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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: JUL 2 6 2012 Office: BLOOMINGTON, MN FILE: [redacted]

IN RE: Applicant: [redacted]

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

Michael Hathaway

for Perry Rhew
Chief, Administrative Appeals Office

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

The applicant is a native and citizen of Egypt who was found to be inadmissible under section 212(a)(2)(A)(i)(II) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(2)(A)(i)(II), for having been convicted of a crime involving a controlled substance; and 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 director stated that the applicant sought a waiver of inadmissibility pursuant to sections 212(h) and 212(a)(9)(B)(v) of the Act, 8 U.S.C. § 1182(h), and 8 U.S.C. § 1182(a)(9)(B)(v), respectively. The director concluded that the applicant had failed to establish that his bar to admission would impose extreme hardship on a qualifying relative, and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) accordingly.

On appeal, counsel argues that U.S. Citizenship and Immigration Services (USCIS) failed to thoroughly and cumulatively analyze the hardship factors in the instant case. Counsel contends that the USCIS conceded that the applicant's spouse will experience financial and emotional hardship if the applicant is deported, but found that her emotional hardship was not "extreme hardship." Counsel stated that USCIS cited *Matter of Pilch*, 212 I&N Dec. 627 (BIA 1996), as holding that "emotional hardship caused by severed family and community ties is a common result of deportation and does not constitute extreme hardship." Counsel asserts that USCIS erred in not considering the applicant's wife's emotional trauma stemming from her sole legal custody of her child and having to choose between her husband and child. Counsel contends that having to make this choice constitutes extreme hardship not commonly experienced by families of aliens who are removed from the United States. Counsel asserts that USCIS erred in second-guessing the licensed medical professional's assessing the applicant's wife with severe depression. Counsel discusses reports on depression by the National Institute of Mental Health (NIMHA), and asserts that the applicant's wife requires the emotional support of the applicant and without it will experience extreme hardship. Counsel argues that USCIS erred in analyzing this hardship independently from the other conceded hardships that the applicant's wife will face. Counsel discusses the hardship factors set forth in *Matter of Cervantes-Gonzalez,* 22 I&N Dec. 560, 565 (BIA 1999), and states that the list is not exhaustive. Counsel contends that the applicant's wife has family ties to the United States: she was born and raised here, her entire family is in the United States, she has no family ties elsewhere, and her career and real estate (her home) is here. Counsel states that the biological father of the applicant's stepson will not permit his child to relocate to Egypt and the applicant's wife will not be able to afford to visit her son if she lived there. Counsel contends that the quality of life in Egypt is significantly inferior to what the applicant's wife now has and that she will suffer a financial loss if she sold her home in the United States. Counsel contends that USCIS did not properly consider whether a favorable exercise of discretion should be granted.

The applicant was found to be inadmissible under section 212(a)(2)(A)(i)(II) of the Act for having been convicted of a crime involving a controlled substance.

Section 212(a)(2) of the Act states in pertinent part:

Criminal and related grounds. —

(A) Conviction of certain crimes. –

(i) In general. – Except as provided in clause (ii), any alien convicted of, or who admits having committed, or who admits committing acts which constitute the essential elements of –

. . .

(II) a violation of (or conspiracy or attempt to violate) any law or regulation of a State, the United States, or a foreign country relating to a controlled substance (as defined in section 102 of the Controlled Substances Act (21 U.S.C. 802)), is inadmissible.

Section 212(h) of the Act provides, in pertinent part, that:

> The Attorney General may, in his discretion, waive the application of . . . subparagraph (A)(i)(II) . . . insofar as it relates to a single offense of simple possession of 30 grams or less of marijuana if – . . . in the case of an immigrant who is spouse, parent, son, or daughter of a citizen of the United States or an alien lawfully admitted for permanent residence, if it is established to the satisfaction of the Attorney General that the alien's denial of admission would result in extreme hardship to the United States citizen or lawfully permanent resident spouse, parent, son, or daughter of such alien.

The record shows that on June 7, 2004, the applicant pled guilty to having a small amount of marijuana (6.8 grams) in violation of Minn. Stat. § 152.027.3. The judge ordered that the applicant pay a fine, surcharge, and costs.

The director found that the applicant was convicted of a crime involving a controlled substance. As the applicant has not disputed inadmissibility on appeal, and the record does not show the finding of inadmissibility to be erroneous, we will not disturb the finding of the director.

The AAO will now address the finding of inadmissibility for unlawful presence, which is under section 212(a)(9)(B) of the Act. That section provides, in part:

(B) Aliens Unlawfully Present

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

(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 as a B1/B2 nonimmigrant visitor on September 14, 1998 with authorization to remain until March 13, 1999. The applicant departed from the United States in July or September 2001. The applicant began to accrue unlawful presence from March 13, 1999 until July or September 2001, when he left the country and triggered the ten-year bar, rendering him 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 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, 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, 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 applicant's wife described her and her son's close relationship with the applicant in the affidavit dated October 8, 2007. She stated that the applicant is the "stabilizer in our family. I often come home stressed about work and he calms me down . . . Several people that I work with have commented on how much better I am now that I married someone that makes me happy." The applicant's wife conveyed that she had two prior divorces and marrying the applicant is one her best

decisions. She stated that they are struggling financially and requires the applicant's income to meet their expenses. The applicant's wife stated that she has been seeing a therapist for severe depression and that she takes prescription drugs "to help me handle everything that is going on in my life." She indicated that she is pre-diabetic and has a good job, which she has held for 15 years, and the going to Egypt is impossible for financial and emotional reasons. The applicant's wife stated that she cannot take her son out of the state, and that "the biggest reason [that she cannot relocate to Egypt] is that I would not be able to raise my son."

The asserted hardships to the applicant's wife in the instant case are financial and emotional in nature. The applicant's wife's assertion of having a close relationship with the applicant is consistent with the submitted letters by family and friends who attest to the applicant's having a strong bond with his wife and stepson. The applicant's wife's assertion of having depression is consistent with the psychological evaluation by [redacted] dated September 30, 2007. This evaluation conveyed that the applicant's wife stated that she has had depression since the birth of her son 13 years ago, and that her depression never went away until she met the applicant 3 years ago. The evaluation conveyed that the applicant's wife stated that she saw a psychologist 13 years ago and was on Zoloft for a while. [redacted] indicated that the applicant's wife stated that she has been depressed since her attorney said the applicant might be sent to Egypt and has been "very sad and tearful, can not [sic] concentrate on her job, is very worried and anxious, and has sleeping problems and nightmares." [redacted] diagnosed the applicant's wife with severe major depressive disorder. However, the letters from the applicant's family members and friends to do not indicate that the applicant's wife has or ever had severe depression and the record contains no evidence from her employer reflecting that the applicant's wife has had problems with work performance. Counsel asserts that the applicant's wife's emotional trauma stems from her having to choose between living with her husband in Egypt or her child in the United States. The record indicates that the applicant's stepson was born on November 3, 1993 and is now 18 years old. We conclude that his dependency on his mother and stepfather is less than when he was a minor. In addition, the applicant's wife's claim of financial hardship is not demonstrated by the record. The applicant submitted tax returns showing his wife as employed as a manager with [redacted] and the primary wage earner of the household. The applicant has not submitted evidence of their household expenses and demonstrated his wife's income is not sufficient to pay them. When the hardship factors are considered together, they fail to establish that the applicant's wife will experience extreme hardship if she remained in the United States without the applicant.

In regard to the hardships of relocation to Egypt, the asserted hardships to the applicant's wife are having to separate from her son and family members in the United States, lack of family ties in Egypt, having a diminished quality of life there, suffering a financial loss in selling her house in the United States, and having to give up her life and job which she has held for more than 15 years. The record contains an article "Mental health services in the Arab world, and an Eastern Mediterranean Health Journal paper "Egyptian contribution to the concept of mental health," dated May 2001; and the U.S. Department of State Country Reports on Human Rights Practices – 2007 for Egypt.

However, we can find extreme hardship warranting a waiver of inadmissibility only where an applicant has demonstrated extreme hardship to a qualifying relative in the scenario of separation *and* the scenario of relocation. A claim that a qualifying relative will remain in the United States and thereby suffer extreme hardship as a consequence of separation can easily be made for purposes

of the waiver even where there is no intention to separate in reality. *See Matter of Ige*, 20 I&N Dec. 880, 886 (BIA 1994). Furthermore, to separate and suffer extreme hardship, where relocating abroad with the applicant would not result in extreme hardship, is a matter of choice and not the result of inadmissibility. *Id., see also Matter of Pilch*, 21 I&N Dec. 627, 632-33 (BIA 1996). As the applicant has not demonstrated extreme hardship from separation, we cannot find that refusal of admission would result in extreme hardship to the qualifying relative(s) in this case.

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 sections 212(h) and 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.