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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: **JUN 18 2012**

Office: ATHENS, GREECE

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 Application for Permission to Reapply for Admission into the United States after Deportation or Removal under Section 212(a)(9)(A)(iii) of the Immigration and Nationality Act, 8 U.S.C. § 1182(a)(9)(A)(iii)

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 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. 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), 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 section 212(a)(9)(A)(ii)(I) of the Act, 8 U.S.C. § 1182(a)(9)(A)(ii)(I), as an alien requesting admission within ten years of having been ordered removed from the United States. He is married to a United States citizen. He seeks a waiver of inadmissibility pursuant to section 212(a)(9)(B)(v) of the Act, 8 U.S.C. § 1182(a)(9)(B)(v), and permission to reapply for admission pursuant to section 212(a)(9)(A)(iii) of the Act, 8 U.S.C. § 1182(a)(9)(A)(iii).

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 accordingly denied the Application for Waiver of Grounds of Inadmissibility (Form I-601). Based on her denial of the Form I-601, the Field Office Director denied the Application for Permission to Reapply for Admission into the United States After Deportation or Removal (Form I-212) as a matter of discretion. *Decision of the Field Office Director*, dated February 8, 2010.

On appeal, the applicant addresses the Field Office Director's conclusions and states that his spouse is suffering financially and emotionally due to his inadmissibility, *Form I-290B*, received on March 2, 2010.

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 on January 3, 2000 on a C1/D nonimmigrant visa, valid until January 8, 2000. It further indicates that, thereafter, his stay in the United States was extended until December 28, 2004. On October 12, 2005, the applicant was placed in proceedings and on October 20, 2005, an immigration judge granted him voluntary departure until February 17, 2006. The applicant failed to comply with the grant of voluntary departure and was removed from the United States on December 28, 2006. Accordingly, he accrued unlawful presence beginning on December 29, 2004, the day after his extended stay expired, until

October 20, 2005, the date on which the immigration judge granted him voluntary departure. He again began accruing unlawful presence on February 18, 2006, the day after the grant of voluntary departure expired, until he was removed from the United States on December 28, 2006. As the applicant accrued more than one year of unlawful presence and is seeking admission within ten years of his 2006 departure from the United States, he is inadmissible pursuant to section 212(a)(9)(B)(i)(II) of the Act.

The record includes, but is not limited to, statements from the applicant and his spouse; a medical statement pertaining to the applicant's spouse; statements from the Turkish Social Security Organization; a copy of a 2010 collection notice addressed to the applicant's spouse; copies of 2007 billing statements for credit cards belong to the applicant's spouse; a 2006 credit report on the applicant's spouse; statements issued by Turkish government authorities; and documentation relating to the sale of the applicant's spouse's business and firearm in 2007, and her purchase of a BMW in 2006.

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

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. Hardship to the applicant or other family members 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-Moralez*, 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, the AAO considers the totality of the circumstances in determining whether denial of admission would result in extreme hardship to a qualifying relative.

The applicant asserts on appeal that his spouse is suffering financial and emotional hardship as a result of her relocation to Turkey. *Attachment, Form I-290B*. The applicant also asserts that his

spouse is suffering from depression since she moved to Turkey and that she requires long-term cognitive therapy for her depression. He contends that her treatment costs are prohibitive as he and his spouse have no social rights or health insurance in Turkey. The applicant also maintains that he and his family are struggling financially because he has lost his job and that his spouse has never worked in any business in Turkey. The applicant also reports that he has been the subject of telephonic threats since he returned to Turkey.

The applicant's spouse also asserts that she and the applicant are experiencing financial difficulties in Turkey. She states that she and the applicant cannot afford to take their son to the dentist because he is a U.S. citizen and they must pay for any dental treatment he receives, which is very expensive. She also contends that their son wants to go to school in the United States, and that she and the applicant want him to grow up with U.S. laws, culture and religion. The applicant's spouse further indicates that she and the applicant have received telephonic threats. *Statement of the Applicant's Spouse*, received September 28, 2009.

To demonstrate that his spouse is experiencing emotional hardship in Turkey, the applicant has submitted a February 20, 2010 statement from psychiatrist [REDACTED], who reports that the applicant's spouse is suffering from major depression. [REDACTED] indicates that the applicant's spouse's symptoms include asthenia, dullness, loss of energy, poor appetite, and anhedonia, and that she is also experiencing difficulty in making decisions and a loss of self-confidence. He describes the medications he has prescribed for the applicant's spouse, and recommends that she remain on medication for the long-term while seeking cognitive psychotherapy. *Statement of [REDACTED]*, dated February 20, 2010.

The AAO notes that [REDACTED] evaluation of the applicant's spouse's mental health is limited to a single paragraph. Therefore, while the input of any mental health professional is respected and valuable, the report fails to provide discussion of the applicant's spouse's symptoms, their severity or how they have affected her ability to function. Accordingly, the evaluation is of limited evidentiary value to a determination of extreme hardship.

In support of the applicant's claim of economic hardship, the AAO notes that the record contains a copy of minutes from the Directorate of Tax Administration of Adana that indicate the applicant "gave up" a retail business selling dried nuts, fruits, beverages and tobacco in April 2009. It also includes a copy of a February 16, 2010 statement issued by the 2nd Regional Office of Title Deed Registry in response to a request of the same date made by the applicant that indicates property owned by the applicant was sold on December 14, 2009. The record also contains statements issued by the Turkish Social Security Organization on February 25, 2010, that indicate neither the applicant nor his spouse is registered for social insurance in Turkey.

While the AAO notes this documentation, we do not find it to support the applicant's claims that he has lost his job as a result of "the economic crisis," that he and his spouse cannot afford her medical treatment, or that they are experiencing general financial hardship. The record fails to document the applicant's claim that he has lost the job indicated on the immigrant visa petition filed by his spouse

on March 31, 2009. Going on record without supporting documentation is not sufficient to meet the applicant's burden of proof in this proceeding. *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)). Moreover, in the questionnaire filled out by the applicant at the time of his consular interview, the applicant offered a significantly more positive picture of his and his spouse's financial circumstances, indicating that he had insurance; owned two homes, as well as a market that he was renting out; and that he had \$25,000 in a Turkish savings account. Without additional documentary evidence of the applicant's financial resources or the lack thereof, and his financial obligations, the AAO cannot determine the financial impact of relocation on the applicant's spouse.

The record also includes a complaint filed by the applicant on February 25, 2010 with [REDACTED] in which he reports that he has received telephonic death threats from an unknown person during the preceding month. The applicant filed a similar complaint on July 2, 2007, with [REDACTED] asserting that he had received an anonymous telephonic threat in January 2007. The AAO acknowledges these complaints, but notes that the record also indicates that the Chief Public Prosecutor in [REDACTED] opened an investigation into the applicant's complaint on the day it was filed. Accordingly, the AAO finds the record to indicate that the local authorities have initiated steps to ensure the applicant's and his family's safety.

The applicant's spouse also asserts that her son is eager to attend school in the United States and that she and the applicant want him to grow up with U.S. laws, culture and religion. As discussed above, however, children are not qualifying relatives in this proceeding, and, as such, any hardship they may experience due to an applicant's inadmissibility is considered only to the extent that it affects the qualifying relative. In the present case, the record fails to provide country conditions information to indicate how the applicant's child would be harmed by growing up in Turkey or to demonstrate any resulting hardship for his mother, the only qualifying relative.

Having considered the asserted hardship factors, the AAO finds that, even when considered in the aggregate, they do not establish that the applicant's spouse would experience hardship beyond that commonly created by relocation. Accordingly, the record does not demonstrate that the applicant's spouse would experience extreme hardship if she remains in Turkey with the applicant.

With regard to hardship upon separation, the applicant asserts that his spouse has an outstanding bank loan and credit card debt. The applicant's spouse states that she and the applicant opened a restaurant when he was living in the United States and that she had to sell it because she could not run it without him, causing her financial difficulties. She notes that she had to turn in her BMW and sell her gun. She also maintains that she was unable to pay her credit card debt after applicant left for Turkey and that her credit is really bad now.

The record includes a February 8, 2010 debt collection notice issued by [REDACTED] that indicates the applicant's spouse has an unpaid balance of \$825.47 on her JC Penny's card. It also contains a July 12, 2006 report from CIS Information Services that establishes the applicant's spouse then owed \$140,875 on a mortgage, had \$32,356 in auto loans and faced

credit card debt of \$5,794. The applicant has also submitted copies of several 2007 credit card billings statements, documentation relating to his spouse's 2007 sale of her pizza business for \$44,000, and a July 5, 2007 DPS-3-C, Sale of Transfer of All Firearms, issued by the Connecticut Department of Public Safety that relates to her sale of a firearm.

The submitted documentation from 2006 and 2007, particularly the CIS Information Services report, establishes that prior to and immediately after the applicant's removal, the applicant's spouse faced a number of significant financial obligations. It does not, however, demonstrate the applicant's spouse's financial circumstances at the time the appeal was filed in 2010. The only documentation provided concerning the applicant's spouse's current financial situation is the 2010 debt collection notice for [REDACTED], which is insufficient proof that the applicant's spouse would face significant debt if she returns to the United States. Moreover, as previously discussed, the record does not establish the applicant's financial circumstances in Turkey and, therefore, that he would be unable to assist his spouse in meeting any financial obligations she might have if she returns to the United States.

The applicant's spouse also asserts that the applicant and their son are very close, and that she cannot think of her son without his father. She states that she believes that the applicant would become depressed if he is separated from her and their son.

The AAO acknowledges that both the applicant and his son would experience emotional hardship if the applicant's spouse returns to the United States and they are separated as a result. However, as already discussed, neither the applicant nor his son are qualifying relatives in this proceeding and the record does not demonstrate how any emotional hardship they would experience as a result of separation would affect the applicant's spouse, the only qualifying relative.

The record does not articulate any other basis on which separation would create hardship for the applicant's spouse. Accordingly, the AAO finds that the record does not contain sufficient evidence to establish that the applicant's spouse would suffer extreme hardship if the applicant's waiver application is denied and she returns to the United States.

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 would experience extreme hardship if he is refused admission. The AAO therefore finds that the applicant has failed to establish eligibility for a waiver 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.

The AAO notes that the Field Office Director also denied the applicant's Form I-212 in the same decision. *Matter of Martinez-Torres*, 10 I&N Dec. 776 (reg. Comm. 1964) held that an application for permission to reapply for admission is denied, in the exercise of discretion, to an alien who is mandatorily inadmissible to the United States under another section of the Act, and no purpose would be served in granting the application. As the applicant is inadmissible under section 212(a)(9)(B)(i)(II) of the Act, no purpose would be served in considering the applicant's Form I-212.

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.