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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

**PUBLIC COPY**



H6

DATE: MAY 04 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 (INA), 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.

Thank you,

Perry Rhew

Chief, Administrative Appeals Office

**DISCUSSION:** The waiver application was denied by the Field Office Director, Athens, Greece. A subsequent appeal was dismissed by the Administrative Appeals Office (AAO). The matter is now before the AAO on a motion to reopen and reconsider. The motion will be granted. The previous decisions of the field office director and the AAO will be withdrawn and the application approved.

The record reflects that the applicant is a native and citizen of Lebanon. The applicant was found 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 a period of one year or more and seeking readmission within ten years of his last departure from the United States. The applicant's spouse and two children are U.S. Citizens. He also has two stepchildren in the United States, one of whom resides with his spouse. 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), in order to return to the United States and reside with his family.

The field office director concluded that the applicant had failed to establish that extreme hardship would be imposed on a qualifying relative and the application was denied accordingly. *See Decision of the Field Office Director* dated May 22, 2008. The AAO found that the applicant had established extreme hardship to his spouse upon relocation to Lebanon, but not upon remaining in the United States, and dismissed the appeal. *AAO Decision*, dated March 16, 2010.

On motion, counsel asserts that the applicant's spouse would experience extreme hardship if she remained in the United States. *Motion to Reopen and Reconsider*, filed April 12, 2010.

The record includes, but is not limited to, a medical letter for the applicant's spouse, briefs from counsel, a letter from the applicant's daughter, letters from the applicant's daughter's pediatrician and from her kindergarten teacher, letters from the applicant's spouse and her older son, a letter from the applicant's former employer in the United States, and letters from relatives of the applicant's spouse. The entire record was reviewed and considered in arriving at a decision on the appeal.

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 Secretary, 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.

The record reflects that the applicant resided in the United States from November 1999 to April 2007, when he returned to Lebanon. The applicant submitted an application to Register Permanent Residence or Adjust Status (Form I-485) on October 25, 2002 and indicated that he had been paroled into the United States, but the record contains no documentation indicating the applicant was inspected and paroled. The application for adjustment of status was withdrawn on April 15, 2004. Therefore, the applicant accrued unlawful presence in excess of one year and is inadmissible under section 212(a)(9)(B)(i)(II) of the Act as he is seeking readmission within ten years of his last 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 or her child 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 AAO notes that in our March 16, 2010 decision we found that the applicant had demonstrated extreme hardship to his spouse if she relocated to Lebanon. Therefore, in this proceeding we will only consider hardship to the applicant’s spouse should she remain in the United States.

Counsel states that the applicant’s spouse has had trouble being a single mother and making ends meet; she relies on food stamps to feed herself and her children; she faces losing her home if she is unable to pay the property taxes and water bill; she has recently sought medical treatment; her 19-year-old son lives with her; her daughter is in Lebanon with the applicant and her daughter has a close relationship to the applicant; bringing their daughter back to the United States would not necessarily cure her anxiety; and the applicant’s spouse cannot go to Lebanon due to financial and safety issues.

In an April 8, 2010 affidavit, the applicant’s spouse states that she has not seen her daughter for three years; she cannot afford to travel to Lebanon to bring her back and her daughter is too young to travel by herself; she has to provide financial support and emotional stability for her son; she cannot

eat or sleep and has lost 40 pounds; she cannot go to work as she does not have a lot of family nearby and she cannot leave her four-year-old son with others as he has separation anxiety and cries the whole time that she is gone; she can only find minimum wage jobs as she has not worked in a long time; she relies on food stamps to feed her and her four-year-old and 19-year-old sons who live with her; and she has almost lost her house and has not been able to pay her winter property taxes and municipal water bill. The applicant's spouse's older son states that he has become close to the applicant and that his stepsister is attached to the applicant; and he details the applicant's involvement with the family. The applicant's in-laws state that the applicant is a family man and is dedicated to his family.

The applicant's spouse's physician states that she is under his care; she is being treated for severe panic and anxiety attacks; she is under a great deal of stress; and she is in desperate need of the applicant to provide for her and support her. The record includes a prescription bottle label for lorazepam, which is used to treat anxiety or anxiety associated with symptoms of depression, for the applicant's spouse. The record includes a letter from the applicant's former employer in the United States in which they offer him employment upon his return to the United States.

Counsel asserts that the applicant's daughter is suffering hardship due to separation from her mother and states that "the prolonged separation from her mother; and the impossible thought of leaving her father behind have made her physically ill." A 2008 letter from her pediatrician in Lebanon states that the applicant's daughter's health is being affected by her separation from her mother and brothers in the United States, and she cannot understand why her father may not be permitted to return to the United States. The letter states, "[REDACTED] doesn't want to leave her father behind although she is anxious to see her mother and brothers. Please take my opinion, as a pediatrician, in make (sic) a decision on Mr. [REDACTED] waiver." An April 3, 2009 letter states that she suffers from chronic psychological problems, difficulty breathing, a weak immune system and sleep difficulty due to her separation from her mother. A letter from the applicant's daughter's kindergarten teacher states that she cries because she wants to go to the United States to be with her mother and brother, but loves her father dearly and has become quieter in school since learning that he could not go back.

The record reflects that the applicant's spouse is separated from her daughter and her daughter is experiencing serious psychological problems due to separation. The record reflects that bringing her daughter back to the United States would not solve her problems as she would be separated from her father. The record also includes evidence that the applicant's spouse is being treated for severe panic and anxiety attacks and is taking medication. The AAO acknowledges that the applicant's spouse's emotional hardship has been exacerbated by her daughter's problems in Lebanon, and she will be affected by her daughter's problems whether her daughter resides in the United States or Lebanon. Based on these factors, and the normal results of separation, the AAO finds that extreme hardship has been established in the event that the applicant's spouse remains in the United States.

The AAO additionally finds that the applicant merits a waiver of inadmissibility as a matter of discretion. In discretionary matters, the alien bears the burden of proving eligibility in terms of

equities in the United States which are not outweighed by adverse factors. *See Matter of T-S-Y*, 7 I&N Dec. 582 (BIA 1957).

In evaluating whether section 212(h)(1)(B) relief is warranted in the exercise of discretion, the factors adverse to the alien 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 and seriousness, and the presence of other evidence indicative of the 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 alien began 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 or service in 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).

*See Matter of Mendez-Morales*, 21 I&N Dec. 296, 301 (BIA 1996).

The AAO must then, "[B]alance the adverse factors evidencing an alien's undesirability as a permanent resident with the social and humane considerations presented on the alien's behalf to determine whether the grant of relief in the exercise of discretion appears to be in the best interests of the country." *Id.* at 300. (Citations omitted).

The adverse factors in the present case include the applicant's unauthorized period of stay, entry without inspection and unauthorized employment.

The favorable factors for the applicant include his U.S. citizen spouse and children, the absence of a criminal record, extreme hardship to his spouse and good moral character as evidenced in the letters of support.

The AAO finds that the immigration violations committed by the applicant are serious in nature and cannot be condoned. Nevertheless, the AAO finds that taken together, the favorable factors in the present case outweigh the adverse factors, such that a favorable exercise of discretion is warranted. Accordingly, the previous decisions of the field office director and the AAO will be withdrawn and the application will be approved.

**ORDER:** The previous decisions of the field office director and the AAO are withdrawn and the application is approved.