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



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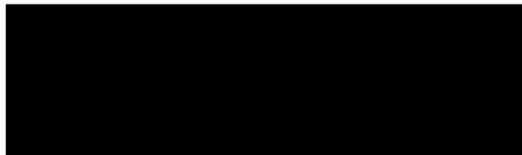
Office: ATHENS

FILE: 

IN RE: 

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:

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,

A handwritten signature in cursive script that reads "Michael Shumway".

for Perry Rhew  
Chief, Administrative Appeals Office

**DISCUSSION:** The Form I-601, Application for Waiver of Grounds of Inadmissibility was denied by the Field Office Director, Athens, Greece, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native and citizen of Egypt who resided in the United States from October 28, 2000 until his departure from the U.S. on August 23, 2009. He 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 U.S. for more than one year and seeking readmission within 10 years of his removal from this country. The applicant is married to a U.S. citizen, and he is the beneficiary of an approved Form I-130, Petition for Alien Relative (Form I-130). 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 live in the United States with his U.S. citizen spouse and family.

In a decision dated August 5, 2011, the director concluded the applicant had failed to establish that his wife would experience extreme hardship if he were denied admission into the United States. The waiver application was denied accordingly.

Through counsel, the applicant asserts on appeal that his U.S. citizen wife will experience extreme emotional, financial, and physical hardship if the applicant is denied admission into the United States and his wife either moves with their children to Egypt to be with him, or alternatively stays in the U.S. separated from her husband. Counsel indicates further that evidence demonstrates the applicant merits an exercise of discretion. In support of these assertions counsel submits affidavits from the applicant, his wife, and family members and friends. Counsel also submits medical and psychological evaluation records, financial information, and country conditions reports and articles on Egypt. The entire record was reviewed and considered in rendering 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.

(ii) Construction of unlawful presence.- For purposes of this paragraph, an alien is deemed to be unlawfully present in the United States if the alien is present in the United States after the expiration of the period of stay authorized by the Attorney General or is present in the United States without being admitted or paroled.

Counsel does not contest that the applicant is inadmissible under section 212(a)(9)(B)(i)(II) of the Act. Furthermore, the record supports a finding of inadmissibility under this section of the Act. The record reflects the applicant was admitted into the U.S. on October 28, 2000, with a B1 visitor visa valid through November 27, 2000. The applicant applied for, and received two extensions on his stay, through November 25, 2001. He remained unlawfully in the U.S. after November 25, 2001, and he was placed into removal proceedings on April 15, 2003, based on unlawful presence in the U.S. The applicant conceded his removability based on unlawful presence, and he applied for asylum and withholding of removal before an immigration judge on October 18, 2004. On September 19, 2005, the immigration judge denied the applicant's asylum and withholding of removal claims. The applicant was granted voluntary departure for 60 days, through November 18, 2005, with an alternate order of removal if he did not depart by that date. The applicant did not depart, and he filed a Board of Immigration Appeals (BIA) appeal that was dismissed on September 25, 2006, and a Ninth Circuit Court of Appeals petition for review that was denied on February 25, 2009. The applicant departed the United States approximately 6 months later, on August 23, 2009.

The Regulations provide at 8 CFR § 239.3 that if an alien is already accruing unlawful presence when removal proceedings are initiated, s/he will continue to accrue unlawful presence unless the alien is protected from such accrual. Accrual of unlawful presence stops on the date the alien is granted voluntary departure and resumes on the day after voluntary departure expires. *See generally*, USCIS Adjudicator's Field Manual, Chapter 40.9.2 (May 6, 2009) (referring to 8 C.F.R. §§ 239.3 and 1240.26). Furthermore, section 212(a)(9)(B)(iii) of the Act provides:

Exceptions – (II) Asylees. No period of time in which an alien has a bona fide application for asylum pending under section 208 shall be taken into account in determining the period of unlawful presence in the United States under clause (i) unless the alien during such period was employed without authorization in the United States.

It is unclear from the record if, or when, the applicant was employed without authorization in the United States. Assuming he was not employed without authorization, however, based on the asylee exception contained in section 212(a)(9)(B)(iii) of the Act the applicant stopped accruing unlawful presence on October 18, 2004, when he applied for asylum before the immigration judge. Accrual of unlawful presence began again 60 days after the applicant's petition for review was denied by the Ninth Circuit Court of Appeals (on April 26, 2009). The applicant was therefore unlawfully present in the U.S. for 1057 days (almost 3 years) from November 26, 2001 through October 17, 2004. Because he was unlawfully present in the U.S. for more than one year, and he is seeking readmission into the U.S. within 10 years of his removal from the United States, he is inadmissible under section 212(a)(9)(B)(i)(II) of the Act.<sup>1</sup>

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<sup>1</sup> It is noted the applicant did not depart the U.S. within 60 days of a final decision on his asylum claim. By not departing within the amount of days provided to him for voluntary departure, an alternate order of removal went into effect. The applicant is therefore required to obtain USCIS permission to apply for admission into the U.S., pursuant to section 212(a)(9)(A) of the Act, 8 U.S.C. section 1182(a)(9)(A).

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

Waiver.-The Attorney General 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 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. No court shall have jurisdiction to review a decision or action by the Attorney General regarding a waiver under this clause.

The record reflects that the applicant married a U.S. citizen on August 7, 2007. The applicant's spouse is a qualifying relative for section 212(a)(9)(B)(v) of the Act, waiver of inadmissibility purposes.

The record contains references to hardship the applicant's U.S. citizen children would experience if the waiver application were denied. It is noted that Congress did not include hardship to an alien's children as a factor to be considered in assessing extreme hardship. In the present case, the applicant's spouse is the only qualifying relative for the waiver under section 212(a)(9)(B)(v) of the Act, and hardship to the applicant's children will not be separately considered, except as it may affect the applicant's spouse.

Section 212(a)(9)(B)(v) of the Act provides that a waiver of the bar to admission is dependent first upon a showing that the bar imposes an extreme hardship on a qualifying family member. 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).

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*, 22 I&N Dec. 560, 565 (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 to a qualifying relative. 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 BIA 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 BIA 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).

Though hardships may not be extreme when considered abstractly or individually, the BIA 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.

Counsel asserts that the applicant's wife will experience extreme emotional, financial and psychological hardship if the applicant is denied admission into the U.S. In support of this claim the record contains affidavits from the applicant's wife stating that her parents are originally from Egypt, but that she was born and raised in the U.S. Upon the applicant's removal from the U.S., his wife moved with their child to Egypt to be with the applicant. She states the applicant was unable to find work in Egypt, and that they lived with his parents in poor and unsanitary conditions. The applicant's wife states medical conditions are poor in Egypt, and that the education system is also inferior to that in the United States. She indicates further that she does

not speak Arabic and is unable to communicate, and that as a woman and a U.S. citizen, she is unable to go out without her husband for fear of being sexually harassed or assaulted. The applicant's wife returned to the U.S. with her son after living in Egypt for three months. She was pregnant with her second child at the time, and she and her two children now live with her parents. The applicant's wife indicates that she is a licensed optometrist in the U.S., and that she worked in her profession prior to having children. She no longer works because she believes that her young sons should be raised by their mother. The applicant's wife states that it is tense and difficult living with, and being financially reliant upon her parents due to their age and health (her father has nasal problems and her mother is a breast cancer survivor), and their differing views on childrearing. She indicates that it is also emotionally difficult for her and her children to live separately from the applicant. The applicant's wife states that country conditions in Egypt have deteriorated since her husband's departure to Egypt, and she fears for his safety and feels nervous and anxious about the future.

The applicant's husband indicates in his affidavits that living conditions in Egypt are dangerous and violent due to political and religious strife. He states that he has been unable to find work in Egypt and that he lives with his parents. The affidavits and medical records also indicate the applicant suffered a knee injury that required surgery in Egypt, and the applicant states that he may need to move from his parents' house to Cairo in order to find better job opportunities.

The record contains birth certificates reflecting the applicant and his wife have two children, born June 1, 2008 and July 20, 2010, as well as pre-departure expense and income information for the applicant and his wife. The record additionally contains a psychological evaluation of the applicant's wife reflecting that she was interviewed on one occasion. Based on information provided by the applicant's wife and psychological test results, the evaluator indicates the applicant's wife has high levels of psychological distress and has a poor capacity to cope with stress and hardship. The evaluator states that the applicant's wife has Adjustment Disorder with Anxiety and Depressed Mood, and indicates that continued separation from her husband, and continuous living in a tense home environment with her parents will cause the applicant's wife severe psychological harm.

Country conditions evidence contained in the record reflects that there is political unrest in Egypt, and that foreigners are cautioned to avoid sporadic demonstrations where they could become victims of violence. Reports and articles reflect that the cost of private education is high, and that health facilities in Egypt are inferior to those in the U.S. The country conditions evidence additionally reflects reports of foreign and unescorted women being subjected to sexual harassment, verbal abuse and rape in Egypt.

The record contains a letter from the applicant's mother and father-in-law with their views on hardship their daughter is experiencing due to her separation from the applicant. Letters and affidavits from friends also attest to the applicant's good moral character and contain the writers' views on conditions in Egypt.

Upon review, the AAO finds that the evidence in the record establishes the hardship the applicant's wife would experience if she relocated to Egypt, when considered in the aggregate, rises beyond the common results of removal or inadmissibility to the level of extreme hardship.

The AAO finds, however, that the evidence, considered in the aggregate, fails to establish the applicant's wife would experience emotional, financial or physical hardship that rises above the common results of removal or inadmissibility to the level of extreme hardship if she remains in the United States. The applicant's wife asserts that her husband lives in grave danger in Egypt and that her fear for his safety causes her extreme emotional distress. While country conditions reports indicate that sporadic political demonstrations have led to violent clashes between police and protesters in Egypt, the record fails to indicate the applicant participates in demonstrations in Egypt, that violence is constant and pervasive, or that the applicant faces a specific or country-wide risk of harm in Egypt. The psychological evaluation evidence contained in the record also fails to establish that the applicant's wife is experiencing, or will in the future experience, emotional hardship that rises above the common results of removal or inadmissibility to the level of extreme hardship. Although the evaluation indicates that the applicant's wife has been diagnosed with Adjustment Disorder with Anxiety and Depressed Mood, it is noted that the evaluator's conclusions are based on one meeting with the applicant. The evaluator does not recommend care or treatment for the applicant's wife's condition, and the record contains no evidence that the applicant's wife has sought subsequent psychological treatment. The record also fails to demonstrate that the applicant's wife would be unable to pay for ongoing psychological treatment if she chose to get treatment. Although the applicant's wife states she is financially dependent upon her parents, evidence in the record reflects she is a licensed optometrist by profession. She worked prior to having a family, and although she prefers to be home with her children, the record contains no evidence to indicate that the applicant's wife is otherwise unable to resume her profession in order to become financially independent.

The AAO does not doubt nor minimize the depth of concern and anxiety over the applicant's immigration status. The fact remains, however, that Congress provided for a waiver of inadmissibility only under limited circumstances. In nearly every qualifying relationship, whether between husband and wife or parent and child, there is a deep level of affection and a certain amount of emotional and social interdependence. While, in common parlance, the prospect of separation or relocation nearly always results in considerable hardship to individuals and families, in specifically limiting the availability of a waiver of inadmissibility to cases of "extreme hardship" Congress did not intend that a waiver be granted in every case where a qualifying relationship, and thus the familial and emotional bonds, exist. The point made in this and prior decisions on this matter is that the current state of the law, viewed from a legislative, administrative, or judicial point of view, requires that the hardship, which meets the standard in section 212(a)(9)(B)(v) of the Act, be above and beyond the normal, expected hardship involved in such cases. In the present matter, the applicant has established only that his wife would experience the type of emotional and financial hardship commonly associated with removal or inadmissibility, if he is denied admission and his wife remains in the United States.

We can find extreme hardship warranting a waiver of inadmissibility only where an applicant has shown extreme hardship to a qualifying relative in the scenario of relocation *and* the scenario of separation. The AAO has long interpreted the waiver provisions of the Act to require a showing of extreme hardship in both possible scenarios, as a claim that a qualifying relative will relocate and thereby suffer extreme hardship can easily be made for purposes of the waiver even where there is no actual intention to relocate. *Cf. Matter of Ige*, 20 I&N Dec. 880, 886 (BIA 1994). Furthermore, to relocate and suffer extreme hardship, where remaining in the United States and being separated from the applicant would not result in extreme hardship, is a matter of choice and not the result of inadmissibility. *Id.*, also *cf. Matter of Pilch*, 21 I&N Dec. 627, 632-33 (BIA 1996). The applicant has not demonstrated extreme hardship from separation. We therefore cannot find that refusal of admission would result in extreme hardship to the qualifying relative in this case.

As the applicant has not established extreme hardship to a qualifying family member, no purpose would be served in determining whether the applicant merits a waiver as a matter of discretion.

In proceedings for an application for waiver of grounds of inadmissibility under section 212(a)(9)(B)(v) of the Act, 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.<sup>2</sup>

**ORDER:** The appeal is dismissed.

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<sup>2</sup> Although the applicant in this case did not file a Form I-212 Application for Permission to Reapply for Admission into the United States after Deportation or Removal (Form I-212), it is noted that a Form I-212 should be denied in the exercise of discretion, to an alien who is mandatorily inadmissible to the United States under another section of the Act, as no purpose would be served in granting the application. In this case the applicant is inadmissible under section 212(a)(9)(B)(II) of the Act. *Matter of Martinez-Torres*, 10 I&N Dec. 776 (Reg. Comm. 1964).