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

U.S. Citizenship and Immigration Services

[redacted]

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DATE: OFFICE: ATHENS FILE [redacted]

IN RE: DEC 1 1 2012 [redacted]

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:

[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.

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 sustained.

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 and seeking readmission within 10 years of her last departure from the United States. The applicant is a beneficiary of an approved Petition for Alien Relative, as a daughter of a U.S. citizen, who seeks a waiver of inadmissibility in order to reside in the United States with her mother.

The Field Office Director concluded that the record failed to establish the existence of extreme hardship for a qualifying relative. The Field Officer Director denied the application accordingly. *See Decision of the Field Office Director,* dated August 2, 2011.

On appeal, counsel for the applicant asserts that the applicant's mother needs the applicant in the United States both emotionally and physically. Counsel further asserts that the applicant's mother cannot relocate to Lebanon to reside with the applicant because of the country conditions in Lebanon and the applicant's mother's ties to the United States.

In support of the waiver application and appeal, the applicant submitted letters of support, medical documentation concerning the applicant's mother, identity documents, Lebanon country conditions reports, and a psychological evaluation of the applicant's mother. 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 applicant entered the United States pursuant to a B-2 visa on November 11, 2001 with authorization to remain in the United States until May 10, 2002. The applicant received an extension of her authorization until August 14, 2002. The applicant remained in the United States beyond that date until her departure on April 3, 2005. Accordingly, she accrued over one year of unlawful presence in the United States, and she is inadmissible under section 212(a)(9)(B)(i)(II) of the Act. The applicant does not contest her inadmissibility on appeal.

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 mother. 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 record reflects that the applicant is a 52 year-old native and citizen of Lebanon. The applicant's mother is a 73 year-old native of Lebanon and citizen of the United States. The applicant is currently residing in Lebanon and the applicant's mother is residing in Granada Hills, California.

Counsel for the applicant asserts that the applicant's mother needs the applicant in the United States because she needs her assistance in caring for her medical conditions. Counsel further asserts that the applicant's mother is also emotionally suffering due to separation from the applicant. The applicant's mother asserts that she needs the applicant with her for emotional support and to act as a caregiver. The record contains evidence of the applicant's mother's ailments, including diabetes mellitus, hypertension, severe depression, and generalized anxiety disorder. A letter from the applicant's mother's physician states that the applicant's mother is currently living alone after the death of her husband and her other daughter's move to Lebanon. According to the applicant's mother's physician, the applicant's mother has declined physically and mentally since these events and needs help from a daily caregiver to prevent further decline

and to assist her with medication compliance and monitoring her symptoms.

The psychological report concerning the applicant's mother states that the applicant's mother can no longer cook for herself and stand up due to severe back pain. The report states that the applicant's sister, who used to care for the applicant's mother, took care of the grocery shopping, cooking, cleaning and chores, drove the applicant's mother around, and assisted her with her showering and dressing. Further, the applicant's sister stated that as the applicant's mother speaks limited English and has a Maronite Catholic conservative upbringing, she would need a caregiver who speaks Lebanese Arabic and would not feel comfortable being dressed by a stranger. The applicant's brother submitted a letter stating that he is busy with his family and business so that he cannot provide the applicant's mother the kind of care that she requires. In the aggregate, there is sufficient evidence in the record to find that the applicant's mother is suffering from a level of hardship beyond the common results of inadmissibility or separation from her.

The applicant's mother asserts that she cannot relocate to Lebanon to reside with the applicant because she would have to leave behind her husband's grave, which she regularly visits two times every week. The applicant's mother also asserts that she would have to leave behind her son and grandchild if she relocated to Lebanon, in addition to the medications and health services she receives in the United States. The applicant's mother contends that she could not afford medications if she returned to Lebanon. It is noted that the record contains a letter of support from the applicant's brother indicating that he used to reside with the applicant's mother before his marriage and that he is able to help her once or twice a week.

The applicant's mother also asserts that it would be dangerous for her to return to Lebanon because of the instability of the political situation in that country. It is noted that the Department of State has issued travel warnings concerning Lebanon, dated September 17, 2012, stating that all U.S. citizens should avoid travel to Lebanon because of current safety and security concerns. In this case, the record contains sufficient evidence to show that the hardships faced by the applicant's mother, in the aggregate, would rise to the level of extreme hardship if she relocated to Lebanon.

Considered in the aggregate, the applicant has established that her mother would face extreme hardship if her waiver request is denied. Extreme hardship is a requirement for eligibility, but once established it is but one favorable discretionary factor to be considered. *Matter ofMendez-MoraleZy* 21 I&N Dec. 296, 301 (BIA 1996). For waivers of inadmissibility, the burden is on the applicant to establish that a grant of a waiver of inadmissibility is warranted in the exercise of discretion. *Id.* at 299. The adverse factors evidencing an alien's undesirability as a permanent resident must be balanced with the social and humane considerations presented on her behalf to determine whether the grant of relief in the exercise of discretion appears to be in the best interests of this country. *Id.* at 300.

The AAO notes that *Matter of Marin,* 16 I & N Dec. 581 (BIA 1978), involving a section 212(c) waiver, is used in waiver cases as guidance for balancing favorable and unfavorable factors and this cross application of standards is supported by the Board of Immigration Appeals (BIA). In *Matter*

of Mendez-Moralez, the BIA, assessing the exercise of discretion under section 212(h) of the Act, stated:

> We find this use *of Matter of Marin, supra,* as a general guide to be appropriate. For the most part, it is prudent to avoid cross application, as between different types of relief, of particular principles or standards for the exercise of discretion. *Id.* However, our reference to *Matter of Marin, supra,* is only for the purpose of the approach taken in that case regarding the balancing of favorable and unfavorable factors within the context of the relief being sought under section 212(h)(1)(B) of the Act. *See, e.g., Palmer v. INS,* 4 F.3d 482 (7th Cir.1993) (balancing of discretionary factors under section 212(h)). We find this guidance to be helpful and applicable, given that both forms of relief address the question of whether aliens with criminal records should be admitted to the United States and allowed to reside in this country permanently.

Matter of Mendez-Moralez at 300.

In *Matter of Mendez-Moralez*, in evaluating whether section 212(h)(1)(B) relief is warranted in the exercise of discretion, the BIA stated that:

> The factors adverse to the applicant include the nature and underlying circumstances of the exclusion ground at issue, the presence of additional significant violations of this country's immigration laws, the existence of a criminal record and, if so, its nature, recency and seriousness, and the presence of other evidence indicative of an alien's bad character or undesirability as a permanent resident of this country. . . . The favorable considerations include family ties in the United States, residence of long duration in this country (particularly where the alien began his residency at a young age), evidence of hardship to the alien and his family if he is excluded and deported, service in this country's Armed Forces, a history of stable employment, the existence of property or business ties, evidence of value and service to the community, evidence of genuine rehabilitation if a criminal record exists, and other evidence attesting to the alien's good character (e.g., affidavits from family, friends, and responsible community representatives)....

Id. at 301.

The BIA further states that upon review of the record as a whole, a balancing of the equities and adverse matters must be made to determine whether discretion should be favorably exercised. The equities that the applicant for section 212(h)(1)(B) relief must bring forward to establish that he merits a favorable exercise of administrative discretion will depend in each case on the nature and circumstances of the ground of exclusion sought to be waived and on the presence of any additional adverse matters, and as the negative factors grow more serious, it becomes incumbent upon the applicant to introduce additional offsetting favorable evidence. *Id.* at 301.

The favorable factors include the extreme hardship the applicant's mother would experience whether she remained in the United States, separated from the applicant, or accompanied the applicant in Lebanon, as well as hardship to the applicant's U.S. citizen and lawful permanent resident relatives, and the applicant's apparent lack of a criminal record. The unfavorable factors in this matter include the applicant's unlawful presence in the United States.

Although the applicant's violations of immigration law cannot be condoned, the positive factors in this case outweigh the negative factors. In these proceedings, the burden of establishing eligibility for the waiver rests entirely with the applicant. *See* section 291 of the Act, 8 U.S.C. §1361. In this case, the applicant has met her burden and the appeal will be sustained.

ORDER: The appeal is sustained. The waiver application is approved.