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U.S. Citizenship  
and Immigration  
Services

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[Redacted]

FILE:

[Redacted]

Office: ROME, ITALY

Date: OCT 19 2007

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:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

Robert P. Wiemann, Chief  
Administrative Appeals Office

**DISCUSSION:** The waiver application was denied by the District Director, Rome, Italy, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant, [REDACTED] is a native and citizen of Egypt 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 under section 212(a)(9)(A)(ii) of the Act, 8 U.S.C. § 1182(a)(9)(A)(ii), as an alien previously removed. The applicant is married to a naturalized citizen, [REDACTED]. He 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), which the district director denied, finding that the applicant failed to establish hardship to a qualifying relative. *Decision of the District Director, dated August 29, 2005.* The applicant submitted a timely appeal.

Section 212(a)(9)(B)(i)(II) of the Act provides that any alien (other than an alien lawfully admitted for permanent residence) who has been unlawfully present in the United States for one year or more, and again seeks admission within 10 years of the date of such alien's departure or removal, is inadmissible.

Unlawful presence accrues when an 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. Section 212(a)(9)(B)(ii) of the Act, 8 U.S.C. § 1182(a)(9)(B)(ii). The periods of unlawful presence under sections 212(a)(9)(B)(i)(I) and (II) are not counted in the aggregate.<sup>1</sup> For purposes of section 212(a)(9)(B) of the Act, time in unlawful presence begins to accrue on April 1, 1997.<sup>2</sup>

The three- and ten-year bars of sections 212(a)(9)(B)(i)(I) and (II) of the Act, 8 U.S.C. § 1182(a)(9)(B)(i)(I) and (II), are triggered by a departure from the United States following accrual of the specified period of unlawful presence. If someone accrues the requisite period of unlawful presence but does not subsequently depart the United States, then sections 212(a)(9)(B)(i)(I) and (II) of the Act, 8 U.S.C. § 1182(a)(9)(B)(i)(I) and (II), would not apply. *See* DOS Cable, note 1. *See also Matter of Rodarte*, 23 I&N Dec. 905 (BIA 2006)(departure triggers bar because purpose of bar is to punish recidivists). With regard to an adjustment applicant who had 180 days of unauthorized stay in the United States before filing an adjustment of status application, his or her return on an advance parole will trigger the three- and ten-year bar. Memo, Virtue, Acting Exec. Comm., INS, HQ IRT 50/5.12, 96 Act. 068 (Nov. 26, 1997).

The record reflects that on September 11, 2000, the applicant, who was admitted into the United States for 29 days as a crewman, failed to depart from the United States with his vessel, and was removed from the United States on April 26, 2003. As shown by the record, the applicant accrued time in unlawful presence from October 11, 2000 until April 26, 2003, the date of his removal. The district director was therefore correct in finding the applicant inadmissible under section 212(a)(9)(B)(i)(II) of the Act, 8 U.S.C. § 1101(a)(9)(B)(i)(II).

The AAO will now address the finding that a waiver of inadmissibility is not warranted.

<sup>1</sup> Memo, Virtue, Acting Assoc. Comm. INS, Grounds of Inadmissibility, Unlawful Presence, June 17, 1997 INS Memo on Grounds of Inadmissibility, Unlawful Presence (96Act.043); and Cable, DOS, No. [REDACTED] (April 4, 1998) [hereinafter *Virtue Memo Unlawful Presence*].

<sup>2</sup> *See* DOS Cable, note 1; and IIRIRA Wire #26, HQIRT 50/5.12.

Section 212(a)(9)(B) of the Act 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 upon a showing that the bar to admission imposes an extreme hardship on a qualifying relative, *i.e.*, the U.S. citizen or lawfully resident spouse or parent of the applicant. Hardship to the applicant is not a consideration under the statute, and unlike section 212(h) of the Act where a child is included as a qualifying relative, they are not included under section 212(a)(9)(B) of the Act. Thus, hardship to the applicant and his children will be considered only to the extent that it results in hardship to a qualifying relative. The qualifying relative in this case is the applicant’s wife. If extreme hardship to the qualifying relative is established, the Secretary then assesses whether an exercise of discretion is warranted. *See Matter of Mendez-Morales*, 21 I&N Dec. 296 (BIA 1996).

On appeal, counsel states that the facts in *Matter of Ngai*, 19 I&N Dec. 245 (BIA 1984), and *Matter of Shaughnessy*, 39 F.3d 1049 (9<sup>th</sup> Cir. 1994) are dissimilar from the instant case, as those cases involve criminal convictions and a qualifying relative who is not a United States citizen, like [REDACTED]. Counsel states that [REDACTED] will experience the extreme hardship of separation from her husband along with the financial difficulties of raising a family alone. She states that [REDACTED] and her husband have a two-year-old son, that [REDACTED] is six months pregnant, and that their infant will be born in the United States. Counsel states that [REDACTED] will be deprived of her husband’s companionship during her pregnancy, labor, and care of their children, causing her mental anguish. She states that [REDACTED] situation is similar to the facts in *Matter of Mansour*, 11 I&N Dec. 306, 308 (BIA 1965), although [REDACTED] separation from her husband will be for eight years, not two years. Counsel states that [REDACTED] family, including her father and mother, lives in Egypt and that she would be alone supporting herself and her children in the United States.

In addition to other documents, the record contains a letter from the applicant and a letter from his wife. In his letter, the applicant stated that he wants his son to have a good education in America and he misses his wife and son. In her letter, the applicant’s wife indicated that she gave birth to her child while the applicant was in the United States, so he did everything for her. She stated that it is “really hard to live [in Egypt] after living in America with my husband and son.”

In the October 26, 2005 letter, counsel asserts that *Matter of Ngai* and *Matter of Shaughnessy* are not applicable here, as they do not involve U.S. citizens, and concern inadmissibility based on a criminal conviction. The AAO disagrees with counsel’s assertion. The words of the statute provide that “extreme hardship” must be established to the spouse or son or daughter of a “United States citizen” or of “an alien lawfully admitted for permanent residence.” The statute does not distinguish the “extreme hardship” that must be established to a U.S. citizen spouse or parent from the “extreme hardship” that is to be established to a lawful permanent resident spouse or parent. 8 U.S.C. § 1182(a)(9)(B)(v).

Furthermore, decisions of the Board of Immigration Appeals (BIA) have indicated that cross-application is appropriate and there is no case law indicating that extreme hardship is viewed differently depending on the type of waiver. This cross application of law is discussed in *Matter of Cervantes-Gonzalez*, 22 I&N Dec. 560, 565 (BIA 1999), a case in which the BIA assessed a section 212(i) waiver of inadmissibility, and wrote:

Although it is, for the most part, prudent to avoid cross application between different types of relief of particular principles or standards, we find the factors articulated in cases involving suspension of deportation and other waivers of inadmissibility to be helpful, given that both forms of relief require extreme hardship and the exercise of discretion . . . . [S]ee . . . *Hassan v. INS*, 927 F.2d 465, 467 (9<sup>th</sup> Cir. 1991) (noting that suspension cases interpreting extreme hardship are useful for interpreting extreme hardship in section 212(h) cases). These factors related to the level of extreme hardship which an alien's "qualifying relative," . . . would experience upon deportation of the respondent.

Moreover, in a cancellation of removal case, *In Re Monreal-Aguinaga*, 23 I&N Dec. 56, 63(BIA 2001), the BIA states:

We do find it appropriate and useful to look to the factors that we have considered in the past in assessing "extreme hardship" for purposes of adjudicating suspension of deportation applications, as set forth in our decision in *Matter of Anderson*, 16 I&N Dec. 596 (BIA 1978). That is, many of the factors that should be considered in assessing "exceptional and extremely unusual hardship" are essentially the same as those that have been considered for many years in assessing "extreme hardship," but they must be weighted according to the higher standard required for cancellation of removal. However, insofar as some of the factors set forth in *Matter of Anderson* may relate only to the applicant for relief, they cannot be considered under the cancellation statute, where only hardship to qualifying relatives, and not to the applicant, may be considered. Factors relating to the applicant himself or herself can only be considered insofar as they may affect the hardship to a qualifying relative.

Also, the BIA, in the suspension of deportation case, *In Re Kao-Lin*, 23 I & N Dec. 45, 54 (BIA 2001), referred to the factors listed in *Matter of Anderson*, *supra*, in making a determination of extreme hardship, stating in footnote 3 that:

The standard for "extreme hardship" that we apply in the present case is the same as that applied in cases dealing with petitions for immigrant status under section 204(a)(1) of the Act, 8 U.S.C. § 1154(a)(1) . . . as well as in cases involving waivers of inadmissibility under section 212(i) of the Act, 8 U.S.C. § 1182(i).

"Extreme hardship" is not a definable term of "fixed and inflexible meaning"; establishing extreme hardship is "dependent upon the facts and circumstances of each case." *Matter of Cervantes-Gonzalez*, 22 I&N Dec. 560, 565 (BIA 1999). The BIA in *Matter of Cervantes-Gonzalez* lists the factors it considers relevant in determining whether an applicant has established extreme hardship pursuant to section 212(i) of the Act. 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.* at 565-566. The BIA indicated that these factors relate to the applicant's "qualifying relative." *Id.* at 565-566.

In *Matter of O-J-O*, 21 I&N Dec. 381, 383 (BIA 1996), the BIA stated that the factors to consider in determining whether extreme hardship exists "provide a framework for analysis," and that the "[r]elevant factors, though not extreme in themselves, must be considered in the aggregate in determining whether extreme hardship exists." It further stated that "the trier of fact must consider the entire range of factors concerning hardship in their totality" and then "determine whether the combination of hardships takes the case beyond those hardships ordinarily associated with deportation." (citing *Matter of Ige*, 20 I&N Dec. 880, 882 (BIA 1994).

Applying the *Cervantes-Gonzalez* factors here, extreme hardship to the applicant's wife must be established in the event that she joins the applicant; and in the alternative, that she remains in the United States. A qualifying relative is not required to reside outside of the United States based on the denial of the applicant's waiver request.

The record fails to establish that the applicant's wife would endure extreme hardship if she remained in the United States without her husband.

Counsel states that [REDACTED] would experience "financial difficulties associated with raising their family alone in the United States." Courts in the United States have universally held that economic detriment alone is insufficient to establish extreme hardship. *See, e.g., INS v. Jong Ha Wang*, 450 U.S. 139, 144 (1981) (upholding BIA finding that economic loss alone does not establish extreme hardship) and *Mejia-Carrillo v. United States INS*, 656 F.2d 520, 522 (9<sup>th</sup> Cir. 1981) (economic loss alone does not establish extreme hardship, but it is still a fact to consider). Additional factors are needed to combine with economic detriment in order to categorize [REDACTED] hardship as extreme. Counsel provided proof of [REDACTED] pregnancy and the birth of her now four-year-old U.S. citizen child. However, counsel provided no documentation of [REDACTED] financial or emotional situation, health problems, etc. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *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)).

Counsel states that [REDACTED] situation is similar to the facts presented in *Matter of Mansour*, 11 I&N Dec. 306, 308 (BIA 1965), where an exchange visitor from Egypt is granted a waiver of the 2-year foreign-residence requirement of section 212(e) of the Act, as amended, on account of his wife's existing emotional problem, and the mental anguish she would experience if deprived of her husband's companionship.

Courts in the United States have stated that "the most important single hardship factor may be the separation of the alien from family living in the United States," and also, "[w]hen the BIA fails to give considerable, if not predominant, weight to the hardship that will result from family separation, it has abused its discretion." *Salcido-Salcido v. INS*, 138 F.3d 1292, 1293 (9<sup>th</sup> Cir. 1998) (citations omitted); *Cerrillo-Perez v. INS*, 809 F.2d 1419, 1424 (9<sup>th</sup> Cir. 1987) (remanding to BIA) ("We have stated in a series of cases that the hardship to the alien resulting from his separation from family members may, in itself, constitute extreme hardship.") (citations omitted).

However, the fact that an applicant has a U.S. citizen son and is expecting the birth of another U.S. child is not sufficient, in itself, to establish extreme hardship. As held by the BIA, the birth of a U.S. citizen child is not per se extreme hardship. *Matter of Correa*, 19 I&N Dec. 130 (BIA 1984). In *Marquez-Medina v. INS*, 765 F.2d 673 (7th Cir. 1985), the Seventh Circuit stated that an illegal alien cannot gain a favored status merely by the birth of a citizen child. The Ninth Circuit has found that an alien illegally present in the United States cannot gain a favored status merely by the birth of his citizen child. *Lee v. INS*, 550 F.2d 554 (9th Cir. 1977). In *Banks v. INS*, 594 F.2d 760 (9th Cir. 1979), the Ninth Circuit found that an alien, illegally within this country, cannot gain a favored status on the coattails of his (or her) child who happens to have been born in this country.

Moreover, in *Hassan v. INS*, 927 F.2d 465, 468 (9th Cir. 1991), the Ninth Circuit upheld the BIA's finding that deporting the applicant and separating him from his wife and child was not conclusive of extreme hardship as it "was not of such a nature which is unusual or beyond that which would normally be expected from the respondent's bar to admission." (citing *Patel v. INS*, 638 F.2d 1199, 1206 (9th Cir. 1980) (severance of ties does not constitute extreme hardship). In *Shoostary v. INS*, 39 F.3d 1049 (9th Cir. 1994), the court upheld the finding of no extreme hardship if Shoostary's lawful permanent resident wife and two U.S. citizen children are separated from him. As stated in *Perez v. INS*, 96 F.3d 390 (9th Cir. 1996), "[e]xtreme hardship" is hardship that is "unusual or beyond that which would normally be expected" upon deportation and "[t]he common results of deportation or exclusion are insufficient to prove extreme hardship." (citing *Hassan v. INS*, 927 F.2d 465, 468 (9th Cir. 1991)). In *Sullivan v. INS*, 772 F.2d 609, 611 (9th Cir. 1985), the Ninth Circuit stated that deportation is not without personal distress and emotional hurt; and that courts have upheld orders of the BIA that resulted in the separation of aliens from members of their families.

The record reflects that [REDACTED] is very concerned about separation from her husband. The AAO is mindful of and sympathetic to the emotional hardship that is undoubtedly endured as a result of separation from a loved one. After a careful and thoughtful consideration of the record, however, the AAO finds that the situation of [REDACTED] if she remains in the United States, is typical to individuals separated as a result of removal and does not rise to the level of extreme hardship as defined by the Act. The record before the AAO is insufficient to show that the emotional hardship, which certainly will be endured by the applicant's wife, is unusual or beyond that which is normally to be expected upon removal. Against the background of cases such as *Hassan*, *Shoostary*, *Perez*, and *Sullivan*, counsel's reliance on *Matter of Mansour* is unpersuasive in establishing extreme hardship to [REDACTED].

The present record is insufficient to establish that [REDACTED] would endure extreme hardship if she joined her husband in Egypt.

The conditions in Egypt, the country where [REDACTED] and would live if she joins her husband, are a relevant hardship consideration. While political and economic conditions in an alien's homeland are relevant, they do not justify a grant of relief unless other factors such as advanced age or severe illness combine with economic detriment to make deportation extremely hard on the alien or his qualifying relatives. *Matter of Ige*, 20 I&N Dec. 880 (BIA 1994) (citations omitted).

[REDACTED] assertion, that it is "really hard to live [in Egypt] after living in America," fails to establish extreme hardship if she were to join her husband in Egypt, as shown by various BIA and court decisions. The case, *Matter of Chumpitazi*, 16 I&N Dec. 629 (BIA 1978), indicates that "the readjustment of an alien to life in his native country after having spent a number of years in the United States is not . . . extreme," but "is

a type of hardship suffered by most aliens who have spent time abroad.” In another case, *Matter of Pilch*, 21 I&N Dec. 627 (BIA 1996), the BIA found the Pilchs’ cultural readjustment to Poland would not constitute “extreme hardship.” *Id.* at 631-632. [REDACTED] and his wife had lived in the United States for 11 years and 9 years, respectively, and their U.S. children, ages 6, 5, and 4, for their entire lives. *See also*, *Ramirez-Durazo v. INS*, 794 F.2d 491, 498 (9th Cir. 1986) (difficulties of readjustment to Mexican culture and environment are not sufficient to establish extreme hardship); *Chokloikaew v. INS*, 601 F.2d 216, 218 (5th Cir. 1979) (no “extreme hardship” in readjusting to social and economic conditions in Thailand for alien who lived in United States for ten years); and *Hernandez-Patino v. INS*, 831 F.2d 750, 754 (7th Cir. 1987) (readjustment of life in native country after having spent a number of years in the United States is not extreme hardship).

The applicant makes no claim of economic hardship stemming from an inability to find work in Egypt.

In considering the hardship factors raised here, the AAO examines each of the factors, both individually and cumulatively, to determine whether extreme hardship has been established. It considers whether the cumulative effect of claims of economic and emotional hardship would be extreme, even if, when considered separately, none of them would be. It considers the entire range of factors concerning hardship in their totality and then determines whether the combination of hardships takes the case beyond those hardships ordinarily associated with removal.

In the final analysis, the AAO finds that the requirement of significant hardships over and above the normal economic and social disruptions involved in removal has not been met so as to warrant a finding of extreme hardship. Having carefully considered each of the hardship factors raised, both individually and in the aggregate, it is concluded that these factors do not in this case constitute extreme hardship to a qualifying family member for purposes of relief under 212(a)(9)(B)(v) of the Act, 8 U.S.C. § 1182(a)(9)(B)(v).

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. The applicant has not met that burden. Accordingly, the appeal will be dismissed.

**ORDER:** The appeal is dismissed.