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U.S. Department of Homeland Security
U. S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
Washington, DC 20529-2090

U.S. Citizenship and Immigration Services

H6

FILE: Office: ATHENS, GREECE Date: DEC 03 2010

IN RE: Applicant:

APPLICATION: Application for Waiver of Grounds of Inadmissibility pursuant to section 212(a)(9)(B)(v) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 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 Immigration and Nationality Act, 8 U.S.C. § 1182(a)(9)(A)

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.

If you believe the law was inappropriately applied by us in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. 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 $630. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

Perry Rhew for
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 record reflects that the applicant is a native and citizen of Jordan who 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 more than one year. The applicant is married to a U.S. citizen and 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 reside with his wife and son in the United States.

The field office director found that the applicant failed to establish extreme hardship to his spouse and denied the waiver application accordingly. *Decision of the Field Office Director*, dated April 24, 2008.

The record contains, *inter alia*: a copy of the marriage certificate of the applicant and his wife, Ms. indicating they were married on September 29, 1997; letters from Ms. two letters from Ms physician; letters from Ms. employer; a letter from Ms. mother's physician; copies of financial and tax documents; pictures of the applicant and his family; numerous letters of support; and an approved Petition for Alien Relative (Form I-130). The entire record was reviewed and considered in rendering this 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 the Secretary of 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 this case, the record shows that the applicant entered the United States on December 26, 1992, with a visitor's visa. He filed an application for asylum on November 17, 1993, which was denied by the Chicago Asylum Office. The applicant was placed in deportation proceedings, and on February 2, 1996, the immigration judge granted the applicant voluntary departure until March 4, 1996, with an alternate order of deportation. The applicant was given a final voluntary departure order on January 18, 2005. The applicant remained in the United States until he was removed on April 11, 2005. Therefore, the record shows, and the applicant does not contest, that he was unlawfully present in the United States for a period of one year or more. The applicant is inadmissible to the United States under section 212(a)(9)(B)(i)(II) of the Act for being unlawfully present in the United States for a period of one year or more and seeking admission to the United States within ten years of his last departure.

In addition, the AAO finds that the applicant is also inadmissible to the United States under section 212(a)(9)(A) of the Act as an alien who has been previously removed.

Section 212(a)(9) of the Act provides:

> (A) *Certain aliens previously removed.*
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> . . . .
>
> (ii) *Other aliens.* Any alien not described in clause (i) who –
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> (I) has been ordered removed under section 240 or any other provision of law, or
>
> (II) departed the United States while an order of removal was outstanding,
>
> and who seeks admission within 10 years of the date of such alien's departure or removal . . . is inadmissible.
>
> (iii) *Exception.* – Clauses (i) and (ii) shall not apply to an alien seeking admission within a period if, prior to the date of the alien's reembarkation at a place outside the United States or attempt to be admitted from foreign contiguous territory, the Attorney General has consented to the alien's reapplying for admission.

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

As a qualifying relative is not required to depart the United States as a consequence of an applicant's inadmissibility, two distinct factual scenarios exist should a waiver application be denied: either the qualifying relative will join the applicant to reside abroad or the qualifying relative will remain in the United States. Ascertaining the actual course of action that will be taken is complicated by the fact that an applicant may easily assert a plan for the qualifying relative to relocate abroad or to remain in the United States depending on which scenario presents the greatest prospective hardship, even though no intention exists to carry out the alleged plan in reality. *Cf. Matter of Ige,* 20 I&N Dec. 880, 885 (BIA 1994) (addressing separation of minor child from both parents applying for suspension of deportation). Thus, we interpret the statutory language of the various waiver provisions in section 212 of the Act to require an applicant to establish extreme hardship to his or her qualifying relative(s) under both possible scenarios. To endure the hardship of separation when extreme hardship could be avoided by joining the applicant abroad, or to endure the hardship of relocation when extreme hardship could be avoided by remaining in the United States, is a matter of choice and not the result of removal or inadmissibility. As the Board of Immigration Appeals stated in *Matter of Ige*:

> [W]e consider the critical issue . . . to be whether a child would suffer extreme hardship if he accompanied his parent abroad. If, as in this case, no hardship would ensue, then the fact that the child might face hardship if left in the United States would be the result of parental choice, not the parent's deportation.

Id. See also Matter of Pilch, 21 I&N Dec. 627, 632-33 (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 deportation, 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. at 631-32; *Matter of Ige*, 20 I&N Dec. at 883; *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.*

We observe that 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.*, *In re 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).

Family separation, for instance, has been found to be a common result of inadmissibility or removal in some cases. *See Matter of Shaughnessy*, 12 I&N Dec. at 813. Nevertheless, family ties are to be considered in analyzing hardship. *See Matter of Cervantes-Gonzalez,* 22 I&N Dec. at 565-66. The question of whether family separation is the ordinary result of inadmissibility or removal may depend on the nature of family relationship considered. For example, in *Matter of Shaughnessy*, the Board considered the scenario of parents being separated from their soon-to-be adult son, finding that this separation would not result in extreme hardship to the parents. *Id.* at 811-12; *see also U.S. v. Arrieta*, 224 F.3d 1076, 1082 (9th Cir. 2000) ("Mr. Arrieta was not a spouse, but a son and brother. It was evident from the record that the effect of the deportation order would be separation rather than relocation."). In *Matter of Cervantes-Gonzalez*, the Board considered the scenario of the respondent's spouse accompanying him to Mexico, finding that she would not experience extreme hardship from losing "physical proximity to her family" in the United States. 22 I&N Dec. at 566-67.

The decision in *Cervantes-Gonzalez* reflects the norm that spouses reside with one another and establish a life together such that separating from one another is likely to result in substantial hardship. It is common for both spouses to relocate abroad if one of them is not allowed to stay in the United States, which typically results in separation from other family members living in the

United States. Other decisions reflect the expectation that minor children will remain with their parents, upon whom they usually depend for financial and emotional support. *See, e.g., Matter of Ige*, 20 I&N Dec. at 886 ("[I]t is generally preferable for children to be brought up by their parents."). Therefore, the most important single hardship factor may be separation, particularly where spouses and minor children are concerned. *Salcido-Salcido*, 138 F.3d at 1293 (quoting *Contreras-Buenfil v. INS,* 712 F.2d 401, 403 (9th Cir. 1983)); *Cerrillo-Perez*, 809 F.2d at 1422.

Regardless of the type of family relationship involved, the hardship resulting from family separation is determined based on the actual impact of separation on an applicant, and all hardships must be considered in determining whether the combination of hardships takes the case beyond the consequences ordinarily associated with removal or inadmissibility. *Matter of O-J-O-*, 21 I&N Dec. at 383. Nevertheless, though we require an applicant to show that a qualifying relative would experience extreme hardship both in the event of relocation and in the event of separation, in analyzing the latter scenario, we give considerable, if not predominant, weight to the hardship of separation itself, particularly in cases involving the separation of spouses from one another and/or minor children from a parent. *Salcido-Salcido*, 138 F.3d at 1293.

In this case, the record reflects that the applicant wed [redacted] in September 1997, more than one year after the applicant had been ordered removed. Therefore, the equity of their marriage, and the weight given to any hardship Ms. [redacted] may experience, is diminished as they began their relationship with the knowledge that the applicant had already been ordered removed. *See Ghassan v. INS*, 972 F.2d 631, 634-35 (5th Cir. 1992) (finding it was proper to give diminished weight to hardship faced by a spouse who entered into a marriage with knowledge of the alien's possible deportation); *Garcia-Lopes v. INS*, 923 F.2d 72, 76 (7th Cir. 1991) (less weight is given to equities acquired after a deportation order has been entered); *Carnalla-Munoz v. INS*, 627 F.2d 1004, 1007 (9th Cir. 1980) (a "post-deportation equity" need not be accorded great weight). In *Matter of Cervantes-Gonzalez*, the Board of Immigration Appeals stated that:

> The respondent's wife knew that the respondent was in deportation proceedings at the time they were married. In contrast to the respondent's assertions on appeal, this factor is not irrelevant. Rather, it goes to the respondent's wife's expectations at the time they were wed. Indeed, she was aware that she may have to face the decision of parting from her husband or following him to Mexico in the event he was ordered deported. In the latter scenario, the respondent's wife was also aware that a move to Mexico would separate her from her family in California. We find this to undermine the respondent's argument that his wife will suffer extreme hardship if he is deported.

22 I&N Dec. 560, 566-67 (BIA 1999).

The applicant's wife, Ms. [redacted] states that she was born and raised in Michigan and that she has a very close family. According to Ms. [redacted], she is the eldest of five children and her youngest sister is severely mentally impaired. Ms. [redacted] states that her sister was born with a chromosome abnormality and has required full-time care since birth, including assistance with bathing, using the bathroom,

feeding, and hygiene. Ms. contends that "all of [the] siblings assist [their] parents in her care." In addition, Ms. states she works more than fifty hours per week as a Physician Assistant and that she takes care of her ten year old son. She states she has had to place her son in childcare after school and that if her husband were here, childcare would be unnecessary. Furthermore, Ms. contends her son has suffered since her husband's departure. According to Ms. , her son's school performance has declined, he has become withdrawn, and he has moments of spontaneous crying on a regular basis. She states her son needs his father back in the United States for his emotional and psychological well-being. Ms. also states that her mother has many health problems including diabetes, depression, hyperlipidemia, and high blood pressure. In addition, Ms. states she has many financial obligations and that the stress impacts her on a daily basis. She states that six months after her husband left the United States, she had to close their business. She contends that since her husband's departure, she suffers from insomnia, depression, anxiety, has lost a lot of weight, and has difficulty eating and concentrating. Moreover, Ms. contends she cannot move to Jordan to be with her husband because of safety issues and her son does not speak Arabic. She states she would be unable to work as a Physician Assistant in Jordan as the position does not exist there. *Letters from* dated April 29, 2009, August 26, 1998, and January 7, 2007; *Notice of Appeal or Motion (Form I-290B)*, dated May 12, 2008.

A letter from Ms. physician states that "[f]or the last few years she has been suffering from generalized anxiety disorder and depression," and is having problems with sleep disturbances. The physician recommends "further therapy treatment" for Ms. *Letter from* dated May 12, 2008. A more recent letter from the physician states that Ms. "is still following here for her health problems including her insomnia and anxiety disorder." According to the physician, Ms. reports she is going through a very stressful time, which is contributing to her anxiety, severe insomnia, and depression. The physician states that Ms. will be trying a medication for insomnia. *Letter from* dated November 19, 2008.

A letter from Ms. mother's physician states that Ms. mother has depressive and anxious symptoms, diabetes, hypertension, and hyperlipidemia. According to the physician, Ms. mother works full-time and also has a twenty-six year old daughter who requires twenty-four hour care. The physician states that Ms. "has increasingly been helping with the care of her sister." *Letter from* dated April 28, 2009.

The AAO finds that if Ms. had to move to Jordan to be with her husband, she would experience extreme hardship. The record shows that Ms. was born and raised in the United States. According to Ms. , her entire immediate family, including her mentally disabled sister and her mother who has several health problems, live in the United States. In addition, according to Ms. , neither she nor her son speaks Arabic. In addition, Ms. expresses concerns about safety in Jordan and the AAO takes administrative notice that according to the U.S. Department of State:

> The threat of terrorism remains high in Jordan. . . . Terrorists often do not distinguish between U.S. government personnel and private U.S. citizens. Terrorists may target

> areas frequented by Westerners, such as tourist sites, hotels, restaurants, bars, nightclubs, liquor stores, shopping malls, transportation hubs, places of worship, expatriate residential areas, and schools. In light of these security concerns, U.S. citizens are urged to maintain a high level of vigilance, to be aware of their surroundings, and to take appropriate steps to increase their security awareness. . . . Western women, both visiting and residing in Jordan, have reported sexual harassment, stalking, and unwelcome advances of a sexual nature. . . . Women are advised to take reasonable precautions including dressing conservatively, not traveling alone, and avoiding travel to unfamiliar areas at night.

U.S. Department of State, Country Specific Information, Jordan, dated May 18, 2010. The AAO finds that the cumulative hardship Ms. would experience if she had to move to Jordan is extreme, going beyond the hardship ordinarily associated with inadmissibility.

Nonetheless, Ms has the option of staying in the United States and the record does not show that she would suffer extreme hardship if she were to remain in the United States without her husband. Although the AAO is sympathetic to the family's circumstances, if Ms. decides to stay in the United States, their situation is typical of individuals separated as a result of inadmissibility and does not rise to the level of extreme hardship based on the record. The Board of Immigration Appeals and the Courts of Appeals have repeatedly held that the common results of deportation or exclusion are insufficient to prove extreme hardship. For example, *Matter of Pilch, supra*, 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, *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. *See also Hassan v. INS,* 927 F.2d 465, 468 (9th Cir. 1991) (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).

Regarding Ms. insomnia, depression, and anxiety, there is insufficient evidence to show that the hardship she has experienced is beyond what would normally be expected. Although the two letters from her physician acknowledge that Ms. has these conditions, they do not specify whether she was clinically diagnosed with depression and an anxiety disorder according to a recognized mental health exam or test. In addition, the letters do not specify the prognosis, treatment, or severity of Ms. conditions. There is no evidence she has an ongoing relationship with a mental health professional and there is no evidence that there is a history of treatment for depression or an anxiety disorder. Without more detailed information, the AAO is not in the position to reach conclusions regarding the severity of any medical or mental health condition or the treatment and assistance needed.

Regarding the financial hardship claim, although the record contains voluminous documentary evidence, the AAO finds that the hardship is not extreme. According to the most recent tax returns in the record, Ms earned $71,608 in 2005. *2005 Wage and Tax Statement (Form W-2); see also 2004 Wage and Tax Statement (Form W-2)* (indicating earned $64,000 in 2004).

Furthermore, Ms. submitted a Form I-864, affirming she would financially support the applicant based on her salary alone of $59,077. *Affidavit of Support under Section 213A of the Act (Form I-864)*, dated November 13, 2004. Although the AAO does not doubt that Ms. has experienced some financial hardship since her husband's departure from the United States, the AAO finds that based on her income alone, the level of hardship is not extreme.

With respect to Ms. son, as stated above, hardship to the applicant's children can be considered only insofar as it results in hardship to Ms. the only qualifying relative in this case. Although the AAO recognizes the emotional suffering her son has experienced, there is no claim that the couple's son has any physical or mental health condition that causes extreme hardship to Ms. In sum, there is no allegation that the applicant's situation is unique or atypical compared to other individuals separated as a result of inadmissibility. *See Perez v. INS, supra* (defining extreme hardship as hardship that was unusual or beyond that which would normally be expected upon deportation).

A review of the documentation in the record fails to establish the existence of extreme hardship to the applicant's wife if she were to remain in the United States separated from the applicant. 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, the burden of proving eligibility remains entirely 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.

The AAO notes that the field office director denied the applicant's Form I-212 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)(i)(II) of the Act, no purpose would be served in granting the applicant's Form I-212.

ORDER: The appeal is dismissed.