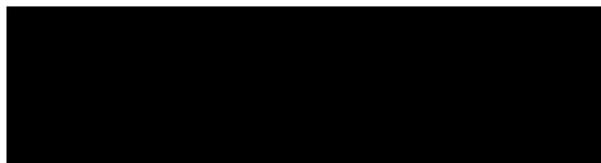


**identifying data deleted to  
prevent clearly unwarranted  
invasion of personal privacy  
PUBLIC COPY**

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



H6

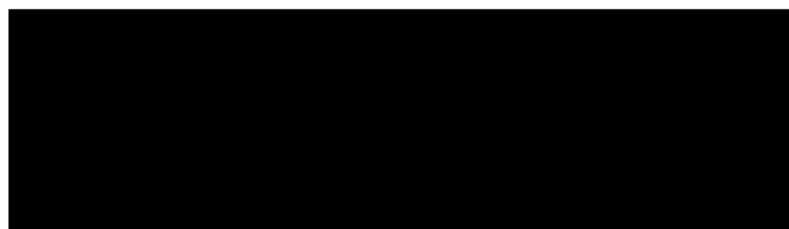
DATE: **OCT 31 2011** Office: CHICAGO, IL

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 (the Act), 8 U.S.C. section 1182(a)(9)(B)(v), and Section 212(i) of the Immigration and Nationality Act, 8 U.S.C. § 1182(i).

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 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, Chicago, Illinois. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native of Jordan and citizen of Jordan and Sweden. He 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), and section 212(a)(6)(C)(i) of the Act, 8 U.S.C. § 1182(a)(6)(C)(i), for having been unlawfully present in the United States for one year or more and seeking admission within ten years of his last departure, and misrepresenting his intent to reside in the United States. He is married to a naturalized United States citizen. He seeks a waiver of inadmissibility pursuant to sections 212(a)(9)(B)(v) and 212(i) of the Act, 8 U.S.C. §§ 1182(a)(9)(B)(v) and 1182(i).

The Field Office Director concluded that the applicant had failed to establish that the bar to his admission would impose extreme hardship on a qualifying relative, his U.S. citizen spouse, and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) on June 25, 2009.

On appeal, counsel for the applicant asserts that United States Citizenship and Immigration Services (USCIS) failed to properly consider extreme hardship factors. *Form I-290B*, received on July 24, 2009.

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.

....

The record indicates that the applicant entered the United States under the Visa Waiver Pilot Program (VWPP) in November 2000 and remained beyond his 90 day authorized period of stay until March 1, 2004. The applicant was unlawfully present for more than one year during this period. The applicant reentered the United States on May 11, 2004 on the VWPP and remained beyond his authorized period of stay, departing the U.S. on November 2, 2005. During this period, the applicant again accrued more than one year of unlawful presence. The applicant reentered the United States again on July 28, 2006, and again remained beyond his authorized period of stay. He married a U.S. citizen and filed a Form I-485 adjustment application on December 11, 2007. As the applicant has been unlawfully present in the United States for over a year and is now seeking admission within ten

years of his last departure from the United States, he is inadmissible under section 212(a)(9)(B)(i)(II) of the Act.

Section 212(a)(9)(B)(v) of the Act provides for a waiver of section 212(a)(9)(B)(i) inadmissibility as follows:

The Attorney General [now Secretary of Homeland Security] 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 . . . 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.

Section 212(a)(6)(C) Misrepresentation, states in pertinent part:

- (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 chapter is inadmissible.

Section 212(a)(6)(C)(iii) authorizes a waiver, in the discretion of the Attorney General, as proscribed by Section 212(i):

- (1) The Attorney General may, in the discretion of the Attorney General, waive the application of clause (i) of subsection (a)(6)(C) of this section 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 Attorney General 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 . . . .

The record indicates that the applicant entered the United States under the Visa Waiver Program in November 2000 and remained beyond his 90 day authorized period of stay until March 1, 2004. The applicant re-entered the United States on July 28, 2006, and again remained beyond his authorized period of stay. He married a U.S. citizen and filed a Form I-485 adjustment application on December 11, 2007. In a sworn statement taken during his adjustment interview the applicant admitted that he misrepresented his prior periods of unlawful presence when entering the United States on May 11, 2004 and on July 28, 2006, and admitted that he misrepresented his intent to resume his unlawful residence. As such, the applicant is inadmissible under § 212(a)(6)(C)(i) for having misrepresenting his intent to reside in the United States, and under § 212(a)(9)(B)(v) for having been unlawfully present in the United States for more than one year and seeking admission within ten years of his last departure. The applicant does not contest these findings.

The record includes, but is not limited to, counsel's brief; a statement from the applicant's spouse; medical documents pertaining to the applicant's spouse's fertility treatments; a handwritten prescription form from the desk of [REDACTED] dated July 20, 2009; bank statements, tax records and an employment letter for the applicant; statements from friends and associates of the applicant and his spouse; mortgage statements for the applicant's residential property; and documents filed in relation to the applicant's Form I-130 and Form I-485.

The entire record was reviewed and all relevant evidence considered in rendering this decision.

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 spouse is the only qualifying relative in this case. If extreme hardship to a qualifying relative is established, the applicant is statutorily eligible for a waiver, and USCIS then assesses whether a favorable exercise of discretion is warranted. *See Matter of Mendez-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 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.

On appeal, counsel for the applicant asserts the applicant’s spouse will experience uncommon hardship due to the applicant’s inadmissibility. *Statement in Support of Appeal*, dated July 22, 2009. With regard to hardship upon relocation, counsel for the applicant asserts that the applicant’s spouse has resided in the United States for the last 17 years, has strong family ties to the United States, has no family ties in Jordan or Sweden and would not be able to maintain the same level of income as they received in the United States. *Id.*

An examination of the record does not reveal any evidence in support of counsel’s assertions that the applicant’s spouse would be unable to find employment in Jordan or Sweden if she desired to do so, or any evidence which supports the assertion that the quality of life would in either Jordan or Sweden would result in a hardship impact on the applicant’s spouse. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *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)).

While the applicant’s spouse may have family ties in the United States, this fact alone, if it were sufficiently supported in the record, would not establish extreme hardship upon relocation. Even when the hardship impacts asserted upon relocation are examined in the aggregate, they fail to

establish that the applicant's spouse would experience uncommon hardship rising to the level of extreme, either upon relocation to Sweden or Jordan.

With regard to hardship upon separation, counsel asserts that the applicant's spouse would experience emotional, financial and physical hardship due to separation from the applicant. *Statement in Support of Appeal*, dated July 22, 2009. Counsel asserts that the applicant is the only source of income for his spouse, that she suffers from anxiety and depression/panic attacks and has undergone five failed in vitro fertilization procedures. Counsel explains that they have a house and car payments which the applicant covers with his income as a grocery store manager.

Counsel also asserts on appeal that cases cited by the Field Office Director are distinct from the facts of this case and that the record shows the applicant's spouse will experience extreme hardship. The AAO notes that the cases cited by the Field Office Director were not cited for the holdings based on their fact patterns, but for general guidance on what constitutes extreme hardship. The applicant must establish that the facts of their individual case demonstrate a qualifying relative will experience extreme hardship.

The record includes substantial documentation regarding the applicant's spouse's infertility treatments. However, the AAO notes that these documents show that the treatments took place prior to her marriage with the applicant and fail to establish that she has any current, ongoing medical condition. Nor does the record establish that the failed fertility treatments create a hardship for the applicant's spouse.

With regard to the emotional impact on the applicant's spouse, the record includes a brief, handwritten note on a prescription form which reads "Diagnosis: Anxiety/Depression with panic [a]ttacks", dated July 20, 2009. The record also contains a statement from the applicant's sister discussing the emotional impact that separation would have on the applicant's spouse. These documents are not sufficient to establish that the applicant's spouse is currently being treated for any mental health condition or that the emotional hardship impact on her is distinguishable from that which is commonly experienced by the relatives of inadmissible aliens.

The record contains some bank account statements, mortgage records and an employment letter for the applicant. The record does not contain any other documentation which indicates that the applicant's spouse is unable to work, or that she could not rely on family members to mitigate the financial impacts of the applicant's departure. Without additional evidence which establishes the degree of financial impact on the applicant's spouse the record does not support that this presents an uncommon hardship factor.

Even when the hardship factors asserted upon separation are examined in the aggregate, the record as it is currently constituted, fails to establish that they rise above the common hardship associated with separation from a family member.

The record, reviewed in its entirety and in light of the *Cervantes-Gonzalez* factors cited above, does not support a finding that the applicant's spouse faces extreme hardship if the applicant is refused admission. U.S. court decisions have repeatedly held that the common results of removal or inadmissibility are insufficient to prove extreme hardship. *See Hassan v. INS*, 927 F.2d 465, 468 (9th Cir. 1991). In addition, *Perez v. INS*, 96 F.3d 390 (9th Cir. 1996), held that the common results of deportation are insufficient to prove extreme hardship and defined extreme hardship as hardship that was unusual or beyond that which would normally be expected upon deportation. The AAO therefore finds that the applicant has failed to establish extreme hardship to his U.S. citizen spouse as required under section 212(a)(9)(B)(v) of the Act. 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 rests 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.