family living in Jordan." In a statement dated October 28, 2004, the applicant's mother states that living in Jordan "and being separated from [her] other children and grandchildren living in the United States has been very distressing to [her]." Counsel states the applicant "has extensive family times [sic] in the United States as his four siblings, their families and mother are U.S. citizens. There are no family members living in Jordan." Counsel states the applicant's mother "suffer[s] from heart failure with hypertension and angina, osteoarthritis and depression" and she "needs social care from her family because these diseases make [it] very hard to move." The AAO notes that medical documentation in the record establishes that in 2008, the applicant's mother was suffering from heart failure with hypertension and angina, osteoarthritis, and depression. *See statement from Dr.* [redacted], dated February 25, 2008. Additionally, the AAO notes that medical documentation in the record establishes that the applicant's mother is suffering from severe back pain. *See letter from Dr.* [redacted], dated March 20, 2009; *see also letter from Dr.* [redacted], undated. Further, in a statement dated July 18, 2006, Dr. [redacted] indicated that the applicant's mother was suffering from depression and he prescribed her Prozac. The AAO notes that no documentation was submitted establishing that the applicant's mother cannot be treated for her medical conditions in Jordan

or that she has to return to the United States to receive treatment(s). Going on record without supporting documentation is not sufficient to meet the applicant's burden of proof in this proceeding. *See Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)). In fact, the record establishes that the applicant's mother was receiving medical treatment in Jordan. However, the AAO notes the medical and mental health concerns of the applicant's mother.

Counsel states the applicant's son, [redacted], had his gall bladder removed and he remained in critical condition after the surgery. The AAO notes that medical documentation in the record establishes that the applicant's son, [redacted], was seen for severe abdominal pain, he had his gall bladder removed on April 3, 2008, and during post operation he was in critical condition because of leakage of bile, for which he had another operation. *See statement from Dr.* [redacted] dated April 30, 2008. However, the AAO notes that no medical documentation has been submitted establishing that the applicant's son, [redacted], continues to suffer from abdominal pain. Additionally, the record establishes that the applicant's son received treatment for his medical condition in Jordan. The AAO also notes that the record contains medical documentation that the applicant's sons suffer from asthma. *See statement from Dr.* [redacted], dated October 20, 2004. However, the AAO notes that even though Dr. [redacted] claims that the applicant's sons' asthmatic attacks are getting worse, the record establishes that they are being treated for their asthma in Jordan. In a statement dated October 28, 2004, the applicant states his children are "depressed and anxious. They suffer peer harassment at school, mostly due to their accent, and being born and raised in the U.S. They are having difficulty adjusting to the new environment." In a statement dated October 26, 2004, Professor [redacted] states the applicant's two eldest sons are unhappy in Jordan; however, "[t]hey don't have a clinical psychiatric problem so far. But they are liable to get one." In a statement dated October 20, 2004, Dr. [redacted] indicates that the applicant's children show "signs of depression and anxiety." Dr. [redacted] states that "[t]o avoid further deterioration of their health and psychological condition, it is [his] recommendation that the children should go back home to the U.S.A. as soon as possible." In a statement filed December 23, 2010, the applicant states his children are "having extreme hardship being away from their grandma" and they ask him everyday to return to the United States. The AAO acknowledges that the applicant's children may have suffered some emotional hardship when they first arrived to Jordan; however, the record does not contain any updated medical and/or psychological documentation that in the last seven years, they continue to have difficulty adjusting to life in Jordan. In a statement dated September 18, 2001, the applicant's mother states she wants her grandchildren to grow up in the United States where they have medical and education resources. The AAO notes the medical, mental health, and education concerns for the applicant's children.

In a statement filed May 1, 2009, the applicant states "life in Jordan [is] very difficult." He claims that "Jordan is an underdeveloped country, not economically supportive and must depend heavily on [foreign] aid. It's a small Arab country with [inadequate] supplies of water (ranked in the top 10 most deficient countries) and other natural resources. Debt, poverty, and [un]employment are fundamental problems." The applicant also states that he has "been unable to find any work" and he is "currently fully supported by [his] family members in the U.S." The AAO notes the applicant's concerns for country conditions in Jordan.

The AAO acknowledges that the applicant's mother has resided in the United States for many years; however, she is a native of Jordan and it is presumed that she would not (or did not) face difficulty in adapting to the culture and languages. Additionally, the AAO notes that no documentary evidence has been submitted to establish that the applicant's mother experienced any financial hardship in Jordan. The AAO acknowledges that the applicant's children have some medical conditions and may not have access to the American education and health systems; however, the AAO finds that the applicant has not shown that hardship to his children will elevate his mother's challenges to an extreme level. Therefore, based on the record before it, the AAO finds that the applicant has failed to establish that his mother would suffer extreme hardship if she relocated to Jordan.

In addition, the record does not establish extreme hardship to the applicant's mother if she remains in the United States. Counsel states the "health of the [applicant's mother] has been severely affected by the deportation of [the applicant] and his family." The applicant claims that his mother is currently residing in the United States and she is very sick. He states he is "deeply concerned for [his mom]" and when he talks "to her she always keeps crying." He also states that his mother is "unable to sleep, having extreme anxieties, having [a] hard time eating, sleeping, walking, moving, and [doing] anything on her own." The applicant claims that she is having difficulty walking, she is losing the use of her legs, and she is "under observation for her lower back." As noted above, medical documentation in the record establishes that the applicant's mother has severe back pain, and has received steroid and cortisone injections. *See letter from Dr.* [redacted]; *see also letter from Dr.* [redacted], *supra*. Additionally, as noted above, the applicant's mother suffers from heart failure with hypertension and angina, osteoarthritis, and depression. *See statement from Dr.* [redacted], *supra*. The applicant claims that he needs "to be with her to help her with her daily activities." In a letter dated March 20, 2009, Dr. [redacted] indicates that the applicant's mother needs the applicant's "assistance in her daily activities and she would benefit greatly if" the applicant became her primary caregiver. Additionally, in an undated letter, Dr. [redacted] indicates that the applicant's mother "will need assistance from family members for her daily life activities, such as going to doctor's appointments, getting in and out of a car, and even facilitating the bathroom." The AAO notes that the applicant has four United States citizen siblings, who all reside in the Fresno, California area. *See statement from* [redacted] dated October 28, 2004. Additionally, the record establishes that the applicant's mother's address is the same as his brother's address. Further, the AAO notes that the applicant has not shown whether his siblings would be unable to assist his mother in his absence. However, the AAO notes the applicant's mother's medical and mental health concerns.

The applicant states his mother-in-law will be having open heart surgery, and she requires assistance from him and his wife. In a letter dated October 20, 2010, Dr. [redacted] states that it would be "extremely helpful" for the applicant to be with his mother-in-law "during[,] before[,] and after her surgery to care for her well being." The applicant states his mother-in-law's condition is very bad and "she might not live for another year." The AAO notes that medical documentation in the record establishes that the applicant's mother-in-law has a history of congestive heart failure. *See letter from Dr.* [redacted] dated October 20, 2010. Dr. [redacted] states the applicant's mother-in-law's medical condition "carries a serious risk of mortality"; however, on November 19, 2010, she underwent "open heart surgery." The AAO notes that no updated medical documentation has been submitted establishing

that the applicant's mother-in-law's surgery was not successful, and/or that she requires the applicant's assistance.

The AAO notes that the applicant's mother may be suffering some emotional problems; however, the submitted medical documents do not establish that her emotional hardships go beyond the typical effects of separation or relocating to another country. Additionally, other than the medical and emotional issues suffered by the applicant's mother, the record does not include sufficient documentation of financial or other types of hardship that the applicant's mother would experience. Based on the record before it, the AAO finds that the applicant failed to establish that his mother would suffer extreme hardship if his waiver application is denied and she remains in the United States.

A review of the documentation in the record fails to establish the existence of extreme hardship to the applicant's mother caused by the applicant's inadmissibility to the United States. 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 remains entirely 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.