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]

H6

DATE: JUN 04 2012 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 (the Act), 8 U.S.C. section 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.

Thank you,

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Field Office Director, Athens, Greece. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained.

The applicant is a native and citizen of Syria. He was found to be inadmissible to the United States pursuant to section 212(a)(9)(B)(i)(II) of the Act, 8 U.S.C. § 1182(a)(9)(B)(i)(II), for having been unlawfully present in the United States for one year or more and seeking admission within ten years of his last departure. He is married to a United States citizen and has one U.S. citizen child. 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).

The Field Office Director concluded that the applicant had established that his spouse would suffer extreme hardship upon relocation, but had failed to demonstrate that she would experience extreme hardship upon separation. He denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) on December 9, 2011.

On appeal, counsel for the applicant asserts that the Field Office Director erred in denying the waiver application, and that the conditions in Syria are resulting in extreme emotional hardship for the applicant's spouse. *Form I-290B*, received on January 9, 2012.

The record includes, but is not limited to, counsel's brief; statements from the applicant, the applicant's spouse and members of the applicant's spouse's family; country conditions information on Syria, including a series of travel warnings issued by the Bureau of Consular Affairs, U.S. Department of State; medical records relating to the applicant's spouse; a listing of financial obligations; copies of bank statements; copies of a gas bill and car insurance invoice; a copy of a New Jersey Internet Application for Continued Weekly Unemployment Benefits; photographs of the applicant, his spouse, their daughter and family members; and an article on children living in separated families.

The entire record was reviewed and all relevant evidence considered in rendering this decision.

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

> (i) In general. - Any alien (other than an alien lawfully admitted for permanent residence) who-
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> . . . .
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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.
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> . . . .

The record indicates that the applicant entered the United States on a K-1 fiancé(e) visa on July 15, 2002, valid for 90 days. He did not marry his fiancée, but did not depart the United States until on or about June 24, 2011. Accordingly, the applicant accrued unlawful presence from October 15, 2002, the day after his K-1 visa would have expired, until his June 24, 2011 departure. As the applicant resided unlawfully in the United States for more than one year and is now seeking admission within ten years of his 2011 departure from the United States, he is inadmissible under section 212(a)(9)(B)(i)(II) of the Act.

Section 212(a)(9)(B)(v) of the Act provides for a waiver of section 212(a)(9)(B)(i) inadmissibility as follows:

> The Attorney General [now Secretary of Homeland Security] 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 . . . 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) 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 child can be considered only insofar as it results in hardship to a qualifying relative. The applicant's spouse 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).

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 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. 627, 632-33 (BIA 1996); *Matter of Ige*, 20 I&N Dec. 880, 883 (BIA 1994); *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.*

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., Matter of 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). For example, though family separation has been found to be a common result of inadmissibility or removal, separation from family living in the United States can also be the most important single hardship factor in considering hardship in the aggregate. *See Salcido-Salcido*, 138 F.3d at 1293 (quoting *Contreras-Buenfil v. INS*, 712 F.2d 401, 403 (9th Cir. 1983)); *but see Matter of Ngai*, 19 I&N Dec. at 247 (separation of spouse and children from applicant not extreme hardship due to conflicting evidence in the record and because applicant and spouse had been voluntarily separated from one another for 28 years). Therefore, the AAO considers the totality of the circumstances in determining whether denial of admission would result in extreme hardship to a qualifying relative.

The Field Office Director previously found that the applicant had established that moving to Syria would result in extreme hardship for his spouse and the AAO agrees with this assessment. An examination of the record finds the asserted hardship factors, when considered in the aggregate, to establish that relocation to Syria would result in uncommon hardship for the applicant's spouse rising to the degree of extreme hardship. The Field Office Director did not, however, find the applicant to have established extreme hardship to his spouse upon separation, and the applicant now appeals that conclusion.

On appeal, counsel for the applicant asserts that the applicant's spouse is experiencing emotional and financial hardship due to separation. *Statement in Support of Appeal*, dated February 7, 2012. Counsel refers to country conditions materials in the record, including a number of U.S. State Department travel warnings for Syria, and contends that the applicant's spouse is experiencing emotional hardship as a result of her daily fears for the applicant's safety. Counsel also indicates that the applicant's spouse is experiencing financial hardship as she was laid off from her job in June 2011 and continues to be unemployed. He further asserts that conditions in Syria prevent the applicant from obtaining employment that would allow him to provide his spouse with financial assistance. Counsel also maintains that the applicant's spouse's financial situation is creating daily emotional hardship for her as she is worried about her continued ability to care for, feed and house her daughter.

With regard to financial hardship, the applicant has submitted a copy of a New Jersey Internet Application for Continued Weekly Unemployment Benefits that is sufficient to demonstrate that his spouse is unemployed and has been unemployed since June 12, 2011. The AAO also finds the submitted country conditions information on Syria sufficient to establish that the applicant who is residing in [redacted] near the city of Homs, is unlikely to be able to obtain the type of employment that would allow him to provide financial assistance to his spouse. Therefore, although the AAO notes that the record does not indicate that the applicant's spouse would be unable to obtain financial assistance from her U.S. family members to mitigate the impact of the applicant's removal, we also acknowledge that the applicant's spouse is experiencing financial hardship in the applicant's absence.

The applicant's spouse has submitted a statement asserting that she worries constantly about the applicant due to his presence in Syria. *Statement of the Applicant's Spouse*, January 3, 2012. She explains that the area where the applicant resides is experiencing civil and social unrest resulting in violence on a daily basis. She states that she has difficulty reaching the applicant by telephone, is unable to travel to Syria to see him, that clothing she has sent to him has been returned by the post office because "no clothing of any kind can be mailed to Syria," that mail service to the area surrounding the city of Homs has been suspended and that the applicant has never received the Field Office Director's decision. In a subsequent letter, the applicant's spouse reports that the applicant was shot at and grazed by a sniper on May 13, 2012, while standing outside his church in [redacted] *Letter from the Applicant's Spouse*, dated May 30, 2012,

The record includes a February 12, 2012 travel warning for Syria issued by the U.S. State Department, which has been updated as of March 6, 2012 and advises U.S. citizens against travel to Syria and of the possibility that the country's borders may become more difficult to cross or may close without warning. The Country Specific Information on Syria published by the U.S. State Department on July 12, 2011, also advises that all U.S. citizens avoid travel to Syria, noting that demonstrations protesting government rule in Syria have grown and have been violently suppressed by Syrian security forces. According to the State Department report, the unrest has now spread to the capital of Damascus and surrounding areas and is expected to grow. It further states that the Syrian government conducts intense physical and electronic surveillance of Syrian citizens. The

AAO also notes that on March 29, 2012, the Secretary of Homeland Security in response to deteriorating conditions in Syria authorized Temporary Protected Status for eligible Syrian nationals and persons without nationality who last habitually resided in Syria.

Having reviewed the evidence of record, the AAO has taken note of the applicant's spouse's financial circumstances and her legitimate fears for the applicant's safety in Syria. We find that when the emotional hardship the applicant's spouse is experiencing due to her concern about the applicant's well-being and safety in Syria, her unemployed status and resulting financial hardship, and the hardships routinely created by the separation of families are considered in the aggregate, the applicant has established that his spouse would experience extreme hardship if the waiver application is denied and she remains in the United States.

As the applicant has established that a qualifying relative would experience extreme hardship as a result of his inadmissibility, both upon relocation and separation, we will now determine whether the applicant warrants a waiver 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(h)(1)(B) relief is warranted in the exercise of discretion, the factors adverse to the alien include the nature and underlying circumstances of the exclusion 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 he is excluded and 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 then "balance 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 AAO finds that the unfavorable factors in this case include the applicant's unlawful presence and unauthorized employment in the United States. The favorable factors in this case include the applicant's U.S. citizen spouse and daughter, the extreme hardship his spouse would experience if the waiver application is denied, the absence of a criminal record in the United States and the numerous statements from his spouse's family members regarding his character and the supportive, positive role he has played in their lives.

Although the applicant's unlawful presence and unauthorized employment are serious violations of U.S. immigration law, the AAO finds the favorable factors in this case to outweigh the negative factors. Therefore, favorable discretion will be exercised.

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 met that burden. Accordingly, the appeal will be sustained.

ORDER: The appeal is sustained.