

identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

U.S. Department of Homeland Security
20 Massachusetts Ave., N.W., Rm. 3000
Washington, DC 20529



U.S. Citizenship
and Immigration
Services

PUBLIC COPY

H3

FILE:

Office: ATHENS, GREECE

Date: OCT 27 2008

IN RE:

Applicant:

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:

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 Form I-601, Application for Waiver of Ground of Inadmissibility (Form I-601) was denied by the Officer in Charge, Athens, Greece. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed, and the Form I-601 will be denied.

The record reflects that the applicant is a native and citizen of Syria. The applicant 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. The applicant presently seeks a waiver of her ground of inadmissibility under section 212(a)(9)(B)(v) of the Act, 8 U.S.C. § 1182(a)(9)(B)(v).

The officer in charge determined the applicant had failed to establish that a qualifying family member would suffer extreme hardship if the applicant were denied admission into the United States. The applicant's Form I-601 was denied accordingly.

On appeal the applicant asserts, through counsel, that evidence in the record establishes the applicant's husband will suffer extreme hardship if the applicant's Form I-601 is denied.

Section 212(a)(9)(B)(i)(II) of the Act provides, in pertinent part, that any alien who:

[H]as 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.

In its decision, *In re Rodarte-Roman*, 23 I&N Dec. 905, 908 (BIA 2006), the Board of Immigration Appeals (Board) clarified that a:

“[D]eparture from the United States triggers the 10-year inadmissibility period specified in section 212(a)(9)(B)(i)(II) . . . if that departure was preceded by a period of unlawful presence of at least 1 year. . . . [T]he departure which triggers inadmissibility . . . must fall at the end of a qualifying period of unlawful presence. . . .

The record reflects that the applicant was admitted into the United States with a B2 visitor visa in April 1999. The applicant's visitor visa was valid through October 1999. The applicant did not depart the United States in October 1999, and she remained in the country unlawfully until November 2001, at which time she returned to Syria. Because the applicant was unlawfully present in the United States for more than one year between October 1999 and November 2001, she is subject to section 212(a)(9)(B)(i)(II) of the Act, unlawful presence inadmissibility provisions.

Section 212(a)(9)(B)(v) of the Act provides that:

[T]he Attorney General [now Secretary, Department of Homeland Security, “Secretary”] has sole discretion to waive clause [212(a)(9)(B)](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.

In the present matter, the applicant is married to a U.S. lawful permanent resident. The applicant's husband is thus a qualifying family member for purposes of section 212(a)(9)(B)(v) of the Act. It is noted that children, whether U.S. citizens or lawful permanent residents, are not qualifying relatives under section 212(a)(9)(B)(v) of the Act. Hardship claims made with regard to the applicant's lawful permanent resident children may therefore **only be considered** to the extent that they relate directly to extreme hardship suffered by the applicant's husband

In *Matter of Cervantes-Gonzalez*, 22 I&N Dec. 560, 565-66 (BIA 1999), the Board deemed the following factors to be relevant in determining extreme hardship to a qualifying relative:

[T]he 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.

The Board held in *Matter of Ige*, 20 I&N Dec. 880, 882, (BIA 1994), that, "relevant [hardship] factors, though not extreme in themselves, must be considered in the aggregate in determining whether extreme hardship exists." "Extreme hardship" has been defined as hardship that is unusual or beyond that which would normally be expected upon deportation. *Perez v. INS*, 96 F.3d 390 (9th Cir. 1996.) Court decisions have repeatedly held that the common results of deportation or exclusion [now removal or inadmissibility] are insufficient to prove extreme hardship. *Perez v. INS, supra. See also, Hassan v. INS*, 927 F.2d 465, 468 (9th Cir. 1991.)

The applicant asserts, through counsel, that the denial of her Form I-601 application will cause extreme emotional and financial hardship to her husband. In support of her assertion, the applicant submits the following evidence:

An April 10, 2007, affidavit signed by stating that he and the applicant have two lawful permanent resident children, born August 16, 1988 (20 years old), and October 11, 1990 (18 years old.) states that he owns a convenience store, and is unable to sell his business as it is his only means of supporting his family. He states that it is also difficult to hire employees that are honest and dependable for his business, and that past employees have stolen merchandise and cash from him. The high crime rate area that his store is located in also makes it difficult to find employees to work in his store. states that his business is worth \$30,000, and that he would be unable to purchase a similar business for that amount in Syria if he sold. He states further that it is difficult to obtain a loan to start a business in Syria. states that his wife does not work, that the economy is poor in Syria and that unemployment is high, and he states that he would be unable to support his family in Syria. also fears that he and his family could be targeted by terrorists in Syria based on their past U.S. residence, and perceived wealth and ties to the United States.

A June 19, 2006, statement signed by stating that his wife overstayed her tourist visa because due to a pending employment-based immigrant visa application he was unable to depart the

country, and she did not want to be separated from him. [REDACTED] states that he and his wife have been married for over 19 years, and he states that he cannot imagine living without her. He indicates that she left the U.S. to go back to Syria in 2001 because their children were in Syria, and she could not live without them. He states that he cannot return to Syria because he is self-employed and because he has financial commercial lease obligations as well as residential lease obligations. He states that living apart from his wife has caused him emotional hardship, and he indicates that raising his two children alone while working close to 80 hours a week will also cause him extreme hardship, as there will be no one to supervise or guide their behavior and choices

Business tax, license and lease information for [REDACTED]'s business. The documents reflect that Mr. [REDACTED] leased store space for his convenience store on November 1, 2005. The lease is through October 31, 2010, "unless terminated earlier, or extended as provided herein...."

An apartment lease reflecting that [REDACTED] signed a 12-month lease beginning March 31, 2006 and ending April 1, 2007.

U.S. Department of State country conditions reflecting generally that: Syria's economy faces serious challenges and impediments to growth, rising poverty and a high unemployment rate; alerting U.S. citizens to the presence of anti-American terrorist groups, and ongoing safety and security concerns in Syria

Syrian medical reports reflecting that the applicant underwent a Hysterectomy and Great Intestinal Adhesion Disconnection operation on July 20, 2008, and that due to her inability to take care of her own special needs she needs her family's attendance and help.

Letters from the applicant's children reflecting that they lived apart from their mother and father between 1999 and 2001, and that they have lived in the United States apart from their mother since July 2006. The letters indicate that the applicant's husband and elder son work most of the time, and that the applicant's son also plans to attend university. The applicant's daughter indicates that she has to take care of herself and the family's needs, and that she needs her mother near her for emotional and family support.

A June 19, 2006, letter from the family's priest in Florida indicating that [REDACTED] will suffer financial and emotional hardship if the applicant is denied admission into the United States.

The AAO finds, upon review of the evidence, that the applicant has failed to establish that her husband would suffer financial or emotional hardship beyond that normally experienced upon removal of a family member if the applicant is denied admission into the United States and [REDACTED] either remains in the U.S., or moves with the applicant to Syria.

The Ninth Circuit Court of Appeals held in *Shooshtary v. INS*, 39 F.3d 1049, 1051, (9th Cir. 1994.) that the, "extreme hardship requirement . . . was not enacted to insure that the family members of excludable aliens fulfill their dreams or continue in the lives which they currently enjoy." The Board held further in *Ramirez-Durazo v. INS*, 794 F.2d 491, 498 (9th Cir. 1986) that hardship involving a lower standard of living, difficulties of

readjustment to a different culture and environment and reduced job opportunities, does not rise to the level of extreme hardship.

The applicant asserts that her husband will suffer extreme emotional hardship if he is separated from the applicant, and if he must raise their children alone. The AAO notes however, that [REDACTED] and the applicant have lived separately for many years, since 2001. Furthermore, the AAO notes that emotional hardship caused by severing family and community ties has been found to be a common result of deportation and does not constitute extreme hardship. *Matter of Pilch*, 21 I&N Dec. 627 (BIA 1996.) The AAO additionally notes that the applicant's children are both healthy, college-aged adults (18 and 20 years old) that work and have been taking care of themselves. The claim that [REDACTED] would suffer emotional and financial hardship based on his inability to care for his children has thus not been established. The applicant also failed to present any evidence to indicate that she suffers from an ongoing medical condition on the basis of which [REDACTED] has, or would, suffer extreme emotional hardship. Accordingly, the applicant failed to establish that her husband would suffer hardship beyond that normally experienced upon removal of a family member, if the applicant's Form I-601 were denied and Mr. [REDACTED] remained in the United States.

The applicant additionally asserts that her husband would suffer extreme financial hardship if he returned to Syria to live with her because he has incurred business and apartment lease obligations; he would probably lose his business, which is his sole source of family income; and starting a business or finding work in Syria would be difficult. The AAO notes first that "[t]he mere showing of economic detriment to qualifying family members is insufficient to warrant a finding of extreme hardship." *INS v. Jong Ha Wang*, 450 U.S. 139 (1981.) In addition, the AAO notes that the Syrian economy evidence submitted by the applicant is general and does not establish why [REDACTED] would be unable to find work in Syria. Furthermore, the applicant submitted no corroborative evidence to demonstrate that [REDACTED] would be unable to hire help to run his business in the U.S. if he chose to do so, or that he would sell at a loss if he sold. In addition, [REDACTED] business lease indicates that the lease can be terminated early, and it does not appear to have an early termination penalty provision, and the apartment lease obligations contained in the record have already been met. The AAO notes further that the country condition information submitted by the applicant fails to establish that a Syrian citizen with former residence ties to the U.S. would be at risk for terrorist attacks in Syria. The applicant has therefore failed to establish that her husband would suffer extreme hardship if he moved to Syria to be with the applicant.

A section 212(a)(9)(B)(v) of the Act, waiver of inadmissibility is dependent first upon a showing that the bar to admission imposes an extreme hardship on a qualifying family member. If extreme hardship is established, the Secretary then assesses whether an exercise of discretion is warranted. In the present matter, the applicant failed to establish that her husband would suffer extreme hardship in Syria or in the United States if the applicant were denied admission into the United States. The AAO therefore finds it unnecessary to address whether discretion should be exercised in the present matter.

Section 291 of the Act, 8 U.S.C. § 1361, provides that the burden of proof is on the applicant to establish eligibility for the benefit sought. The applicant has failed to meet her burden of proof in the present matter. The appeal will therefore be dismissed and the Form I-601 application will be denied.

ORDER: The appeal is dismissed. The application is denied.