

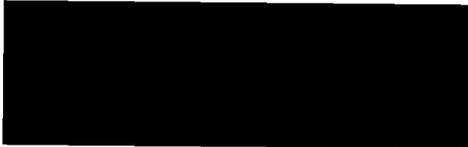
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U.S. Department of Homeland Security
U. S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090



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



H6

Date: **APR 27 2012**

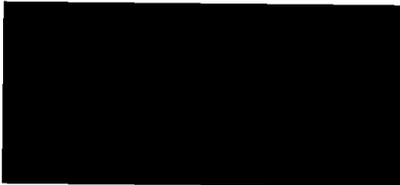
Office: ATHENS

FILE: 

IN RE: 

APPLICATION: Application for Waiver of Grounds of Inadmissibility under section 212(a)(9)(B) of the Immigration and Nationality Act, 8 U.S.C. § 1182(a)(9)(B)

ON BEHALF OF APPLICANT:

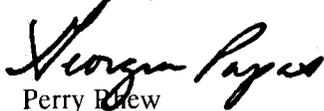


INSTRUCTIONS:

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 E. Hew

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 dismissed.

The applicant is a native and citizen of Egypt 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 again seeking admission within ten years of his last departure from the United States. The applicant seeks a waiver of inadmissibility in order to reside in the United States with his U.S. citizen spouse and children.

The Field Office Director found that the applicant failed to establish that his qualifying relative would experience extreme hardship as a consequence of his inadmissibility. The application was denied accordingly. *See Decision of the Field Office Director* dated October 6, 2011.

On appeal, the applicant's attorney indicates that the qualifying spouse is experiencing extreme hardship, including emotional, psychological and financial hardships, in Egypt.

The record contains an Application for Waiver of Grounds of Inadmissibility (Form I-601); a Notice of Appeal or Motion (Form I-290B); medical and psychological documentation regarding the qualifying spouse's son; an appeal brief; country-conditions materials; affidavits from the qualifying spouse; financial documentation; an approved Petition for Alien Relative (Form I-130); photographs; a marriage certificate; birth certificates for the qualifying spouse and the children; psychiatric documentation regarding the qualifying spouse and documentation submitted with the Application to Register Permanent Residence or Adjust Status (Form I-485). The entire record was reviewed and considered in rendering a decision on the appeal.

Section 212(a)(9) 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.

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.

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. 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 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.

The record indicates that the applicant entered the United States in September 2000 without inspection and timely complied with a voluntary departure order by leaving on May 18, 2010. The applicant accrued unlawful presence from September 2000 until May 18, 2010, a period in excess of one year. In applying for an immigrant visa, the applicant is seeking admission within ten years of his departure from the United States. Therefore, as a result of the applicant’s unlawful presence, he is inadmissible to the United States under section 212(a)(9)(B)(i)(II) of the Act. The applicant has not disputed his inadmissibility.

The AAO finds that the applicant has failed to establish that his qualifying spouse will suffer extreme hardship as a consequence of being separated from him if she remains in the United States without him. The qualifying spouse, in her affidavit, states that she needs the applicant in the United States because he has to run their restaurant business while she stays at home with their children. However, there is no supporting documentation to demonstrate that the applicant’s presence is integral in the maintenance of the restaurant or to indicate that he possesses specific abilities that the qualifying spouse lacks to manage the business. Further, the qualifying spouse states that she cannot bear to be without the applicant, and as a result has moved with their children to Egypt. However, she fails to sufficiently describe the nature of her hardships that prompted her to move with the children to Egypt. Moreover, the applicant’s spouse indicates that she is suffering emotionally and psychologically due to the applicant’s immigration problems. The record contains medical records, including a letter from her doctor, revealing that the qualifying spouse was “slightly depressed” and suffering from anxiety, severe insomnia and panic attacks. The doctor prescribed medication to the qualifying spouse, recommending that the applicant remain with the qualifying spouse. However, the record does not address whether the qualifying spouse’s psychological issues have been ameliorated with such medications or indicate the specific psychological hardships that the qualifying spouse would endure without the presence of the applicant. The qualifying spouse also

indicates that her extended family in the United States financially supports her family in Egypt. As such, it appears that the qualifying spouse has a network of family members that can support her upon her separation from the applicant. The applicant therefore failed to provide sufficient documentation regarding the qualifying spouse's potential hardships upon separation.

Likewise, the AAO finds that the applicant has not met his burden of showing that the qualifying spouse is suffering extreme hardship living in Egypt with the applicant. In the appeal brief, the applicant's attorney asserts that raising a Christian family in a country increasingly hostile to Christians results in hardship to all family members, particularly the qualifying spouse. The record contains country-conditions materials confirming that Christians have been the targets of attacks, and the qualifying spouse indicates that she is Christian. However, there is no supporting documentation explaining how she would be identified or targeted as a Christian. Further, it is unclear whether the qualifying spouse or her family has been affected adversely because of their religious beliefs. One country-conditions report also refers to other cultural issues the family may face in Egypt. The qualifying spouse indicates that adjusting to Egypt is difficult for her as she does not speak Arabic. While the AAO concedes that the qualifying spouse's inability to speak Arabic is a hardship to her living in Egypt, the record does not show how her language difficulties have affected her. The qualifying spouse has been living in Egypt for at least one year and there is no reference in the record to specific cultural or safety issues she has faced because she is Christian, female, or from the United States.

The applicant's spouse also asserts that she and the family will suffer financial hardships as a result of relocating to Egypt, including losing their restaurant business in the United States and finding no employment opportunities in Egypt. However, there is no documentation to support the qualifying spouse's assertions that their business is in trouble. Further, the qualifying spouse indicates that she is surviving in Egypt due to the financial help of her family in the United States, yet it is unclear whether the qualifying spouse or applicant are working in Egypt. Further, it is unclear whether their restaurant business is still producing income while they are in Egypt. Although the qualifying spouse asserts that she is experiencing financial hardships as a result of her relocation to Egypt, the record does not support such assertions. Assertions are evidence and will be considered. However, going on record without supporting documentary evidence generally is not sufficient for purposes of meeting the burden of proof in these proceedings. *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)).

In addition, the applicant's attorney contends that the qualifying spouse is suffering emotional and psychological hardships. The record contains a letter from the qualifying spouse's doctor and medical documentation regarding her psychological issues. However, it is unclear whether the qualifying spouse is still experiencing emotional and psychological issues since moving to Egypt. The doctor's letter recommends that the qualifying spouse and applicant remain together, but it does not indicate that she should remain in the United States. Further, because the letter and other evidence in the record provide little detail regarding the extent of the qualifying spouse's emotional and psychological hardships, it is not possible to determine from the record whether her hardship is extreme.

Similarly, the psychological assessment of the applicant and qualifying spouse's son failed to indicate that he was suffering any adverse emotional or psychological hardships. Further, the record also contains translated medical documents regarding their child, indicating that he is having medical issues that must be treated "outside the country." Though the translated records were unclear as to the exact nature of their child's medical issues, it appears he is experiencing spinal and urological problems that require surgery. The record, however, is silent regarding the effect that their child's issues are having on the qualifying spouse. Moreover, the applicant's spouse and children are U.S. citizens who are able to travel to the United States for medical treatment. The record fails to address whether anything prevents their travel to the United States or to other countries that may also have the proper medical treatment for their son. As such, the current record does not establish that the qualifying spouse is experiencing extreme hardship as a result of her relocation to Egypt.

In this case, the record does not contain sufficient evidence to show that the hardships faced by the qualifying relative, considered in the aggregate, rise beyond the common results of removal or inadmissibility to the level of extreme hardship. The AAO therefore finds that the applicant has failed to establish extreme hardship to her qualifying spouse as required under section 212(a)(9)(B) of the Act. 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 application for waiver of grounds of inadmissibility under section 212(a)(9)(B) 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.