



U.S. Citizenship
and Immigration
Services

[REDACTED]

H6

DATE: **DEC 05 2012** Office: ATHENS, GREECE

FILE: [REDACTED]

IN RE: Applicant [REDACTED]

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

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 AAO inappropriately applied the law in reaching its decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen with the field office or service center that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$630. The specific requirements for filing such a motion can be found at 8 C.F.R. § 103.5. **Do not file any motion directly with the AAO.** Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires any motion to 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. 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 Turkey 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 one year or more and seeking readmission within 10 years of his last departure from the United States. The applicant's spouse is a United States citizen and the applicant seeks a waiver of inadmissibility in order to reside in the United States.

The Field Office Director found that the applicant had failed to establish extreme hardship to a qualifying relative and the application was denied accordingly. *Decision of the Field Office Director*, dated June 1, 2011.

On appeal, counsel asserts that the applicant's spouse would experience extreme hardship if the applicant is not granted a waiver of inadmissibility.

The record includes, but is not limited to: the applicant's spouse's statements, medical records for the applicant's spouse, and various immigration application forms. The entire record was reviewed and considered in rendering 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.

The record reflects that the applicant entered the United States with a B-2 non-immigrant visa in 1998 and remained in the United States beyond his authorized stay. The applicant accrued unlawful presence in the United States from 1998 until his departure on January 27, 2007. 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 readmission within 10 years of his departure from the United States.

A section 212(a)(9)(B)(v) waiver of the bar to admission resulting from section 212(a)(9)(B)(i)(II) of the Act is dependent first upon a showing that the bar imposes an extreme hardship to the U.S. citizen or lawfully resident spouse or parent of the applicant. Hardship to the applicant is not considered in section 212(a)(9)(B)(v) waiver proceedings unless it causes hardship to a qualifying relative, in this case the applicant's spouse. Once extreme hardship is established, it is but one favorable factor to be considered in the determination of whether the Secretary should exercise discretion. *See Matter of Mendez*, 21 I&N Dec. 296 (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 applicant's spouse states that she and the applicant have remained in a committed relationship despite their continued separation as a result of his inadmissibility to the United States. The applicant's spouse also indicates that she is trying to remain positive for the applicant's sake, but is experiencing grief and anxiety due to their separation. The applicant's spouse indicates that she lived with her husband in both the United States and Turkey between 2002 and 2007. The applicant's spouse stated that she returned to her position in the United States as the caretaker of a disabled individual because her patient needed her assistance. The applicant's spouse stated that she last visited her husband in Turkey in August of 2007 and they have not seen each other since that time. The applicant's spouse indicates that the separation has made it difficult to maintain their family connection. The applicant's spouse stated that she cannot live in Turkey because her patient requires her care and she has been caring for this individual since childhood. The applicant's spouse indicates that she likes her working conditions and would not want to lose her employment by leaving the United States. The applicant's spouse provided a letter from a psychotherapist, [REDACTED] L.M.S.W., indicating that if Ms. [REDACTED] were to leave her young patient she (the applicant's spouse) would suffer high levels of anxiety in addition to that which she is already experiencing due to the extended separation from her husband. See letter from [REDACTED] L.M.S.W., dated June 30, 2011. The applicant's spouse also submitted a letter from her

physician [REDACTED] M.D., indicating that she was scheduled for surgery on January 5, 2012 and requested that her husband be present for her recovery. *See letter from Dr. [REDACTED] M.D., dated December 16, 2011.*

The applicant's spouse has demonstrated that the separation from the applicant has caused her to suffer some negative emotional consequences. With the absence of the applicant, the applicant's spouse has been unable to engage in the type of quality day to day married lifestyle that she would prefer to have here in the United States. However, although it may be an ideal situation for the applicant to reside with her in the United States, there is insufficient evidence provided to demonstrate that this separation has in fact caused the applicant's spouse more emotional turmoil than that which would be expected during a long term separation from a loved one during a period of inadmissibility. There was also no evidence provided regarding other possible ties the applicant's spouse maintains with family or friends in the United States which could offer her some emotional support during an immediately exigent time such as recovery from surgery. The applicant's spouse further indicated that she is the sole financial source for her family's expenses. However, no documentary evidence was supplied to illustrate that the applicant is unable to provide income, or that the funds supplied by the qualifying relative spouse caused her a financial hardship at any time during the periods of separation or would somehow cause such a hardship in the future.

While we acknowledge the assertions of the applicant's spouse that she may experience some emotional and economic difficulties based on continued separation from the applicant if he remains in Turkey and she resides in the United States, there is insufficient evidence in the record to demonstrate that these issues would rise to the level necessary for a finding of extreme hardship at this time.

In addition, although the applicant's spouse indicated that she would find it more than challenging to relocate to Turkey she has not offered sufficient evidence to support these assertions. In the letter from the psychotherapist referred to previously, it was noted that the applicant's spouse would have a difficult time adjusting to life in Turkey due to cultural and religious differences. *See [REDACTED] letter, supra.* However, the applicant's spouse also indicated that she had been in Turkey for extended periods of time with the applicant and offered no evidence to support the notion that she faced any particular problems within the country during those periods. Therefore, there is insufficient evidence to illustrate that she would in fact have unusual religious or cultural challenges were she to relocate at present to live with the applicant. In addition, the AAO again acknowledges the applicant's spouse's indication that she must remain in the United States to care for her long-time patient and that they have become emotionally attached. While it may be a great relief for her patient to have continued care from the applicant's spouse it has not been sufficiently shown through the evidence submitted that the relocation of the applicant's spouse would cause the qualifying relative offered in this case, to suffer extreme hardship.

Moreover, although the applicant's spouse indicated that she is unable to leave her patient and does not want to lose her working conditions, as previously indicated she did in fact go to stay with her husband in Turkey for extended periods of time while also working in the same position. The applicant's spouse does not indicate that she suffered significant emotional hardship during those

times of separation from her patient, or that she tried and failed to obtain sufficient employment while in Turkey. In this case, the applicant has not demonstrated that his spouse would suffer extreme hardship upon relocation.

A review of the documentation in the record fails to establish the existence of extreme hardship to a qualifying relative. Having found the applicant statutorily ineligible for relief under section 212(a)(9)(B)(v) of the Act, no purpose would be served in discussing whether he merits a favorable exercise 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. 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.