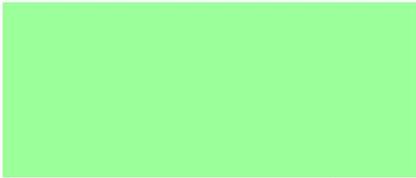


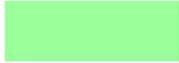


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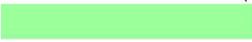


Date: **JAN 17 2013**

Office: ATHENS

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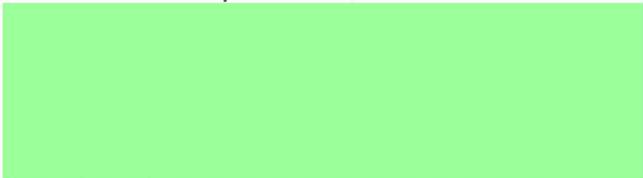
IN RE:

Applicant: 

APPLICATION:

Application for Waiver of Grounds of Inadmissibility under section 212(a)(9)(B) of the Immigration and Nationality Act, 8 U.S.C. § 1182(a)(9)(B) and section 212(i) of the Immigration and Nationality Act, 8 U.S.C. § 1182(i).

ON BEHALF OF APPLICANT:



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.

Thank you



Ron Rosenberg
Acting 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 is now before the AAO on motion. The motion will be granted and the underlying application is approved.

The record establishes that the applicant is a native and citizen of Syria 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 again seeking admission within ten years of her last departure from the United States. The applicant is the spouse of a U.S. citizen. She seeks a waiver of inadmissibility in order to reside in the United States with her spouse.

The Field Office Director concluded that the applicant failed to establish that extreme hardship would be imposed on a qualifying relative and denied the Application for Waiver of Grounds of Excludability (Form I-601) accordingly. *Decision of the Field Office Director*, dated May 12, 2009.

On appeal the AAO determined that the applicant had shown that her U.S. citizen spouse would suffer extreme hardship should he relocate to Syria to reside with the applicant due to her inadmissibility. However, the AAO concluded that as the applicant had not established that her husband would suffer extreme hardship were he to remain in the United States while the applicant resided abroad, the appeal was dismissed. *Decision of the AAO*, dated November 9, 2011.

The AAO also found the applicant to be inadmissible to the United States under section 212(a)(6)(C)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(6)(C)(i), for procuring admission to the United States through fraud or the willful misrepresentation of a material fact as the record shows that in 2001 the applicant entered the United States by presenting a B-1/B-2 nonimmigrant visa for pleasure belonging to her sister.

On motion counsel for the applicant contends the Service had not applied the totality of circumstances of the case. With the motion counsel submits a brief, country information on Syria, and a medical report showing that the applicant was pregnant. The entire record was reviewed and considered in rendering this decision.

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

(B) Aliens Unlawfully Present.-

(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.

(b)(6)

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.

Section 212(a)(6)(C) of the Act provides, in pertinent part, that:

- (i) Any alien who, by fraud or willfully misrepresenting a material fact, seeks to procure (or has sought to procure or has procured) a visa, other documentation, or admission into the United States or other benefit provided under this Act is inadmissible.

Section 212(i) of the Act provides that:

- (1) The Attorney General [now the Secretary of Homeland Security (Secretary)] may, in the discretion of the Attorney General [Secretary], waive the application of clause (i) of subsection (a)(6)(C) in the case of an alien who is the spouse, 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 the United States of such immigrant alien would result in extreme hardship to the citizen or lawfully resident spouse or parent of such an alien.

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 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.

As noted above, the AAO found that the applicant had established extreme hardship to her U.S. citizen spouse were he to relocate abroad to reside with the applicant as a result of her inadmissibility. As such, this criterion will not be re-addressed on motion. In the same decision, the AAO concluded that the applicant had failed to establish that her U.S. citizen spouse would suffer extreme hardship were he to remain in the United States while the applicant relocated abroad due to her inadmissibility. Specifically, the AAO noted

While it is understood that the separation of relatives often results in significant psychological challenges, the applicant has not distinguished her husband's emotional hardships upon separation from that which is typically faced by the relative of those deemed inadmissible. Additionally, the AAO finds the record to include some documentation of the applicant and her husband's income and expenses; however, this material offers insufficient proof that the applicant's husband will be unable to support himself in the applicant's absence. Further, the

applicant has not distinguished her husband's financial challenges from those commonly experienced when a family member remains in the United States alone.

On motion counsel contends that the Service did not consider the effect of the applicant's inadmissibility on the spouse's mother living in the United States and his children living with the applicant in Syria, where they only see their father when he visits. Counsel asserts the spouse would lose the emotional and psychological support of the applicant plus the opportunity to see his children grow and the children would feel as if they are raised by a single parent. Counsel contends the spouse's livelihood depends on his business in the United States to support himself and his mother in the United States, and his family in Syria. Counsel further contends that the spouse would be devastated if he had to relocate his children away from the United States where they have opportunities for school, cultural openness, religious freedom, and individual dignity. Counsel asserts the spouse, as a member of the [REDACTED] would have his right to pursue religious freedom curtailed if forced to relocate to Syria. Counsel concludes that the totality of circumstances and potential effects due to physical, emotional, psychological, and financial harm merit approval of the waiver request.

In a previously-submitted declaration the applicant's spouse stated he was depressed due to separation from the applicant and their children and that was causing feelings of hopelessness and pessimism effecting his reasoning and judgment. He also stated that he feared the effect of the separation on his children. A previously-submitted psychological evaluation had concluded the applicant's spouse suffered from depression with feelings of guilt, helplessness, irritability, fatigue, and loss of interest.

Counsel contends that by living in Syria with the applicant the children are forced from the opportunities and freedoms of the United States. In a previously-submitted brief counsel stated the applicant's children must remain with their mother because of the parents' traditional child-raising philosophy where children of young age not be separated from their mother. Counsel had also contended it was a hardship for the children as Christian to receive a Muslim education.

Counsel questions whether the Service considered the U.S. citizen mother of the applicant's spouse. However the spouse's mother is not a qualifying relative and the applicant has not submitted any evidence to support that her inadmissibility and resulting separation from her spouse causes hardship to her spouse in regards to his mother.

On motion the AAO concludes that the applicant has established that her U.S. citizen spouse would suffer extreme hardship were he to remain in the United States while the applicant relocated abroad as a result of her inadmissibility. The applicant's spouse stated he was depressed due to separation from the applicant and their children with feelings of hopelessness and pessimism effecting his reasoning and judgment. Counsel contends that by living in Syria with the applicant the children are forced from the opportunities and freedoms of the United States, but that they must remain with their mother because of the parents' traditional child-raising philosophy, thus causing them to be separated from the applicant's spouse. In a travel warning the U.S. Department of State "continues to warn U.S. citizens against travel to Syria and strongly recommends that U.S. citizens remaining in Syria depart immediately. No part of Syria should be considered immune from

violence, and the potential exists throughout the country for hostile acts, including kidnappings.” Given the level of violence in Syria the emotional hardship experienced by the applicant in concern for the applicant and their children, who were with the applicant’s spouse, rises above the common result of inadmissibility to extreme hardship.

A review of the documentation in the record, when considered in its totality, reflects that the applicant has established that her U.S. citizen spouse would suffer extreme hardship were the applicant unable to reside in the United States. Accordingly, on motion the AAO finds that the situation presented in this application rises to the level of extreme hardship. However, the grant or denial of the waiver does not turn only on the issue of the meaning of “extreme hardship.” It also hinges on the discretion of the Secretary and pursuant to such terms, conditions and procedures as she may by regulations prescribe. 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 . . . 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).

See Matter of Mendez-Moralez, 21 I&N Dec. 296, 301 (BIA 1996). The AAO must then, “[B]alance 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 favorable factors in this matter are the extreme hardships the applicant’s U.S. citizen spouse would face if the applicant were to reside in Syria and the apparent lack of a criminal record. The unfavorable factor in this matter is the applicant’s misrepresentation of a material fact to gain entry to the United States and subsequent unlawful presence while in the United States.

The immigration violation committed by the applicant is serious in nature and cannot be condoned. Nonetheless, the AAO finds that on motion, the applicant has established that the favorable factors

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in her application outweigh the unfavorable factors. Therefore, a favorable exercise of the discretion is warranted.

In proceedings for application for waiver of grounds of inadmissibility, the burden of establishing that the application merits approval remains entirely with the applicant. Section 291 of the Act, 8 U.S.C. § 1361. The applicant has met that burden. Accordingly, the motion to reopen will be granted and the waiver application approved:

ORDER: The motion to reopen is granted. The waiver application is approved.