

identifying data deleted to  
prevent clearly unwarranted  
invasion of personal privacy

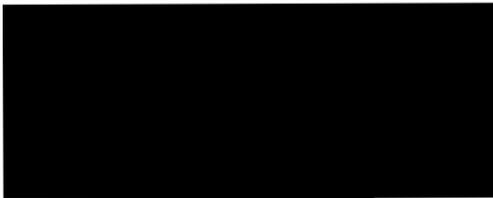
U.S. Department of Homeland Security  
20 Massachusetts Ave. N.W., Rm. 3000  
Washington, DC 20529-2090

**PUBLIC COPY**



U.S. Citizenship  
and Immigration  
Services

#



FILE: [REDACTED] Office: FRANKFURT, GERMANY Date: **JAN 13 2009**

IN RE: [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)

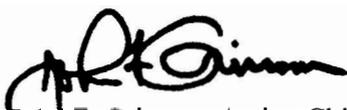
ON BEHALF OF PETITIONER:



**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.

If you believe the law was inappropriately applied or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. Please refer to 8 C.F.R. § 103.5 for the specific requirements. 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 \$585. Any motion must be filed within 30 days of the decision that the motion seeks to reconsider, as required by 8 C.F.R. 103.5(a)(1)(i).

  
John F. Grissom, Acting Chief  
Administrative Appeals Office

**DISCUSSION:** The waiver application was denied by the Officer-in-Charge, Frankfurt, Germany, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained.

The applicant is a native and citizen of Egypt 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 one year or more. The applicant is the spouse of a U.S. Citizen and the beneficiary of an approved Petition for Alien Relative. He seeks a waiver of inadmissibility pursuant to section 212(a)(9)(B)(v) of the Act, 8 U.S.C. § 1182(a)(9)(B)(v), in order to return to the United States and reside with his wife.

The officer-in-charge concluded that the applicant failed to establish that extreme hardship would be imposed on a qualifying relative and denied the application accordingly. *See Decision of the Officer-in-Charge* dated September 25, 2006.

On appeal, counsel for the applicant asserts that the evidence submitted in support of the waiver application demonstrates extreme hardship to the applicant's wife. Counsel further states that the applicant's wife's condition has worsened since the denial of the waiver, and claims that she has begun to experience symptoms of depression and post traumatic stress disorder, for which she has sought treatment. *Brief in Support of Motion to Reopen/ Appeal* at 2. In support of the appeal counsel submitted a statement from the applicant's wife, a psychological evaluation of the applicant's wife, a physical therapy evaluation and treatment plan for the applicant's wife, and a letter from the applicant's mother-in-law's doctor. The entire record was reviewed and considered in arriving at a decision on the appeal.

Section 212(a)(9)(B) of the Act provides, in pertinent part:

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

In *Matter of Cervantes-Gonzalez*, 22 I&N Dec. 560 (BIA 1999), the Board of Immigration Appeals (BIA) provided a list of factors it deemed relevant in determining whether an alien has established extreme hardship. These factors included 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 566. The BIA has held:

Relevant factors, though not extreme in themselves, must be considered in the aggregate in determining whether extreme hardship exists. In each case, the trier of fact 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.

*Matter of O-J-O-*, 21 I&N Dec. 381, 383 (BIA 1996) (citations omitted). In addition, the Ninth Circuit Court of Appeals has held, "the most important single hardship factor may be the separation of the alien from family living in the United States," and, "[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 (9th Cir. 1998) (citations omitted). See also *Cerrillo-Perez v. INS*, 809 F.2d 1419, 1424 (9th Cir. 1987) (remanding to the Board of Immigration Appeals (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). Once extreme hardship is established, it is but one favorable factor to be considered in the determination of whether the Secretary should exercise discretion. See *Matter of Mendez*, 21 I&N Dec. 296 (BIA 1996).

U.S. court decisions have additionally held that the common results of deportation or exclusion are insufficient to prove extreme hardship. See *Hassan v. INS*, 927 F.2d 465, 468 (9th Cir. 1991). For example, in *Matter of Pilch*, 21 I&N Dec. 627 (BIA 1996), the BIA held that emotional hardship caused by severing family and community ties is a common result of deportation and does not constitute extreme hardship. In addition, in *Perez v. INS*, 96 F.3d 390 (9th Cir. 1996), the court held that the common results of deportation are insufficient to prove extreme hardship and defined "extreme hardship" as hardship that was unusual or beyond that which would normally be expected upon deportation. In *Hassan v. INS*, *supra*, the court further held that the uprooting of family and separation from friends does not necessarily amount to extreme hardship, but rather represents the type of inconvenience and hardship experienced by the families of most aliens being deported. Moreover, the U.S. Supreme Court additionally held in *INS v. Jong Ha Wang*, 450 U.S. 139 (1981), that the mere showing of economic detriment to qualifying family members is insufficient to warrant a finding of extreme hardship.

The record reflects that the applicant is a forty-seven year-old native and citizen of Egypt who entered the United States on March 13, 1999 as a visitor for pleasure. His period of authorized stay was extended to March 12, 2000, and he remained in the United States after that date and filed an

Application for Adjustment of Status (Form I-485) on December 21, 2000. His application for adjustment of status was denied on December 17, 2002, and the applicant remained in the United States until October 29, 2004, when he returned to Egypt. The applicant is therefore inadmissible under section 212(a)(9)(B)(i)(II) for having been unlawfully present in the United States from December 17, 2002 to October 29, 2004. The record further reflects that the applicant's wife is a forty-four year-old native of Syria and citizen of the United States. The applicant married his wife in Egypt on March 16, 2005 and she currently resides in Fresno, California with her two daughters from a previous marriage, while the applicant remains in Egypt.

Counsel asserts that the applicant's wife is suffering emotional and psychological hardship due to being separated from the applicant. The applicant's wife states that her husband means everything to her and that she was previously married to an abusive man, and when she met the applicant she began to feel "safe and secure." See *Declaration of [REDACTED]* dated November 20, 2006. She states, "I make every effort to visit him when I can. It is difficult to do so because I have the responsibility of taking care of my children and my mother, and protecting my children from their abusive father." *Id.* She further states,

I need him here in California with me to help protect me and so that I can take care of my daughters and my mother. My daughters are at an age when they have begun to dislike their father and his ways. They don't like to go visit him, and I fear that one day, he will begin to physically abuse them as they will resist him. I cannot leave them here in the United States with their father in order to live with my new husband, and I cannot take my daughter to Egypt to live, as this would be a violation of the court orders pertaining to my daughters' custody. *Declaration of [REDACTED]*

The applicant's wife further states that she has sought treatment for neck pain resulting from stress caused by the separation, and that she has been feeling depressed and anxious and has been "very sad and depressed lately" because she doesn't "see the end to this turmoil." *Id.*

A psychological evaluation prepared by [REDACTED], a Licensed Clinical Social Worker, states that the applicant's wife reports that her former husband was angry and abusive during most of their nearly ten years of marriage, was also insulting and abusive to her mother, and is still abusive when they have contact now. *Report of [REDACTED]*, dated October 19, 2006, at 1. The report further describes two police reports provide by the applicant's wife involving domestic disputes with her former husband, including one incident in which the applicant's wife was bitten and her husband was arrested for domestic battery. The report states that the applicant's wife has "witnessed, experienced, and confronted events in which she felt severely threatened with serious injury" and she feels intense fear and helplessness as a result. *Report of [REDACTED]* at 3. It further states that she has distressing recollections of these events and is experiencing symptoms including sleep difficulties, irritability, hyper-vigilance, and exaggerated startle response. *Report of [REDACTED]* at 3-4. It states her symptoms are worsening and she misses the applicant, with whom she feels more safe and secure. *Id.* The applicant's wife also reports physical symptoms related to this stress, including neck pain, numbness in her hands, and an inability to get out of bed on some days. *Id.* at 4. An evaluation by a physical therapist submitted with the appeal indicates that the applicant was referred to a physical therapist after being diagnosed with neck pain that appears to be

interfering with her work and driving. *Physical Therapy Initial Evaluation and Treatment Plan for* [REDACTED] dated January 5, 2006.

Upon a complete review of the evidence on the record, the AAO finds that the applicant has established that his wife would experience extreme hardship if he is prohibited from returning to the United States. The record indicates that the applicant's wife would not be able to bring her daughters with her if she relocates to Egypt to reside with the applicant. Evidence on the record also establishes that the applicant's wife is experiencing symptoms of anxiety and depression due to her separation from the applicant, and her condition is exacerbated because of apparent post traumatic stress disorder resulting from domestic violence she experienced during her prior marriage. There is additional information on the record indicating that the applicant's wife is still experiencing harassment from her former husband and she worries that he will abuse their daughters when they visit him. The record contains a psychological evaluation of the applicant's wife stating that she is exhibiting symptoms of depression, anxiety, and post-traumatic stress; her condition is worsening and impairing her ability to function; and her condition would be alleviated if the applicant, who helps provide a safe and secure environment for his wife, were allowed to return to the United States.

While the record does not contain specific evidence concerning any counseling or any other treatment the applicant's wife may currently be receiving, there is sufficient documentation to show that her emotional health has been deemed tenuous by a mental health professional and she is also experiencing physical symptoms apparently connected to her psychological condition. It further appears that if the applicant's wife relocated to Egypt and faced separation from her daughters and mother, or remained in the United States and were separated from the applicant, she would suffer emotional hardship beyond that which is normally experienced by family members as a result of removal or deportation.

When considered in the aggregate, the factors of hardship to the applicant's wife constitute extreme hardship. This finding is largely based on evidence submitted with the appeal that documents the emotional and physical distress experienced by the applicant's wife since being separated from the applicant and exacerbated by the abusive relationship with her former husband, who is still in contact with her because they have two children together. Further, the applicant's wife would face either the continued separation from the applicant or separation from her daughters, and, as noted above, separation from close family members is a primary concern in assessing extreme hardship. *Salcido-Salcido v. INS*, 138 F.3d 1292, 1293 (9<sup>th</sup> Cir. 1998).

The AAO additionally finds that the applicant merits a waiver of inadmissibility as a matter of discretion. In *Matter of Mendez-Morales*, 21 I&N Dec. 296 (BIA 1996), the BIA held that establishing extreme hardship and eligibility for section 212(h)(1)(B) relief does not create an entitlement to that relief, and that extreme hardship, once established, is but one favorable discretionary factor to be considered. In discretionary matters, the alien bears the burden of proving eligibility in terms of equities in the United States which are not outweighed by adverse factors. See *Matter of T-S-Y-*, 7 I&N Dec. 582 (BIA 1957).

In evaluating whether section 212(a)(9)(B)(v) relief is warranted in the exercise of discretion, the factors adverse to the alien include the nature and underlying circumstances of the exclusion ground at issue, the presence of additional significant violations of this country's immigration laws, the existence of a criminal record, and if so, its nature and seriousness, and the presence of other evidence indicative of the alien's bad character or undesirability as a permanent resident of this country. The favorable considerations include family ties in the United States, residence of long duration in this country (particularly where alien began residency at a young age), evidence of hardship to the alien and his family if he is excluded and deported, service in this country's Armed Forces, a history of stable employment, the existence of property or business ties, evidence of value or service in the community, evidence of genuine rehabilitation if a criminal record exists, and other evidence attesting to the alien's good character (e.g., affidavits from family, friends and responsible community representatives). *Matter of Mendez-Moralez*, 21 I&N Dec. 296, 301 (BIA 1996). The AAO must then "balance the adverse factors evidencing an alien's undesirability as a permanent resident with the social and humane considerations presented on the alien's behalf to determine whether the grant of relief in the exercise of discretion appears to be in the best interests of the country." *Id.* at 300. (Citations omitted).

The adverse factor in the present case is the applicant's nearly two years of unlawful presence from 2002 to 2004, as well as previous unlawful presence in 2000 before he submitted his application for adjustment of status. The favorable factors in the present case are the extreme hardship to the applicant's wife; the applicant's lack of a criminal record or other immigration violations; and the applicant's family ties to the United States, including his wife, step-daughters, and mother-in-law.

The AAO finds that immigration violation committed by the applicant cannot be condoned. Nevertheless, the AAO finds that taken together, the favorable factors in the present case outweigh the adverse factors, such that a favorable exercise of discretion is warranted. Accordingly, the appeal will be sustained.

**ORDER:** The appeal is sustained.