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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**



tlg

DATE: JUN 18 2012

Office: ATHENS

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:

SELF-REPRESENTED

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 establishes that the applicant, a native and citizen of Egypt, was admitted to the United States using a B-2 visitor's visa sometime in July 2001 for an unspecified temporary period, overstayed, and lived here until July 19, 2008, when he voluntarily departed. As a result, he 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. The applicant does not contest this finding of inadmissibility. Rather, he is seeking a waiver of inadmissibility in order to reside in the United States with his U.S. citizen spouse.

The field office director concluded the applicant had failed to establish that extreme hardship would be imposed on a qualifying relative and, accordingly, denied the Application for Waiver of Ground of Inadmissibility (Form I-601). *Decision of the District Director*, April 19, 2010.

On appeal, the applicant seeks to remedy deficiencies identified in his waiver denial by providing new documentary evidence including medical records, financial information, and an updated hardship letter from his wife. The entire record was reviewed and considered in rendering this decision.

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.

....

(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 Attorney General (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...

A waiver of inadmissibility under section 212(a)(9)(B)(v) 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 or his child can be considered only insofar as it results in hardship to a qualifying relative. The applicant's U.S. citizen 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 applicant has established extreme hardship to a qualifying relative. 22 I&N Dec. 560, 565 (BIA 1999). 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; the Board added that not all of these factors need be analyzed in any given case and emphasized that the list is 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, while 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, or cultural readjustment 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, although 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)); conversely, *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 case-by-case whether denial of admission would result in extreme hardship to a qualifying relative.

The record reflects that the applicant departed the country on July 19, 2008, after about six years of unlawful presence. His wife, the qualifying relative, appears to have travelled with him to Egypt, where she filed a spousal Petition for Alien Relative (Form I-130) on February 9, 2009 based on her marriage to the applicant in New Jersey. After a consular officer identified the applicant's unlawful presence during his August 27, 2009 immigrant visa interview, the applicant and his wife sought an inadmissibility waiver the denial of which is the subject of this appeal.

The applicant's wife contends she will suffer physical, emotional, and financial hardship if the applicant is unable to reside in the United States. She claims to have type 2 diabetes, hypertension, asthma, and allergies. Although the record contains prescription receipts and a one-line diabetes diagnosis on a prescription blank, the record contains no evidence explaining in nonmedical terms the seriousness, prognosis, or treatment of the qualifying relative's diabetes and no medical diagnosis of her other claimed medical conditions. The emotional hardship claim focuses on the qualifying relative's assertion that she suffers from depression due to separation from the applicant, as well as from having become a single parent to their two children as a result. There is no documentary evidence establishing this claim and the only mention of it on record is in the applicant's wife's hardship statements. Absent an explanation in plain language from a treating physician or mental health provider of the exact nature and severity of any condition and a description of any treatment or family assistance needed, the AAO is not in the position to reach conclusions concerning the severity of a medical or psychological condition or the treatment needed. Therefore, the evidence on record is insufficient to establish that a qualifying relative suffers from the conditions claimed.

Regarding the financial hardship caused by the separation, the applicant's wife claims to be dependent on the applicant for economic support. She asserts that her parents and in-laws are unable to assist her financially. The only financial documentation on record consists of eviction notices for each of her parents and documentation showing her father's receipt of what she states is a cash benefit from social services. Except for the prescription drug receipts noted, the record contains no receipts, bills, or other documentation of any payments made or liabilities owed to substantiate this claim. There is no indication what wages or economic support either the applicant or his wife have ever contributed to the household. The only reference to earnings is in the applicant's wife's statement while living in Egypt that her husband was working several jobs and such long hours that he saw little of his family. We note that she also claims the applicant has significant assets, asserts

she had no financial worries when he was in the United States, and reports that he is saving his earnings in Egypt to fund a business they plan to start when he is allowed to return. Such information suggests that the applicant is able to support himself in Egypt, is not a financial burden on his wife, and has resources to contribute to his family. Therefore, the evidence falls short of establishing particularly harsh consequences beyond those commonly or typically associated with separation of husband and wife.

For all these reasons, the cumulative effect of the physical, emotional, and financial hardships the applicant's wife is experiencing due to her husband's inadmissibility does not rise to the level of extreme. The AAO concludes based on the evidence provided that, were his wife to remain in the United States without the applicant due to his inadmissibility, she would not suffer extreme hardship beyond those problems normally associated with family separation.

The qualifying relative contends that she would experience hardship if she relocated abroad to reside with the applicant. Regarding ties to the United States, the record shows the applicant's wife and two children with the applicant were born here, and she claims her entire extended family is in the United States. There is little evidence on record regarding her claimed U.S. family ties, support network, or future plans. Although the Egypt Country Specific Information on the website of the U.S. Department of State (DOS) confirms that medical care falls short of U.S. standards, the applicant has not established that his wife suffers from a condition for which adequate treatment would be unavailable. However, the record shows that the applicant's wife has attempted to live in Egypt, but encountered obstacles that caused her to return to the United States.

Based on her experience after moving with her children to Egypt to live with the applicant pending his permission to return to the United States, the applicant's wife asserts being unable to survive there. Her statements establish that she left Egypt for several reasons, including a particular sensitivity to being a Christian married to a Muslim in a predominantly Muslim country. She reports experiencing culture shock and language barriers, gender and religious discrimination, unhealthy environmental conditions, dangerous transportation, and unhealthy conditions. She also worried about the security situation in Egypt. The DOS country condition information dated February 24, 2012 confirming her concerns about discrimination, pollution, and road safety also notes the bombing of a church as an example of a terrorist event. A March 29, 2012 DOS Travel Alert reports that the fluid political situation has led to violent clashes between police and demonstrators resulting in death, injuries, and property damage.

Regarding the impact on a qualifying relative of relocating abroad, the record reflects that the applicant's wife has strong ties to the United States, where she has lived her entire life, including family, language, and access to quality health care. We note that the U.S. government has deemed Egypt potentially dangerous due to political unrest; problematic for U.S. citizen women due to increasing reports of "domestic violence, sexual harassment, verbal abuse, and rape;" and lacking U.S.-standard medical care. Based on a totality of the circumstances, the AAO concludes the applicant has established that his wife would suffer extreme hardship were she to relocate abroad to reside with the applicant.

The documentation in the record, when considered in its totality, reflects that although the applicant has established that his wife would suffer extreme hardship were she to relocate abroad to reside with the applicant, it fails to establish that she would suffer extreme hardship were she to remain in the United States while the applicant resides abroad. The record demonstrates that the applicant's spouse faces no greater hardship than the unfortunate, but expected, disruptions, inconveniences, and difficulties arising whenever a spouse is removed from the United States or refused admission. Having found the applicant statutorily ineligible for relief, no purpose would be served in discussing whether the applicant merits a waiver as a matter of discretion.

We can find extreme hardship warranting a waiver of inadmissibility only where an applicant has demonstrated extreme hardship to a qualifying relative in the scenario of separation *and* the scenario of relocation. 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*, 20 I&N Dec. 880, 886 (BIA 1994). 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*, 21 I&N Dec. 627, 632-33 (BIA 1996). 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, the burden of establishing that the application merits approval remains entirely with the applicant. Section 291 of the Act, 8 U.S.C. § 1361. The applicant has not met that burden. Accordingly, this appeal will be dismissed.

ORDER: The appeal is dismissed. The waiver application is denied.