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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090

U.S. Citizenship and Immigration Services

[redacted]

H4

DATE: JUL 2 7 2012 Office: ATHENS, GREECE File: [redacted]

IN RE: Application: [redacted]

APPLICATION: Application for Waiver of Grounds of Inadmissibility under section 212(a)(9)(B)(v) of the Immigration and Nationality Act (the Act), 8 U.S.C. section 1182(a)(9)(B)(v) and Application for Permission to Reapply for Admission into the United States after Deportation or Removal under Section 212(a)(9)(A) of the Act, 8 U.S.C. § 1182(a)(9)(A).

ON BEHALF OF APPLICANT:

SELF-REPRESENTED

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 AAO inappropriately applied the law in reaching its decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen in accordance with the instructions on Form I-290B, Notice of Appeal or Motion, with a fee of $630. The specific requirements for filing such a motion can be found at 8 C.F.R. § 103.5. **Do not file any motion directly with the AAO.** Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires any motion to be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

Perry Rhew
Chief, Administrative Appeals Office

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

The applicant is a native and citizen of Egypt. She was found to be inadmissible to the United States pursuant to 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 one year or more and seeking admission within ten years of her last departure. She is also inadmissible under section 212(a)(9)(A)(ii) of the Act as an alien having been removed within ten years of seeking admission. She is married to a United States citizen. She seeks a waiver of inadmissibility pursuant to sections 212(a)(9)(B)(v) and 212(a)(9)(A) of the Act, 8 U.S.C. §§ 1182(a)(9)(B)(v), 1182(a)(9)(A).

The Field Office Director concluded that the applicant had failed to establish that the bar to her admission would impose extreme hardship on a qualifying relative, her U.S. citizen spouse, and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) on July 30, 2010. The Field Office Director denied the applicant's Application for Permission to Reapply for Admission to the United States after Deportation or Removal (Form I-212) as a matter of discretion as the applicant's Form I-601 had been denied.

On appeal, the applicant states that her spouse and children are suffering extreme hardship due to her removal, that her family would not be able to reside in Egypt with her and that her spouse is struggling to support two households. *Attachment, Form I-290B*, received on August 31, 2010.

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-
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> . . . .
>
> (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.

The record indicates that the applicant entered the United States with a B1/B2 visitor's visa on April 26, 1991, and remained beyond her authorized period of stay on October 25, 1991. The applicant subsequently applied for asylum, which was denied on January 12, 1996. The Board of Immigration Appeals (BIA) dismissed her appeal on February 22, 2002, and granted her voluntary departure within 30 days. The applicant remained in the United States beyond that time until she departed on August 15, 2008. As the applicant had no pending applications or legal immigration status to remain in the United States, the applicant resided unlawfully in the United States from March 25, 2002, until

August 15, 2008. As the applicant has resided unlawfully in the United States for over a year and is now seeking admission within ten years of her last departure from the United States, she is inadmissible under section 212(a)(9)(B)(i)(II) of the Act.

The record includes, but is not limited to, a brief from counsel; a statement from the applicant and her spouse; school records pertaining to the applicant's children; medical records related to the applicant; property deeds; copies of a foreclosure notice for a property in the applicant's spouse's name; medical records related to the applicant's daughter; copies of bank statements of the applicant's spouse; a copy of a will and testament for the applicant; a statement from in Egypt, pertaining to the applicant; a statement from , dated August 27, 2010; and photographs of the applicant, her spouse and their children. The entire record was reviewed and all relevant evidence considered in rendering this decision.

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 her children can be considered only insofar as it results in hardship to a qualifying relative. The applicant's 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.

The Field Office Director concluded that the applicant had failed to establish that her spouse would experience any uncommon financial impact due to her departure, or that the emotional hardship of her spouse was distinct from that which is commonly experienced by the relatives of inadmissible aliens. In addition, the Field Office Director noted that the applicant had failed to support her assertions of extreme hardship upon relocation by articulating any basis of hardship or providing evidence of actual hardship.

On appeal, the applicant asserts that her daughters cannot earn a living in the United States, but cannot live in Egypt because of the political, social and financial problems they would face. *Attachment, Form I-290B*, received August 31, 2010. She states they would face threats by fundamentalists and that it would disrupt their education in the United States. She further states that her children's education has suffered, that she herself suffered injuries in a car accident and that her spouse would be unable to leave his limousine business in the United States to live in Egypt.

The evidence submitted on appeal pertains to the applicant's mental health and the educational development of her oldest daughter.

As discussed by the Field Office Director, there is no documentation to support the applicant's assertions that her spouse and children would be unable to reside in Egypt. There is nothing which indicates her spouse would be unable to find employment, either as a driver or otherwise, or that her daughters would experience any uncommon hardships due to relocation. 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)).

The applicant submitted a statement from [redacted] in Egypt, undated, which states that the applicant is experiencing acute depression and should be allowed to reside with her children. *Attachment, Form I-290B*, received August 31, 2010. As discussed above, hardships to the applicant are only considered to the extent that they cause hardship to a qualifying relative. In this case, the brief statement asserting the applicant is experiencing acute depression is not sufficiently probative to establish that she is experiencing mental hardships to a degree that it would significantly impact her spouse, currently residing in the United States.

Even when the hardship impacts upon relocation are considered in the aggregate, the AAO does not find them to rise above the common impacts of relocation to a degree constituting extreme hardship.

The applicant also asserts that her spouse would be unable to support her and her children in two separate households. *Attachment, Form I-290B*, received August 31, 2010. She states that her spouse and daughters will experience emotional hardship due to separation, and that the emotional impact on her daughters has disrupted their educational development.

Children are not qualifying relatives in this proceeding. As such, hardship to them is only relevant to the extent that it impacts the qualifying relative, in this case the applicant's spouse. The record includes a statement from the school counselor where the applicant's oldest daughter is attending High School. The letter states that the applicant's daughter experienced a drop in her grades in her sophomore year due to the applicant's removal, and that her departure to Egypt for a period of five months also disrupted her education.

The AAO does not find the impacts on the applicant's daughter's education to be distinct from that which is commonly experienced by the relatives of inadmissible aliens. While this is not to discount the emotional impact of separation between the applicant and her daughter, the AAO does not find the impacts described to rise to such a degree that they would result in significant hardship on the applicant's spouse. The AAO acknowledges that the applicant has asserted her daughters will experience emotional hardship due to separation, but the record fails to show that their challenges will elevate the applicant's spouse's difficulty to an extreme level.

The Field Office Director provided a reasoned explanation as to why the evidence in the record failed to establish any uncommon financial impact on the applicant's spouse, and the applicant has not submitted any additional evidence on appeal in furtherance of her assertions. As discussed by the Field Office Director, there is insufficient evidence to establish what the applicant's spouse's income level is, what his financial obligations are, the extent of his financial support of the applicant, her children or the applicant's mother. The AAO does not find the record to establish that the applicant's spouse will experience any uncommon financial hardship.

An examination of the record reveals no documentation corroborating that the applicant's spouse is experiencing any emotional impact which is distinguishable from what is commonly experienced by the relatives of inadmissible aliens who remain in the United States. Nor is there evidence that the applicant's spouse is experiencing any uncommon physical impact related to providing care for the applicant's children, or even that the applicant's spouse is actually providing any physical support for their daughters.

Without additional evidence which is probative of the actual financial impact, physical burdens of providing care for their daughters or of an uncommon emotional impact on the applicant's spouse, the AAO cannot accurately determine the severity or extent of hardships faced by the applicant's spouse.

When the hardship impacts related to separation are examined in the aggregate, the AAO does not find the record to establish that they rise above the common consequences experienced by the relatives of inadmissible aliens due to separation.

The record, reviewed in its entirety and in light of the *Cervantes-Gonzalez* factors cited above, does not support a finding that the applicant's spouse faces extreme hardship if his she is refused admission. The AAO recognizes that the applicant's spouse will have to make financial adjustments and may experience some emotional impact. These assertions, however, are common hardships associated with removal and separation, and do not rise to the level of "extreme" as informed by relevant precedent. U.S. court decisions have repeatedly held that the common results of removal or inadmissibility are insufficient to prove extreme hardship. *See Hassan v. INS,* 927 F.2d 465, 468 (9th Cir. 1991). In addition, *Perez v. INS,* 96 F.3d 390 (9th Cir. 1996), 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. The AAO therefore finds that the applicant has failed to establish extreme hardship to her U.S. citizen spouse

as required under section 212(a)(9)(B)(v) of the Act. Having found the applicant statutorily ineligible for relief, no purpose would be served in discussing whether she merits a waiver as a matter of discretion.

The AAO notes that the Field Office Director denied the applicant's Application for Permission to Reapply for Admission into the United States After Deportation or Removal (Form I-212) in the same decision. *Matter of Martinez-Torres,* 10 I&N Dec. 776 (reg. Comm. 1964) held that an application for permission to reapply for admission is denied, in the exercise of discretion, to an alien who is mandatorily inadmissible to the United States under another section of the Act, and no purpose would be served in granting the application. As the applicant is inadmissible under section 212(a)(9)(B)(v) of the Act no purpose would be served in granting the applicant's Form I-212 application.

In proceedings for application for waiver of grounds of inadmissibility under sections 212(a)(9)(B)(v) and 212(a)(9)(A) of the Act, the burden of proving eligibility rests 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.