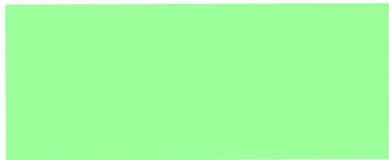


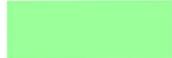


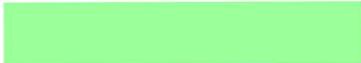
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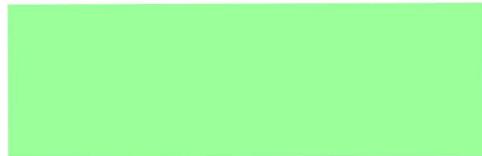
DATE: OCT 02 2013 Office: ATHENS, GREECE

FILE: 

IN RE: 

APPLICATION: Application for Waiver of Grounds of Inadmissibility pursuant to section 212(a)(9)(B)(v) of the Immigration and Nationality Act, 8 U.S.C. § 1182(a)(9)(B)(v) and under section 212(h) of the Immigration and Nationality Act, 8 U.S.C. § 1182(h).

ON BEHALF OF APPLICANT:



INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office (AAO) in your case.

This is a non-precedent decision. The AAO does not announce new constructions of law nor establish agency policy through non-precedent decisions. If you believe the AAO incorrectly applied current law or policy to your case or if you seek to present new facts for consideration, you may file a motion to reconsider or a motion to reopen, respectively. Any motion must be filed on a Notice of Appeal or Motion (Form I-290B) within 33 days of the date of this decision. **Please review the Form I-290B instructions at <http://www.uscis.gov/forms> for the latest information on fee, filing location, and other requirements.** See also 8 C.F.R. § 103.5. **Do not file a motion directly with the AAO.**

Thank you,

Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Field Office Director, Athens, Greece. An appeal of the denial was dismissed by the Administrative Appeals Office (AAO). The matter was before the AAO on motion and the AAO's previous decision was affirmed. The matter is now again before the AAO on motion. The motion will be granted and the AAO's previous decisions affirmed.

The applicant is a native and citizen of Egypt who was found to be inadmissible to the United States pursuant to section 212(a)(2)(A)(i)(I) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(2)(A)(i)(I), for having committed crimes involving moral turpitude and under 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 more than one year and seeking readmission within 10 years of his last departure from the United States. The applicant seeks a waiver of inadmissibility in order to reside in the United States with his U.S. citizen spouse.

In a decision dated October 14, 2011, the field office director concluded that the applicant had failed to show that his family would suffer hardship rising to the level of extreme as a result of his inadmissibility. The application was denied accordingly.

On appeal, counsel asserted that the field office director failed to consider the hardship factors to the applicant's spouse in the aggregate, the applicant warranted a favorable exercise of discretion, he was rehabilitated, and his admission would not be contrary to the national welfare, safety, and security of the United States.

In our decision, on appeal, we found that although the record indicated that the applicant's spouse had been diagnosed with insomnia, it did not show that this insomnia was not controlled by medication or that it was caused by separation from the applicant. The record did not indicate that the applicant's spouse's insomnia and feelings of sadness rose to the level of creating extreme emotional hardship. We also found that the record failed to show that the applicant's spouse was suffering extreme financial hardship as a result of his inadmissibility. We found that the financial documentation in the record suggested that the applicant's spouse was capable of supporting herself and did not indicate that she was suffering because of being separated from the applicant. In regards to relocation, we found that although counsel stated that the applicant was living in a small village with his father and siblings and that the applicant's spouse would suffer extreme hardship as a result of relocation due to the conditions in the country, no documentation was submitted to support counsel's assertions regarding conditions in Egypt. Thus, we found that the applicant had not shown that his spouse would suffer extreme hardship as a result of relocation.

On a subsequent motion, counsel stated that the AAO failed to correctly consider the applicant's arguments on appeal and submitted the following documentation: an affidavit from the applicant, an affidavit from the applicant's spouse, a statement from the applicant's spouse, a letter from the applicant's sister-in-law, the 2011 U.S. State Department Human Rights Report for Egypt, and additional financial and medical documentation.

We found, in a decision dated July 9, 2013, that the record continued to not support the assertions regarding the applicant's spouse's emotional hardship. We noted that the record did not contain any supporting documentation regarding the applicant's spouse's suffering from depression. In addition, the record failed to detail how the applicant's spouse's emotional state was affecting her daily functioning. In regards to financial hardship, the record was also unsupported. We noted that as the record established the applicant's spouse's annual income at approximately \$21,000, it did not fully support the budgetary information provided. Finally, we found that without more information regarding the course of treatment prescribed to the applicant's spouse for her infertility, the access to this treatment in the United States and Egypt, and the requirements for the applicant's presence during treatment, we could not ascertain whether being separated from the applicant would cause his spouse significant hardship in this regard. Thus, we again found that the record did not support a finding that the applicant's spouse would suffer extreme hardship as a result of separation.

In this decision, we also found that the U.S. State Department Human Rights Report did not indicate what conditions a person of the applicant's spouse's background and experience would encounter upon relocation. We noted that the applicant's spouse is from Morocco and had visited Egypt four times since the applicant's departure, including one trip in March 2013. We found the evidence in record did not support a finding that Egypt would be unsafe for the applicant's spouse to relocate or that, given her background and the applicant's background, she would suffer extreme hardship upon relocation.

On the present motion, the applicant submits new hardship documentation, including: a psychiatric evaluation for the applicant's spouse, a copy of a medical prescription, an affidavit from the applicant's spouse's mother, an application from the applicant's spouse's sister, reports from the U.S. State Department regarding travel to Egypt, and a note from a medical doctor in Egypt.

Section 212(a)(2)(A) of the Act states, in pertinent parts:

- (i) [A]ny alien convicted of, or who admits having committed, or who admits committing acts which constitute the essential elements of –
 - (I) a crime involving moral turpitude (other than a purely political offense) or an attempt or conspiracy to commit such a crime . . . is inadmissible.

On appeal, the record indicated that on January 14, 1995, the applicant was convicted of conspiracy to commit bank fraud under 18 U.S.C. 371, was sentenced to four months home confinement, three years of probation, and was made to pay a fine. We noted that the maximum penalty for a conviction under 18 U.S.C. § 371 was five years imprisonment. The applicant did not dispute the finding that he was inadmissible under section 212(a)(2)(A) of the Act for having committed a crime involving moral turpitude. The applicant does not contest this finding on motion.

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

The Attorney General [Secretary of Homeland Security] may, in his discretion, waive the application of subparagraph (A)(i)(I) . . . of subsection (a)(2) . . . if -

(1) (A) in the case of any immigrant it is established to the satisfaction of the Attorney General [Secretary] that --

(i) . . . the activities for which the alien is inadmissible occurred more than 15 years before the date of the alien's application for a visa, admission, or adjustment of status,

(ii) the admission to the United States of such alien would not be contrary to the national welfare, safety, or security of the United States, and

(iii) the alien has been rehabilitated; or

(B) in the case of an immigrant who is the 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 [Secretary] that the alien's denial of admission would result in extreme hardship to the United States citizen or lawfully resident spouse, parent, son, or daughter of such alien . . .

Section 212(h)(1)(A) of the Act provides that the Secretary may, in her discretion, waive the application of subparagraph (A)(i)(I) of subsection (a)(2) if the activities for which the alien is inadmissible occurred more than 15 years before the date of the alien's application for a visa, admission, or adjustment of status. An application for admission to the United States is a continuing application, and admissibility is determined on the basis of the facts and the law at the time the application is finally considered. *Matter of Alarcon*, 20 I&N Dec. 557, 562 (BIA 1992).

On appeal, we found that the events which led to the criminal convictions for which the applicant was found inadmissible occurred more than 15 years ago and were waivable under section 212(h)(1)(A) of the Act. Section 212(h)(1)(A) of the Act requires that the applicant's admission to the United States not be contrary to the national welfare, safety, or security of the United States, and that he has been rehabilitated.

We then found that although the applicant was eligible for a waiver under section 212(h)(1)(A) of the Act, no purpose would be served in waiving this ground of inadmissibility as the applicant remained inadmissible under section 212(a)(9)(B)(i)(II) of the Act and did not show that his inadmissibility was causing his qualifying relative extreme hardship.

Section 212(a)(9) of the Act provides:

(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 (whether or not pursuant to section 244(e) prior to the commencement of proceedings under section 235(b)(1) or section 240), 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.

(ii) Construction of unlawful presence.- For purposes of this paragraph, an alien is deemed to be unlawfully present in the United States if the alien is present in the United States after the expiration of the period of stay authorized by the Attorney General or is present in the United States without being admitted or paroled.

...

(iv) Tolling for good cause.-In the case of an alien who-

(I) has been lawfully admitted or paroled into the United States,

(II) has filed a nonfrivolous application for a change or extension of status before the date of expiration of the period of stay authorized by the Attorney General, and

(III) has not been employed without authorization in the United States before or during the pendency of such application, the calculation of the period of time specified in clause (i)(I) shall be tolled during the pendency of such application, but not to exceed 120 days.

(v) Waiver.-The Attorney General 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 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. No court shall have jurisdiction to review a decision or action by the Attorney General regarding a waiver under this clause.

On appeal, the record showed that the applicant entered the United States as a B-1 visitor on September 11, 1992, with an authorized stay until October 10, 1992. On May 20, 1999, the applicant submitted an Alien Relative Petition (Form I-130) and adjustment application (Form I-485). This petition was dismissed after a divorce. The applicant then remarried, his new spouse filed another Form I-130, and the applicant filed a Form I-589 asylum application. On January 18, 2008 the applicant's asylum application was denied and he was ordered removed from the United States. On December 2, 2008, the applicant was removed from the United States. The applicant accrued unlawful presence from April 1, 1997, the date the unlawful presence provisions were enacted, until May 20, 1999, the date he filed his adjustment of status application. Therefore, we found the applicant inadmissible under section 212(a)(9)(B)(i)(II) of the Act for having been unlawfully present in the United States and seeking readmission within 10 years of his last departure. On motion, the applicant does not contest this finding of inadmissibility.

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

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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 v. I.N.S.*, 138 F.3d 1292 (9th Cir. 1998)(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.

We now find that the applicant has established that his wife is suffering extreme hardship as a result of separation, but has not established she would suffer extreme hardship as a result of relocation. The record indicates that the applicant’s spouse is suffering extreme emotional hardship. She has been diagnosed with major depressive disorder and anxiety. She is taking anti-depressants and is having problems concentrating or carrying out her daily routines. The record indicates that the applicant’s spouse has withdrawn from her family and no longer takes part in family celebrations or traditions. The psychiatric evaluation, affidavit from the applicant’s spouse’s mother, and affidavit from the applicant’s spouse’s sister support the statements regarding the applicant’s spouse’s emotional state.

However, the record does not support the applicant’s assertions regarding extreme hardship to his spouse as a result of relocation. On motion, counsel submits additional country conditions reports and a medical note, dated March 2013, from the Egyptian doctor the applicant’s spouse received treatment from the last time she visited Egypt. We note the country conditions in Egypt and the political instability the country is experiencing. Counsel claims that the applicant’s spouse cannot relocate because of this instability. We cannot give this assertion significant weight given the fact that the applicant’s spouse has visited Egypt during this time period and with these conditions. We also acknowledge that the applicant’s spouse, at the age of 51 years old, would like to have child and is undergoing infertility treatments. Counsel states that the applicant’s spouse had started her treatment in the United States in 2006 and 2007 and that after the applicant’s removal his spouse was forced to undergo treatment in Egypt. Counsel states that the applicant and his spouse cannot afford this treatment in Egypt and prefer to have the treatments done in the United States, where medical care is better. Again, we find that the record does not show that the applicant’s spouse’s desire to have infertility treatments completed in the United States indicates that she would suffer

extreme hardship as a result of relocation. The record indicates that she has seen a doctor in Egypt for this treatment and does not show why she could not continue to do so, other than possibly increased cost. But she has not demonstrated that she cannot afford the treatments or that this would otherwise be extreme hardship to her. The record also fails to indicate why she could not undergo some of her treatments in the United States before traveling to Egypt to be with the applicant. We find that given the current record, the applicant's spouse has failed to show that she would suffer extreme hardship as a result of relocation.

Going on record without supporting evidence generally is not sufficient for purposes of meeting the burden of proof in these proceedings. *See Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm'r 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg'l Comm'r 1972)). Without documentary evidence to support the claim, the assertions of counsel will not satisfy the petitioner's burden of proof. The unsupported assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980).

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 relocation, we cannot find that refusal of admission would result in extreme hardship to the qualifying relative(s) in this case.

In this case, the record does not contain sufficient evidence to show that the hardships faced by the qualifying relative, considered in the aggregate, rise beyond the common results of removal or inadmissibility to the level of extreme hardship. The AAO therefore finds that the applicant has failed to establish extreme hardship to his U.S. citizen spouse as required under section 212(a)(9)(B)(v) of the Act. As the applicant has not established extreme hardship to a qualifying family member no purpose would be served in determining whether the applicant 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. Section 291 of the Act, 8 U.S.C. § 1361. Accordingly, the motion will be granted and the AAO's previous decisions affirmed.

ORDER: The motion is granted and the AAO's previous decisions affirmed.