

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



U.S. Citizenship  
and Immigration  
Services



H6

DATE: **OCT 23 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, 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 AAO inappropriately applied the law in reaching its decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen with the field office or service center that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$630. The specific requirements for filing such a motion can be found at 8 C.F.R. § 103.5. **Do not file any motion directly with the AAO.** Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires any motion to 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 Form I-601 waiver application and the Form I-212 application for permission to reapply for admission were concurrently denied by the Field Office Director, Athens, Greece and are now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The record reflects that the applicant is a native of the West Bank who was found by the Board of Immigration Appeals (BIA) to be stateless. The applicant entered the United States on a temporary non-immigrant tourist visa on December 7, 1997 and after extending the visa, was authorized to remain until December 6, 1998. She overstayed her visa and on August 15, 2001 applied for asylum. On April 17, 1992 an immigration judge denied the asylum application but granted voluntarily departure on or before September 16, 2002. The BIA affirmed the denial on July 12, 2004 and granted voluntary departure no later than 30 days from the date of the order. The U.S. Court of Appeals for the Sixth Circuit dismissed the appeal on July 14, 2006 and affirmed the denials by the BIA and the immigration judge. The applicant accrued unlawful presence in the United States from December 7, 1998 to August 15, 2001, a period in excess of one year, and again from July 14, 2006 until she was removed from the United States on June 14, 2007. She 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 removal. The applicant seeks a waiver of inadmissibility under section 212(a)(9)(B)(v) of the Act, 8 U.S.C. § 1182(a)(9)(B)(v), in order to reside in the United States with her U.S. citizen spouse and children. The applicant was found to be additionally inadmissible under section 212(a)(9)(A)(ii) of the Act, 8 U.S.C. § 1182(a)(9)(A)(ii), as an alien ordered removed under section 240 or any other provision of law. The applicant seeks permission to reapply for admission into the United States within 10 years of her removal under section 212(a)(9)(A)(iii) of the Act, 8 U.S.C. § 1182(a)(9)(A)(iii). The record supports the inadmissibility findings, the applicant does not contest inadmissibility, and the AAO concurs that the applicant is inadmissible under sections 212(a)(9)(B)(i)(II) and 212(a)(9)(A)(ii) of the Act.

The Field Office Director determined that the applicant had failed to establish extreme hardship to a qualifying relative. See *Decision of the Field Office Director*, dated February 4, 2011.

On appeal counsel asserts that the applicant's spouse will suffer extreme hardship if the waiver is not granted. See *Form I-290B, Notice of Appeal or Motion*, received February 28, 2011.

The record contains, but is not limited to: Form I-290B and counsel's brief; various immigration applications and petitions; two hardship affidavits; a psychological evaluation and medical-related records; the applicant's spouse's resume and documents related to the West Bank economy; emails from the applicant's children; documents related to the applicant's asylum claim, removal proceedings, arrest and removal; documents related to the applicant's inadmissibility; documentary evidence related to the applicant's spouse's initial marriage to the applicant in December 1995 while he was still married to the U.S. citizen through whom he obtained his permanent residence, documentary records of interviews and sworn statements concerning knowledge by the parties of the apparent bigamous nature of the marriage and admissions by the parties that the applicant's first marriage was entered into solely for the purpose of obtaining

immigration benefits, and a sworn statement by the applicant's spouse asserting that his marriage to the applicant in December 1995 was not the "official date of the marriage" as that might not be valid under U.S. law given that he was not divorced from his first wife until May 3, 1996. The entire record was reviewed and considered in rendering this decision on the appeal.

Section 212(a)(9) of the Act 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.

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 and her children can be considered only insofar as it results in hardship to a qualifying relative. In the present case, the applicant's spouse is the only qualifying relative. 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 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's spouse is a 45-year-old native of the [REDACTED] and citizen of the United States who has two minor children with the applicant, both residing with the applicant in the [REDACTED] since 2007. The applicant's spouse states that he misses his wife and children very much and has been totally lost without his wife who prepared his meals, cleaned his

house, and made it a happy home. The applicant's spouse writes that he has relocated to Houston and taken a new job after being dismissed in February 2009 from his previous employment. He believes his dismissal was "partially due" to his depression and inability to concentrate as a result of separation from his wife and children. No corroborating evidence has been submitted concerning his termination. The applicant's spouse indicates that he has never sought treatment from the psychologist who prepared an evaluation in January 2009 or from any other therapist because he moved and feels that nothing a doctor can do will help him. Instead, he notes on February 22, 2011 that he takes B-Complex pills for his depression. [REDACTED] writes that she interviewed the applicant's spouse the very next day, February 23, 2011, and "reviewed his record, provided case management, and prepared this formal report." [REDACTED] concurs with the January 2009 diagnosis of major depression and asserts that the applicant spouse now agrees to her "strong recommendation for urgent psychopharmacological intervention" and writes that she "facilitated identification of a medical professional in Houston who can prescribe and monitor a trial of antidepressant medication." No corroborating or follow-up documentary evidence has been submitted concerning the prescribing professional's identity, treatment of the applicant's spouse, or the results thereof.

The applicant's spouse expresses concern for his children who have been living in the [REDACTED] since 2007, particularly with regard to their education and his teenage son's health. He notes that they are living with their mother because he cannot work and take care of them at the same time. The applicant's spouse notes that English is his children's first language, they are not fluent in Arabic and they attend "private schools that focus on English" but get little from their courses because they speak better English than their teacher. He contends that his now [REDACTED] was diagnosed with asthma when he was young. No corroborating diagnostic evidence has been submitted. The applicant's spouse states that during one of his recent visits to the [REDACTED] k, [REDACTED] was having trouble breathing so he took him to doctors but "the medical care there is very substandard." No corroborating country conditions evidence has been submitted. He asserts that physicians in the [REDACTED] "know little about the diagnosis and treatment of asthma" and he is worried that [REDACTED] will not get the asthma treatment he needs there. The record contains no documentary evidence that [REDACTED] has required in the past or currently requires the use of inhalers or other treatment for asthma, currently suffers from the disease, or that such treatment is not available in the [REDACTED]. A note handwritten in English on two pages of a prescription pad indicates that [REDACTED] was treated and given medication on February 9, 2011 in connection with breathlessness, cough and sneezing. A separate English-language typed note from a translator (without the original Arabic text) indicates that [REDACTED] was treated for "carneous appendices in top of his nose and speed tiredness" and was "complaining asthma since early age as family said." These documents do not demonstrate that the applicant's son was inappropriately treated and no evidence in the record demonstrates that appropriate medical care is unavailable or inaccessible in the [REDACTED]. The applicant's spouse previously asserted that [REDACTED] was becoming "somewhat of a discipline problem" but submitted no corroborating evidence. He does not address on appeal whether any behavioral concerns persist. [REDACTED] who has never met or interviewed the applicant's children, concludes that it appears clear they are "experiencing extreme hardship," and adds without offering foundation for her expertise that "the excessive dust and lack of central air conditioning [in the [REDACTED]] likely

place him [REDACTED] at a greater risk for medical complications related to his respiratory disease compared to the lifestyle to which he was accustomed living in the U.S.”

The AAO has considered cumulatively all assertions of separation-related hardship to the applicant’s spouse including his emotional and psychological condition and how it has affected his ability to concentrate at work and interact in society; his concerns for his children’s education in the [REDACTED] and for his son’s health and access to proper medical treatment. While the difficulties described are not insignificant, considered in the aggregate, the evidence is insufficient to demonstrate that the applicant’s U.S. citizen spouse would suffer extreme hardship as a result of separation from the applicant for the remainder of her temporary period of inadmissibility.

Addressing relocation-related hardship, the applicant’s spouse states that he has not resided in the [REDACTED] since he was 17-years-old and would feel like a foreigner. He indicates that most of his family members, including his father, mother and three brothers live lawfully in the United States while he has only one sister in [REDACTED] and another in [REDACTED]. The applicant’s spouse explains that he is a mechanical engineer and contends that he has only an extremely slim chance of securing an engineering job in the [REDACTED] which would pay a maximum of \$1,000 per month. [REDACTED] writes that the average income of an experienced engineer in the [REDACTED] is \$12,000, the total number of officially registered engineers there is 13,000, and only 20% of mechanical engineers are working in their field. The applicant’s spouse explains that even if he secures an engineering job he would no longer be able to afford private school tuition for his children. The applicant’s spouse does not specifically address other economic concerns. The AAO notes that the record contains no documentation addressing the housing in which the applicant and her children currently reside and whether they live with family or separately. The record contains no financial documentation demonstrating their current monthly housing expenses, tuition for the children, or any other living expenses from which an objective determination concerning economic hardship could be made.

The AAO has considered cumulatively all assertions of relocation-related hardship to the applicant’s spouse including adjustment to a country in which he has not resided for many years; his lengthy residence in the United States; economic and employment concerns particularly in the field of mechanical engineering; close family ties to the United States – particularly to his father, mother, and three brothers, and ties to fewer family members in the [REDACTED] loss of the specialized employment he enjoys in the United States; and his stated concerns for the education and health of his children. Though not insignificant, considered in the aggregate, the AAO finds that the evidence is insufficient to demonstrate that the applicant’s U.S. citizen spouse would suffer extreme hardship were he to relocate to the [REDACTED] to be with the applicant during the remainder of her temporary period of inadmissibility.

The applicant has, therefore, failed to demonstrate that the challenges her spouse faces are unusual or beyond the common results of removal or inadmissibility to the level of extreme hardship. Accordingly, the AAO finds that the applicant has failed to demonstrate extreme hardship to a qualifying relative. 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 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.

The AAO notes that the Field Office Director denied the applicant's Form I-212, Application for Permission to Reapply for Admission into the United States After Deportation or Removal, (Form I-212) in the same decision denying the applicant's Form I-601 application. The AAO has dismissed the appeal of the Form I-601 application. *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 remains inadmissible under section 212(a)(9)(B)(i)(II) of the Act, no purpose would be served in approving the applicant's Form I-212.

**ORDER:** The appeal is dismissed.