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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

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



H6

DATE: **MAR 30 2012**

OFFICE: ATHENS

FILE:

IN RE:

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:



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,

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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 reflects that the applicant is a native and citizen of Turkey who entered the United States without admission or parole on January 17, 1999. He was granted voluntary departure before an immigration judge on July 2, 2004, and departed the United States on August 23, 2004. The applicant accrued unlawful presence in the United States from January 17, 1999 until his grant of voluntary departure on July 2, 2004. The applicant 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 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.

The Field Office Director concluded that the record failed to establish the existence of extreme hardship for a qualifying relative and denied the application accordingly. *See Decision of the Field Office Director*, dated November 12, 2009.

On appeal, the applicant's spouse asserts that if she relocated to Turkey, she would leave behind her family with whom she resides. She states that she takes care of her family and they take care of her, including supporting her with OCD. The applicant's spouse also contends that she needs the applicant in the United States because she is unmotivated due to separation from her husband. She further states that she needs her husband to support her financially.

In support of the waiver application and appeal, the applicant submitted a letter and affidavit from his spouse, a letter concerning the applicant's psychological state, financial documentation, documents concerning the applicant's spouse's education, and legal documentation. The entire record was reviewed and considered in rendering a decision on the appeal.

Section 212(a)(9)(B) of the Act, in pertinent part, provides:

(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 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 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. No court shall have jurisdiction to review a decision or action by the Attorney General regarding a waiver under this clause.

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.

In the present case, the record reflects that the applicant is a thirty-four year-old native and citizen of Turkey. The applicant's spouse is a twenty-seven year-old native of Turkey and citizen of the United States. The applicant is currently residing in Turkey and the applicant's spouse is currently residing in Bridgeport, Connecticut.

The applicant's spouse asserts that she is unemployed and that part of the reason she cannot find a job is due to depression, based on separation from the applicant. The applicant's spouse also asserts that she put off her education, in part because she doesn't have the joy and hope to complete things in a timely manner. It is initially noted that in her most recent submission, the applicant's spouse indicates that she intends to return to school in the fall. In support of her assertions concerning her mental state, the applicant submitted a letter from a psychologist stating that the applicant's spouse's separation from her husband is creating extreme emotional hardship so that her original OCD issues have become more pronounced. The psychologist also states that the applicant's spouse is frequently unable to focus on school assignments and characterizes her as a needy and dependent person who seeks reassurance and support. However, in the applicant's spouse's most recent letter in evidence, she states that she had OCD symptoms on a visit to Turkey, but that they were much better upon return to the United States. It is noted that the psychologist's letter originates from Fairfield, Connecticut. Further, the applicant's spouse contradicts several claims in the submitted psychologist's letter. Specifically, the applicant's spouse states that her OCD has not interfered with her ability to go to school or work and does not cause her to become needy. Rather, the applicant's spouse states that her OCD can cause panic attacks, which she has learned to control. There is no indication that there is any ongoing medical relationship between the applicant's spouse and the psychologist who submitted a letter in evidence. In fact, the letter does not contain any treatment plan or evidence of a previous meeting between the applicant's spouse and the psychologist. There is no other psychological evidence concerning the applicant's spouse on the record. Prior counsel for the applicant stated that the applicant's spouse visited only one physician for her OCD condition, in Turkey, but was unable to

provide any supporting evidence. Prior counsel for the applicant also states that the psychologist's letter in evidence represents the only medical or mental health professional consulted by the applicant's spouse. It is acknowledged that separation from a spouse nearly always creates a level of hardship for both parties and the record establishes that the applicant's spouse suffers from some level of emotional hardship if he were separated from the applicant. However, the emotional hardship suffered by the applicant's spouse is not so serious that she is unable to function in her daily life. There is insufficient evidence in the record to find that the applicant's spouse is suffering a level of emotional hardship beyond the common results of inadmissibility or removal in separation from the applicant.

The applicant's spouse asserts that she will need her husband to support her and help pay for her education because she is returning to school in the fall. The applicant's spouse contends that she is currently unemployed and that she is depending upon her father for support. It is noted that the applicant's spouse states that she resides with her family and there is no indication that her family will be unable to continue to support her financially through the remainder of her education. Further, the applicant's spouse has prior work experience and there is no indication that she will be unable to gain employment in the future. There is insufficient evidence in the record to find that the applicant's spouse is suffering a level of financial hardship beyond the common results of inadmissibility or removal because of separation from the applicant. Further, courts considering the impact of financial detriment on a finding of extreme hardship have repeatedly held that, while it must be considered in the overall determination, it is not enough by itself to justify an extreme hardship determination. *See INS v. Jong Ha Wang*, 450 U.S. 139 (1981) (upholding BIA finding that economic detriment alone is insufficient to establish extreme hardship).

The applicant's spouse asserts that she cannot relocate to Turkey because her family is in the United States and she is very close to them. According to the applicant's spouse, her family helps her to cope with her OCD and she is afraid of flying from Turkey to the United States, so that she would not be able to see her family as often as she would like. The record does not contain any letters of support from the applicant's spouse's family members or friends in the United States. Accordingly, there is no supporting evidence concerning the nature of the applicant's spouse's relationship with her family members in the United States. It is also noted that the applicant's spouse is a native of Turkey who has traveled back and forth to her native country from the United States. The record reflects that the applicant and his spouse were married in Turkey on July 7, 2005 and prior counsel for the applicant states that she saw a physician in Turkey in May 2008.

The record contains a letter from a psychologist, referenced above, which states that the applicant's spouse does not have the mental stability to separate from her family of origin and relocate to Turkey. However, as noted above, the applicant's spouse has already refuted claims made in this psychologist's letter. The applicant's spouse asserts that if she went to Turkey, she would have to take medication to cope with her OCD. However, there is no supporting evidence for her claims that her OCD symptoms elevated in Turkey or that she took medication for her condition. There is no letter from her physician in Turkey addressing the basis for her claimed elevation in OCD symptoms. There is no evidence that the applicant's spouse is currently receiving any psychological treatment. Further, there is no claim that the applicant's spouse

would be unable to receive psychological treatment if she relocated to Turkey. In addition, there is no indication that the applicant's spouse would be unable to continue her education or seek employment in Turkey. 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)). The record contains insufficient evidence to find that the applicant's spouse would suffer hardship beyond the common consequences of inadmissibility or removal if she relocated to Turkey.

Although the depth of concern and anxiety over the applicant's immigration status is neither doubted nor minimized, the fact remains that Congress provided for a waiver of inadmissibility only under limited circumstances. While the prospect of separation or involuntary relocation nearly always results in considerable hardship to individuals and families, in specifically limiting the availability of a waiver of inadmissibility to cases of "extreme hardship," Congress did not intend that a waiver be granted in every case where a qualifying relationship exists. U.S. court decisions have repeatedly held that the common results of removal are insufficient to prove extreme hardship. *See Hassan v. INS*, 927 F.2d 465, 468 (9th Cir. 1991), *Perez v. INS*, 96 F.3d 390 (9th Cir. 1996); *Matter of Pilch*, 21 I&N Dec. 627 (BIA 1996) (holding that emotional hardship caused by severing family and community ties is a common result of deportation and does not constitute extreme hardship); *Matter of Shaughnessy*, 12 I&N Dec. 810 (BIA 1968) (holding that separation of family members and financial difficulties alone do not establish extreme hardship). "[O]nly in cases of great actual or prospective injury . . . will the bar be removed." *Matter of Ngai*, 19 I&N Dec. 245, 246 (BIA 1984).

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 his U.S. citizen spouse as required under section 212(a)(9)(B)(v) and 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)(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.