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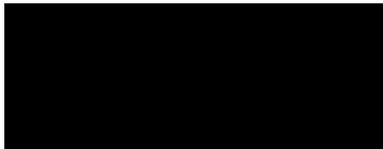
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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090



**U.S. Citizenship
and Immigration
Services**

tl6



Date: **MAY 11 2011**

Office: ATHENS, GREECE

FILE: 

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)

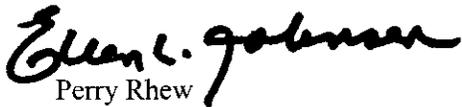
ON BEHALF OF APPLICANT:



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,



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 sustained.

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 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 the daughter of U.S. citizens 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 her parents in the United States.

The field office director found that the applicant failed to establish extreme hardship to a qualifying relative and denied the application accordingly. *Decision of the Field Office Director*, dated May 17, 2010.

The record contains, *inter alia*: an affidavit from the applicant; affidavits and letters from the applicant's parents; affidavits from the applicant's siblings; letters from the applicant's parents' physicians and copies of their medical records; copies of the applicant's mental health records; tax documents; a copy of the U.S. Department of State's Country Reports on Human Rights Practices for Lebanon, numerous articles, and other background materials; 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, and the applicant concedes, that she entered the United States on July 24, 2001, when she was fifteen years old, using a B-2 visitor visa with authorization to remain in the United States until August 18, 2002. *Affidavit of* [REDACTED] dated December 22, 2010. The applicant overstayed her visa and remained in the United States until February 22, 2010. *Id.* The applicant accrued unlawful presence from August 16, 2003, when she turned eighteen years old, until her departure on February 22, 2010. Therefore, the applicant accrued unlawful presence of over six years. She now seeks admission within ten years of her February 2010 departure from the United States. Accordingly, she 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 her last departure.

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 parents are the only qualifying relatives 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-Morales*, 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 a qualifying relative, 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 applicant states that her mother has been living with her in Lebanon ever since she left the United States in February 2010 for her visa interview. The applicant states that her father has also been living with them in Lebanon since October 2010 because he could no longer bear being separated from them. According to the applicant, she has suffered from severe depression for years and her parents will not leave her alone without family support. She states she is now seeing a doctor in Lebanon two or three times per week for depression, severe headaches, muscle pain, and severe bad allergies, and that her father pays out-of-pocket for these medical expenses because they do not have

medical insurance in Lebanon. The applicant contends her parents are extremely unhappy and depressed living in Lebanon, particularly considering that their entire immediate family, and most of their extended family, live in the United States, and considering the highly volatile, dangerous conditions in Lebanon. The applicant states that she hates living in Lebanon, has been harassed because she grew up in the United States, and that her parents cannot stand seeing her unhappy. *Affidavit of* [REDACTED], dated December 22, 2010.

Copies of the applicant's mental health records indicate the applicant was diagnosed with major depression and mild mental retardation. The mental health records state that the applicant was in a special education class when she went to school in the United States, did not learn to speak until she was five years old, had to repeat the fifth grade, and has never been able to learn to tell time.

A letter from [REDACTED] states that the applicant was diagnosed with Major Depressive Disorder and had been treated since March 2003 by both a psychiatrist and a therapist. The letter states that it is in the best interests of the applicant to be with her parents all of the time. *Letter from* [REDACTED] dated April 13, 2010.

The applicant's parents, [REDACTED] and [REDACTED], state that their daughter was born with a disability, was diagnosed with depression since childhood, and has always needed her family's and friends' support in order to "stay normal." The applicant's parents contend that when they moved to the United States in 2001, they sold their home and business in Lebanon and, therefore, have nothing left in Lebanon. [REDACTED] states that she and her husband are the only people who know how to deal with their daughter's depression and that they will not let her stay by herself anywhere. [REDACTED] states that he has been living with his wife and daughter in Lebanon since October 2010 because he could not bear spending any more time apart from them. He states that Lebanon is very unsafe, particularly in Southern Lebanon where they are currently living, due to the fact that much of the area is controlled by Hezbollah. He contends that he is depressed and takes anti-depressants to cope with his health problems, and that his family has no medical insurance in Lebanon. *Affidavit of* [REDACTED] dated December 22, 2010; *Affidavit of* [REDACTED] dated December 22, 2010; *Letter from* [REDACTED] and [REDACTED], dated May 10, 2010.

Letters from [REDACTED] physician in Lebanon state that [REDACTED] suffers from major depression and psychosis, and that since April 2010, she has been admitted to the hospital many times for panic attacks. The physician states [REDACTED] is being treated with antidepressants and antipsychotics, but states that her situation is worsening because she needs her family around her for support. The physician also states that treatment is very expensive and that [REDACTED] does not have medical insurance. *Letters from* [REDACTED], dated November 1, 2010, and October 15, 2010. Copies of [REDACTED] medical records indicate she has leg edema, osteoarthritis, anxiety, depression, back pain, fibromyalgia, flank pain, bladder disorder, urinary hesitancy, and reactive airway disease.

A letter from [REDACTED] physician states that [REDACTED] suffers from dizziness, depression, and insomnia. *Letter from* [REDACTED], dated December 3, 2010. A letter from another physician states that [REDACTED] has multiple cardiac risk factors including hyperlipidemia and a

family history of premature heart disease. *Letter from* [REDACTED] dated March 2, 2004; *see also Letter from* [REDACTED], dated September 24, 2004 (stating [REDACTED] presented with atypical, sharp chest pain and numbness and tingling in his arm). Another letter states that [REDACTED] has mild cataract formation and dizziness. *Letter from* [REDACTED], dated July 24, 2008. Copies of [REDACTED] medical records indicate he suffers from skin lesions, back pain, hip pain, tendonitis, sciatica, gastroesophageal reflux, hyperlipidemia, hypertension, and “[o]verall . . . appears to be doing poorly.”

Upon a complete review of the record, the AAO finds that the applicant’s parents, [REDACTED] and [REDACTED] [REDACTED] have suffered, and will continue to suffer, extreme hardship if the applicant’s waiver application were denied. The record shows that the applicant’s mother has been living in Lebanon with the applicant since she departed the United States because the applicant’s mother is concerned about her daughter’s mental health. The record also shows that the applicant’s father now also lives in Lebanon with them. The record shows that the applicant has been diagnosed with major depression and mild mental retardation since childhood, has been treated for these mental health issues since at least March 2003 when she was seventeen years old, and was in a special education class when she lived in the United States. *Letter from* [REDACTED] *supra*. Considering the applicant’s mental health issues, the AAO finds that the effect of separation causes extreme emotional harm to the applicant’s parents due to their concern about the applicant’s well-being in Lebanon, a concern that is beyond the common results of removal or inadmissibility.

Moreover, moving to Lebanon to avoid separation would be an extreme hardship for the applicant’s parents. The record shows that [REDACTED] and [REDACTED] are currently sixty-one and fifty-seven years old, respectively, and have numerous, serious medical problems including, but not limited to: osteoarthritis, anxiety, depression, fibromyalgia, reactive airway disease, hyperlipidemia, sciatica, gastroesophageal reflux, and hypertension. In addition, [REDACTED] suffers from major depression and psychosis, has been hospitalized for panic attacks, and is being treated with antidepressants and antipsychotics. *Letters from* [REDACTED] *supra*. Moreover, the U.S. Department of State has issued a Travel Warning for Lebanon. The Travel Alert states, in pertinent part:

The U.S. Department of State continues to urge U.S. citizens to avoid all travel to Lebanon due to current safety and security concerns. U.S. citizens living and working in Lebanon should understand that they accept risks in remaining and should carefully consider those risks. . . . Lebanese government authorities are not able to guarantee protection for citizens or visitors to the country should violence erupt suddenly. Access to borders, airports, and seaports can be interrupted with little or no warning. Public demonstrations occur frequently with little warning and have the potential to become violent. Family or neighborhood disputes often escalate quickly and can lead to gunfire or other violence with little or no warning. . . . A number of extremist groups operate in Lebanon, including some, such as Hizballah, that the U.S. government has designated as terrorist organizations. . . . Hizballah maintains a strong presence in parts of the southern suburbs of Beirut, portions of the Bekaa Valley, and areas in South Lebanon. The situation in those and other areas remains

tense, and sporadic violence involving Hizballah or other extremist or criminal organizations remains a possibility in many areas of the country.

U.S. Department of State, Travel Warning, Lebanon, dated April 04, 2011. Considering all of these factors cumulatively, the AAO finds that the hardship the applicant's parents would experience if they had to move to Lebanon is extreme, going well beyond those hardships ordinarily associated with inadmissibility or exclusion. The AAO therefore finds that the evidence of hardship, considered in the aggregate and in light of the *Cervantes-Gonzalez* factors cited above, supports a finding that the applicant's parents face extreme hardship if the applicant is refused admission.

The AAO also finds that the applicant merits a waiver of inadmissibility as a matter of discretion.

In discretionary matters, the alien bears the burden of proving that positive factors are not outweighed by adverse factors. *See Matter of T-S-Y-*, 7 I&N Dec. 582 (BIA 1957). The adverse factor in the present case is the applicant's unlawful presence in the United States. The favorable and mitigating factors in the present case include: significant family ties to the United States including her parents and three siblings, all of whom are either U.S. citizens or lawful permanent residents; the extreme hardship to the applicant's parents if she were refused admission; and the fact that the applicant has not had any arrests or convictions in the United States.

The AAO finds that, although the applicant's immigration violation is serious and cannot be condoned, when taken together, the favorable factors in the present case outweigh the adverse factors, such that a favorable exercise of discretion is warranted. Accordingly, the appeal will be sustained.

ORDER: The appeal is sustained.