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

U.S. Citizenship and Immigration Services

H2

[redacted]

Date: OCT 0 5 2011 Office: AMMAN, JORDAN 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), and section 212(h), 8 U.S.C. § 1182(h), of the Immigration and Nationality Act.

ON BEHALF OF APPLICANT:

SELF-REPRESENTED

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,

Michael Shumway

for Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Acting Field Office Director, Sacramento, California, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native and citizen of Jordan who was found to be inadmissible to the United States under 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 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), so as to immigrate to the United States. The director concluded that the applicant had failed to establish that his admission would impose extreme hardship on a qualifying relative, and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) accordingly. The applicant filed a timely appeal.

The applicant's wife states in letters submitted on appeal that she is pregnant and her child will be born in September 2010. She avers that she moved to Jordan in November 2006 to be with her husband, and returned to the United States in October 2008. The applicant's wife avers that she is concerned about living in Jordan because it has a high infant mortality rate, which is caused by insufficient medical care and malnutrition. She states that she feels anxious about having or raising her child in Jordan and would worry about not being able to communicate with doctors and nurses. The applicant's wife expresses anxiety about living in Jordan and being separated from her parents, who she feels will be able to assist with her child. In addition, she states that she feels unsafe in Jordan and worries that her appearance, a Caucasian with blonde hair and blue eyes, makes her a target for kidnapping. Further, the applicant's wife indicates that she is perceived differently by strangers because of her appearance and she conveys that she does not leave the house because strangers driving by yell at her. She states that as a woman she will face societal discrimination in Jordan. Lastly, the applicant's wife declares that children receive a better education in the United States than in Jordan, and that she would be forced to stop attending Wayne County Community College if she joined her husband in Jordan. The applicant's wife states that if she remains in the United States without her husband, she will struggle to support herself and her baby earning $8 per hour working 32 hours a week. She conveys that she receives Medicaid benefits, food assistance, and financial aid for college.

The applicant was found to be inadmissibility for unlawful presence under section 212(a)(9)(B) of the Act. That section provides, in 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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> > > (I) was unlawfully present in the United States for a period of more than 180 days but less than 1 year, voluntarily departed the United States . . . and again seeks admission within 3 years of the date of such alien's departure or removal, or

> (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.
>
> . . . .

U.S. Citizenship and Immigration Services (USCIS) records reflect that the applicant entered the United States on August 29, 2000 as a nonimmigrant visitor with authorization to remain in the United States for a temporary period not to exceed February 28, 2001. The applicant was granted an extension of status to August 29, 2001, and remained in the United States beyond August 29, 2001. On April 18, 2003, the applicant was placed in removal proceedings and personally served with a notice to appear before an immigration judge. On July 28, 2003, the Form I-130, Petition for Alien Relative was filed on behalf of the applicant. On March 2, 2004, the applicant was served by mail with a notice to appear before an immigration judge for a master hearing on March 30, 2004, October 29, 2004, and September 2, 2005. On September 6, 2005, the immigration judge denied the applicant's motion to continue master hearing. On February 3, 2006, the applicant was personally served with a notice to appear before an immigration judge for a master hearing on February 3, 2006. On February 22, 2006 and May 4, 2006, the applicant was served by mail with a notice to appear before an immigration judge for a master hearing on July 13, 2006. On July 13, 2006, the immigration judge granted the respondent voluntary departure to Jordan in lieu of removal on or before November 13, 2006. On November 8, 2006, the applicant departed from the United States.

Based on the record, the applicant began to accrue unlawful presence from August 29, 2001 until July 13, 2006, when he was granted voluntary departure. The applicant's departure from the United States triggered the ten-year bar, rendering him inadmissible under section 212(a)(9)(B)(i)(II) of the Act.

The waiver for unlawful presence is found under section 212(a)(9)(B)(v) of the Act. That section 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) 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 U.S. citizen spouse is the only qualifying relative in this case. If extreme hardship to a qualifying relative is established, USCIS then assesses whether an 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, we consider the totality of the circumstances in determining whether denial of admission would result in extreme hardship to a qualifying relative.

In rendering this decision, the AAO will consider all of the evidence in the record.

The stated hardship factor in the instant case is the emotional and financial impact to the applicant's wife and child. The applicant's wife indicates in her letters that she has a close relationship with her husband and that she lived with him for nearly two years in Jordan and returned to the United States because of her pregnancy. The applicant's wife conveys that she is in financial straits and the record shows that in April and May of 2010 she qualified for the Medicaid Program and Food Assistance Program of the State of Michigan, Department of Human Services. Further, the applicant's wife states that if she lived in Jordan she would be separated from family members in the United States, particularly her parents who are helping her and will babysit while she and her husband work. She maintains that she would not be able to attend college in Jordan because of financial and language barriers and that she would have to cease her education at Wayne County Community College, and would not be able to fulfill her desire to obtain employment in law enforcement and crime investigation. The applicant's wife declares that she is concerned about medical care in Jordan and about not being able to communicate with doctors and nurses. She also indicates that she feels that she is a target for kidnapping and is perceived differently by strangers because of her appearance, and that she would have to endure societal discrimination because she is a woman. Lastly, the applicant's wife worries about the consequences of not having her child educated in the United States.

In considering all of the hardship factors presented, the AAO finds that when those factors are combined, they fail to demonstrate that the applicant's spouse will experience extreme hardship if the waiver is denied. Though the record demonstrates that the applicant has a close relationship with his wife, he has not established their separation would be more than the common result of inadmissibility. In addition, while the AAO acknowledges that the applicant's wife has received Medicaid and food assistance benefits, the applicant's wife has stated that she has been assisted by her parents, who will babysit her child while she works. Further, while we agree that the applicant's wife, who is now 23 years old, will experience emotional hardship in separating from her family members in the United States, we find that in view of the applicant's wife's age and life experience, her emotional hardship would not be as extreme as that of a minor child who is both emotionally and financially dependent on a parent. Lastly, the applicant has not provided any documentation to establish that his wife and newborn's safety will be at risk in Jordan or that the medical care there is substantially inferior to what the applicant's wife presently has in the United States. In addition, the applicant has not demonstrated that he will be unable to financially support his wife and newborn in Jordan, and that his wife will be unable to attend college or have a career there. Further, no documentation has been presented to demonstrate that the quality of education in Jordan for children is considerably inferior to that of the United States or that the applicant's wife's rights will be severely restricted in Jordan because she is a woman.

We note that although not directly addressed by the director, the record reflects that the applicant was convicted of domestic violence (misdemeanor) in violation of Michigan Penal Code § 750.81(2). We will not need to analyze whether this offense involves moral turpitude, which would

render him inadmissible under section 212(a)(2)(A)(i)(I) of the Act, since this is the applicant's only conviction and it qualifies for the petty offense exception under 212(a)(2)(A) of the Act.

The petty offense exception under 212(a)(2)(A) of the Act requires that the maximum penalty possible for the crime of which the alien was convicted must not exceed imprisonment for one year, and the applicant must not be sentenced to a term of imprisonment in excess of six months. Michigan Penal Code § 750.81(2) states that the maximum penalty possible for violation of Michigan Penal Code § 750.81(2) is imprisonment for not more than 93 days. The record shows that the applicant was not sentenced to any imprisonment. His offense qualifies for the petty offense exception and the applicant is therefore not inadmissible under section 212(a)(2)(A)(i)(I) of the Act.

Based upon the record before the AAO, the applicant in this case fails to establish extreme hardship to a qualifying family member for purposes of relief under section 212(a)(9)(B) of the Act.

Because the applicant is statutorily ineligible for relief, no purpose is 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) 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.