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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**

PUBLIC COPY



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Date: **NOV 09 2011** Office: **ATHENS, GREECE** FILE:

IN RE: Applicant:

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,

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 Syria who was found to be inadmissible to the United States pursuant to section 212(a)(9)(B)(i)(II) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(9)(B)(i)(II), for having been unlawfully present in the United States for more than one year and seeking readmission within ten years of her last departure from the United States. The record indicates that the applicant is married to a United States citizen and is the mother of two United States citizen children. She is the beneficiary of an approved Petition for Alien Relative (Form I-130). 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 her spouse and children.

The Field Office Director found that the applicant had failed to establish that extreme hardship would be imposed on the applicant's qualifying relative and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) accordingly. *Decision of the Field Office Director*, dated March 12, 2009.

On appeal, the applicant, through counsel, claims that "[t]he denial decision consists of subjective abuse of discretion, unsubstantiated by any *raisonne* [sic] facts." *Form I-290B*, filed April 10, 2009.

The record includes, but is not limited to, counsel's appeal brief; counsel's brief in support of the I-601; statements from the applicant and her husband; letters of support for the applicant and her husband; a psychological evaluation on the applicant's husband; medical documents for the applicant and her daughter; and household bills. 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.-

- (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 [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 in November 2001 by presenting her sister's B-1/B-2 nonimmigrant visa for pleasure. On March 28, 2006, the applicant departed the United States.

The applicant accrued unlawful presence from November 2001, when she entered the United States by presenting her sister's B-1/B-2 nonimmigrant visa, until March 28, 2006, when she departed the United States. The applicant is attempting to seek admission into the United States within ten years of her March 28, 2006 departure from the United States. 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 her departure.

Beyond the decision of the Field Office Director, the AAO finds that the applicant is inadmissible under section 212(a)(6)(C)(i) of the Act, 8 U.S.C. § 1182(a)(6)(C)(i), for procuring admission to the United States through fraud or the willful misrepresentation of a material fact.¹ The record establishes that in November 2001, the applicant entered the United States by presenting her sister's B-1/B-2 nonimmigrant visa for pleasure. The AAO notes that the record establishes that the applicant and her sister's photos were mixed up during their visa application process. Even though the sisters realized the photos were switched, the applicant's sister offered her passport to the applicant to use in order to travel to the United States. The applicant then used her sister's passport and nonimmigrant visa to travel to the United States. Based on this misrepresentation, the AAO finds that the applicant is inadmissible under section 212(a)(6)(C)(i) of the Act.

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

- (i) In general.-Any alien who, by fraud or willfully misrepresenting a material fact, seeks to procure (or has sought to procure or has procured) a visa, other documentation, or admission into the United States or other benefit provided under this Act is inadmissible.
- (iii) Waiver authorized.-For provision authorizing waiver of clause (i), see subsection (i).

Section 212 of the Act provides, in pertinent part, that:

¹ An application or petition that fails to comply with the technical requirements of the law may be denied by the AAO even if the Service Center does not identify all of the grounds for denial in the initial decision. *See Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff'd*, 345 F.3d 683 (9th Cir. 2003); *see also Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004) (noting that the AAO conducts appellate review on a *de novo* basis).

- (i) (1) The [Secretary] may, in the discretion of the [Secretary], waive the application of clause (i) of subsection (a)(6)(C) in the case of an immigrant who is the spouse, son, or daughter of a United States citizen or of an alien lawfully admitted for permanent residence, if it is established to the satisfaction of the [Secretary] that the refusal of admission to the United States of such immigrant alien would result in extreme hardship to the citizen or lawfully resident spouse or parent of such an alien...

Waivers of inadmissibility under section 212(a)(9)(B)(v) and section 212(i) of the Act are 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 husband 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 Service (USCIS) then assesses whether a favorable exercise of discretion is warranted. *See Matter of Mendez-Morales*, 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 of Immigration Appeals (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 counsel’s appeal brief dated April 3, 2009, counsel states the applicant’s husband has been running a 20,000 square foot supermarket for years, it requires “daily care and constant on-site supervision,” and it is not possible for the applicant’s husband to run his business from Syria. Counsel claims that if the applicant’s husband joins the applicant in Syria, it would be “sheer destruction of [the applicant’s husband’s] livelihood after years of efforts as [a] contributing member of US society.” Counsel states the applicant’s husband “is fully assimilated into American life, culture and religion.” She claims that the applicant’s husband “does not know how to make a living if forced to return to Syria since he has trained himself as a supermarket owner in [the] United States for years.” In a statement dated October 13, 2008, the applicant’s husband states if he joins the applicant in Syria, he will suffer the loss of “dignity of being able to continue to become a contributing member of this society.... [He] will be forced to abandon [his] family business and [his] family of origin.” In a psychological evaluation dated September 30, 2008, [REDACTED] reports that the applicant’s husband’s mother and siblings reside in the United States. The AAO notes the applicant’s husband’s concerns regarding the difficulties he would face in relocating to Syria.

Counsel states the applicant’s husband “was diagnosed having ‘depression NOS moderate’ by his doctor.” The AAO notes that the record establishes that the applicant’s husband was diagnosed with depression. See *psychological evaluation by [REDACTED]*, dated September 30, 2008. The applicant’s husband states that “[w]ith [his] unfortunate depression, [he] will not be able to survive in Syria without the highly advanced USA medical and health care system.” The AAO notes that there is

no documentation in the record establishing that the applicant's husband cannot receive treatment for his mental health conditions in Syria or that he has to remain in the United States to continue any treatments. However, the AAO notes the mental health concerns of the applicant's husband.

In a statement dated February 15, 2009, the applicant states her children are suffering in Syria. In an undated statement, the applicant states her daughter "suffers from psychological troubles." In a statement dated March 27, 2009, the applicant's husband states he is concerned "about the psychological effect and early education of [his] two US born children living in Syria." He claims that his five (5) year old child is suffering from mental health issues. In a medical report dated February 16, 2009, [REDACTED] states the applicant's daughter appears "withdrawn, inhibited and answered questions with difficulty and showed little interest in the interview and the surroundings with a prominent low mood." [REDACTED] reports that the applicant's daughter "complained of multiple physical symptoms like headaches and abdominal pain and a largely disturbed sleep," and she states the applicant's daughter is suffering from urine incontinence and having temper tantrums. [REDACTED] diagnosed the applicant's daughter with "childhood chronic adjustment disorder with depressed mood." Additionally, in an undated statement, [REDACTED] states the applicant's daughter "is suffering from bronchitis and allergic rhinitis," and "recurrent nocturnal urine incontinence." The applicant states her son is suffering from insect stings, allergies, and colds. In an undated statement, [REDACTED] states the applicant's son is suffering from "acute allergy accompanied with popular derma-eruptions." [REDACTED] states that the applicant's son's medical issues are "most probably due to the stinging of the insects." The AAO notes the medical and mental health concerns for the applicant's children.

Counsel states the applicant and her husband are Christian, and their children are suffering in Syria as they are "involuntarily receiving [a] Muslim education in terms of life ideology instead of basic Christian education." Counsel claims that the applicant's children "will be faced with the dilemma of cultural and religious conflicts in Syria." She also states that "[t]his is a Christian family, who may be forced to live a Muslim life, and subject their children to Muslim education against parents' and children's volition." The applicant states she cannot give her children a safe life in Syria. The AAO notes that on September 30, 2011, the Department of State issued a travel warning to United States citizens urging them to depart Syria immediately. The travel warning states "[g]iven the ongoing uncertainty and volatility of the current situation, U.S. citizens who must remain in remain in Syria are advised to limit nonessential travel within the country." Additionally, "U.S. citizens not in Syria should defer all travel to Syria at this time." The AAO notes the security concerns in Syria and the concerns for the applicant's children.

Based on the applicant's spouse's lack of ties to Syria, the security concerns in Syria, his separation from his family in the United States, financial issues including the loss of his business, having to raise his children in Syria, the mental health issues of his daughter, the medical issues of his children, and his mental health issues, the AAO finds that the applicant's husband would suffer extreme hardship if he were to join the applicant in Syria.

However, the record does not establish extreme hardship to the applicant's husband if he remains in the United States. [REDACTED] states the applicant's husband "belongs to a very united family and he is not used to live [sic] by himself." In a statement dated October 13, 2008, the applicant's husband states he cannot "imagine what [his] life might be like without [the applicant's] companionship, emotional and physical support, and love." Counsel states the applicant's husband "has already and will continue experiencing mental distress if [the applicant] could not be granted admission into U.S." The applicant's husband states he is suffering depression due to being separated from the applicant and his children. Counsel states the applicant's husband's "mental and emotional problems would be exacerbated if he remains in the U.S. being separated from [the applicant] and children." As noted above, the record establishes that the applicant's husband is suffering from depression. *See psychological evaluation by [REDACTED] [REDACTED]* states the applicant's husband's symptoms include, but are not limited to, feelings of sadness, hopelessness, guilt, irritability, restlessness, anxiety, loss of interest in activities, fatigue, decreased energy, difficulty concentrating, and loss of appetite. The AAO notes the mental health concerns of the applicant's husband.

Counsel states that the applicant's husband works more than 60 hours a week, and if his children returned to the United States, they would suffer extreme hardship as the applicant is the one who cares for the children. In counsel's brief in support of the Form I-601 dated October 13, 2008, counsel states the applicant's husband "relies completely on [the applicant] to care for the two minor children." Counsel states the applicant's "family values and culture prohibit children of such a tender age to be separated from their mother," and the "the children in this case" are "suffering imputed extreme hardship as qualifying relatives." (emphasis deleted). Counsel also states that the applicant's children "have legal rights to have both parents in their lives. They deserve all the benefits as that of any other U.S. citizens." The applicant's husband states his children "do not even remember [him]." The AAO acknowledges that the applicant's children may be suffering some hardship; however, the AAO notes that the applicant's children are not qualifying relatives, and the applicant has not shown that hardship to her children will elevate her husband's challenges to an extreme level. However, the AAO notes the concerns for the applicant's children.

The applicant states she is "living in a state of mental distress and having severe nervous tension and agony," and she is having stomachaches. The applicant also states she does not work in Syria and she cannot afford to rent her own place. She states her husband sends her money, but he is suffering financially. The AAO notes the applicant's concerns.

The AAO has carefully considered the psychological evaluation regarding the emotional difficulties experienced by the applicant's husband. While it is understood that the separation of relatives often results in significant psychological challenges, the applicant has not distinguished her husband's emotional hardships upon separation from that which is typically faced by the relatives of those deemed inadmissible. Additionally, the AAO finds the record to include some documentation of the applicant and her husband's income and expenses; however, this material offers insufficient proof that the applicant's husband will be unable to support himself in the applicant's absence. Further, the applicant has not distinguished her husband's financial challenges from those commonly experienced when a family member remains in the United States alone. Based on the record before it, the AAO

finds that the applicant has failed to establish that her husband would suffer extreme hardship if her waiver application is denied and he remains in the United States.

Although the applicant has demonstrated that the qualifying relative would experience extreme hardship if he relocated abroad to reside with the applicant, 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, supra* at 886. 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, supra* at 632-33. As the applicant has not demonstrated extreme hardship from separation, we cannot find that refusal of admission would result in extreme hardship to the qualifying relative in this case.

In proceedings for application for waiver of grounds of inadmissibility under section 212(a)(9)(B)(v) and section 212(a)(6)(C)(i) 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.