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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]

H6

Date: JUN 15 2011 Office: ATHENS, GREECE FILE: [redacted]

IN RE: Applicant: [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 APPLICANT:

[redacted]

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
Chief, Administrative Appeals Office

DISCUSSION: The waiver application 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 record reflects that the applicant is a native and citizen of Lebanon 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 seeking readmission within ten years of his last departure from the United States. The applicant is married to a United States citizen and the beneficiary of approved Petitions for Alien Relative (Form I-130) and Alien Fiancé(e) (Form I-129F). The applicant 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 in the United States with his spouse.

The Field Office Director found that the applicant had failed to establish that extreme hardship would be imposed on a qualifying relative and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) accordingly. *Decision of the Field Office Director*, dated December 31, 2008.

On appeal, the applicant claims that his wife is suffering extreme hardship. *Form I-290B*, filed February 2, 2009.

The record includes, but is not limited to, a letter from counsel, a statement from the applicant's wife, pay stubs for the applicant's wife, household and utility bills, employment verification letters for the applicant and his wife, bank statements, marriage and divorce documents for the applicant, articles on violence and country conditions in Lebanon, a U.S. Department of State Background Note on Lebanon, 2003 and 2004 U.S. Department of State country condition reports on Lebanon, and documents from the applicant's removal proceeding. 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:

> (B) Aliens Unlawfully Present.-
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> (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.
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> . . . .
>
> (iii) 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.

. . . .

(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 [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 the present case, the record indicates that the applicant entered the United States on February 26, 1996 as a B-2 nonimmigrant visitor for pleasure with authorization to remain in the United States until August 25, 1996. The applicant's authorization was extended until December 24, 1996. On February 27, 1998, the applicant's first wife filed a Form I-130 on behalf of the applicant. On the same day, the applicant filed an Application to Register Permanent Residence or Adjust Status (Form I-485). On March 22, 2000, the applicant and his wife divorced. On December 10, 2002, the applicant's Form I-485 and Form I-130 were denied. On December 10, 2004, the applicant filed an Application for Asylum and for Withholding of Removal (Form I-589). On October 6, 2005, the applicant withdrew his Form I-589. On December 5, 2005, the applicant married his current wife in New Jersey. On December 9, 2005, an immigration judge granted the applicant voluntary departure to depart the United States by April 10, 2006. On April 9, 2006, the applicant departed the United States.

The AAO notes that the proper filing of an affirmative application for adjustment of status has been designated by the [Secretary] as an authorized period of stay for purposes of determining bars to admission under section 212(a)(9)(B)(i)(I) and (II) of the Act. *See Memorandum by Johnny N. Williams, Executive Associate Commissioner, Office of Field Operations dated June 12, 2002.* Additionally, pursuant to section 212(a)(9)(B)(iii)(II) of the Act, "[n]o 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)...". The applicant accrued unlawful presence from December 11, 2002, the day after his Form I-485 was denied, until December 10, 2004, the date he filed his Form I-589. The applicant is seeking admission into the United States within ten years of his April 9, 2006 departure. The applicant is, therefore, 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 more than one year and seeking admission within 10 years of his last departure from the United States.

Counsel contends that the applicant's "unlawful presence arises from the fact that the Immigration Service and the Immigration Court did not properly review his file and schedule him for his Removal Hearing in a timely fashion. Accordingly, [the applicant] and his wife should not have to bear the hardship of this bureaucratic mistake." The AAO notes that its appellate jurisdiction is limited, and that the AAO has no jurisdiction over unreasonable delay claims arising under the Act or pursuant to due process claims. *See generally,* 8 C.F.R. § 103.1(a) (2011) and 8 C.F.R. § 2.1 (2011). *See also generally, Fraga v. Smith,* 607 F.Supp. 517 (U.S. Dist.Ct. Or. 1985) (Relating to federal court jurisdiction over such claims).

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 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 United States Citizenship and Immigration Services (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.

In a statement dated March 19, 2008, the applicant's wife states her entire family resides in the United States and she "cannot imagine leaving [her] family here in the United States to move to Lebanon." She claims that the applicant "tells [her] not to join him in Lebanon because of the difficulties that [she] will face there." On appeal, the applicant states "[d]ue to the continuous tensions in the Middle East [his] wife is scared of coming over even for tourism." Additionally, he claims that he has "tried to find work in Lebanon but with no success." Further, the applicant claims his wife "underwent 2 surgeries in her stomach (fibromectomie)." The AAO notes the claims made regarding the difficulties the applicant's wife would face in relocating to Lebanon.

The AAO notes that on April 4, 2011, the U.S. Department of State issued a travel warning to United States citizens to avoid all travel to Lebanon due to current safety and security concerns. The travel warning states that "U.S. citizens living and working in Lebanon should understand that they accept risks in remaining and should carefully consider those risks." Additionally, the travel warning states that "[t]he potential in Lebanon for a spontaneous upsurge in violence is real." The travel warning also states "U.S. citizens traveling or residing in Lebanon despite this Travel Warning should keep a

low profile, varying times and routes for all required travel. U.S. citizens also should pay close attention to their personal security at locations where Westerners generally are known to congregate, and should avoid demonstrations and large gatherings." The AAO notes the security concerns in Lebanon.

The AAO acknowledges that the applicant's wife is a citizen of the United State and that she may experience some hardship in residing in Lebanon. The AAO notes that the applicant submitted U.S. Department of State country reports from 2003 and 2004; however, the record fails to contain any updated documentary evidence that demonstrate that the applicant's wife would be unable to obtain employment upon relocation that would allow her to use the skills she has acquired in the United States. Going on record without supporting documentation is not sufficient to meet the applicant's burden of proof in this proceeding. *See 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)). Additionally, the AAO notes that other than the applicant's statement, there is no medical documentation in the record establishing that his wife suffers from any medical conditions. Further, the AAO notes that no documentation has been submitted establishing that the applicant's wife cannot receive treatment for her claimed medical condition in Lebanon or that she has to remain in the United States to receive treatment. The AAO notes the current travel warning for U.S. citizens in Lebanon; however, other than this travel warning, the record does not include sufficient documentation of financial, medical, emotional or other types of hardship that the applicant's wife would experience if she joined the applicant in Lebanon.

In addition, the applicant states that "[a]s long as [he] stay[s] in Lebanon, [his] spouse and [he] will experience extreme hardship on both moral, emotional, and financial status." The applicant's wife states the "last two years has been unbearable without [the applicant] and [she] [is] suffering emotionally and financially without him." She states it has been "very difficult to maintain a marriage being separated" from the applicant. She also states she would like to start a family but "[i]t would be extremely difficult for [them] to do this with [the applicant] living in Lebanon and [her] here in the United States." Additionally, she claims that raising children on her own "would be too much for [her] to handle." The AAO notes the concerns of the applicant's wife.

The applicant claims his wife is suffering financial hardship. The applicant's wife states she is "unable to support [herself] as well as [the applicant] in Lebanon on [her] monthly income of $2,100.00." She claims she is working two jobs in order to cover her monthly expenses of $2,900.00, and she is "delinquent on several monthly bills." The applicant states his wife's "car was repossessed by the dealer due to non payment." The AAO notes that the record establishes that on February 29, 2008, the applicant's wife was past due on her car payment; however, there is no evidence in the record that her car was repossessed. The applicant's wife states the applicant "still has not found a steady job to at least support himself." As noted above, the applicant claims his wife "underwent 2 surgeries in her stomach (fibromectomie) deriving from the distance between her and [him], and she's lying at home during the past 3 months and she cannot currently resume her work." He also states that if he returns to the United States, he could resume his employment and contribute to the household. The AAO notes the applicant's wife's financial concerns.

As noted above, the AAO notes that no medical documentation has been submitted establishing that the applicant's wife suffers from any medical conditions and that because of these claimed medical conditions, she cannot work. Additionally, the AAO notes that the applicant's wife may be suffering some emotional problems; however, no documentation has been submitted establishing that her emotional hardships go beyond the typical effects of separation or relocating to another country. Further, the AAO notes the applicant's wife's concerns regarding wanting to start a family and being a single parent; however, the submitted evidence does not establish that the applicant's wife cannot join the applicant in Lebanon and continue their family planning. The AAO also notes that the applicant's wife may be experiencing some financial hardship; however, the applicant failed to submit sufficient documentation establishing that his wife is unable to support herself in his absence. Additionally, other than the applicant and his wife's statements, the AAO notes that the applicant has submitted no evidence to establish that he is unable to obtain employment in Lebanon and, thereby, reduce the financial burden on his wife. In that the record does not include sufficient documentation of financial, medical, or other types of hardship that the applicant's wife is experiencing, the AAO finds that the applicant failed to establish that his wife would suffer extreme hardship if his waiver application is denied and she remains in the United States.

A review of the documentation in the record fails to establish the existence of extreme hardship to the applicant's wife caused by the applicant's inadmissibility to the United States. 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 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.

ORDER: The appeal is dismissed.