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

(b)(6)

U.S. Citizenship and Immigration Services

Date: DEC 17 2013 Office: ATHENS, GREECE

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 (AAO) in your case.

This is a non-precedent decision. The AAO does not announce new constructions of law nor establish agency policy through non-precedent decisions. If you believe the AAO incorrectly applied current law or policy to your case or if you seek to present new facts for consideration, you may file a motion to reconsider or a motion to reopen, respectively. Any motion must be filed on a Notice of Appeal or Motion (Form I-290B) within 33 days of the date of this decision. **Please review the Form I-290B instructions at http://www.uscis.gov/forms for the latest information on fee, filing location, and other requirements.** *See also* 8 C.F.R. § 103.5. **Do not file a motion directly with the AAO.**

Thank you,

Ron Rosenberg
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 applicant is a native and citizen of Egypt who 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 his last departure from the United States. 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), to reside in the United States with his U.S. citizen spouse.

The Field Office Director concluded that the applicant had failed to establish that extreme hardship would be imposed on a qualifying relative and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) accordingly. *Decision of the Field Office Director,* dated March 22, 2013.

On appeal, counsel contends that the applicant's spouse will suffer extreme hardship if she remains separated from the applicant and submits new evidence to show that the applicant's spouse will suffer extreme hardship if she relocates to Egypt to reside with the applicant.

The record includes but is not limited to: a statement by counsel in support of the appeal; statements from the applicant, the applicant's spouse, and the applicant's step-children; mental-health evaluations for the applicant's spouse, step-daughter and mother-in-law; medical documentation for the applicant's spouse; country-conditions information about Egypt; and letters of reference. The entire record was reviewed and considered in rendering a decision on the appeal.

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

> (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.

The record indicates that the applicant entered the United States with a nonimmigrant tourist visa on October 13, 2000, and was authorized to stay in the United States until April 12, 2001. The applicant did not depart the United States when his period of authorized stay expired. The applicant married his first wife on November 2, 2002, and filed an Application to Register Permanent Residence or Adjust Status (Form I-485) on December 18, 2002. Thus, the applicant accrued

unlawful presence in the United States from April 12, 2001 to December 18, 2002, a period in excess of one year.

The applicant was placed in immigration proceedings on April 1, 2003, for remaining in the United States beyond his period of authorized stay. The applicant then failed to appear for a scheduled interview in relation to his Form I-485 application, and the Form I-485 was denied on September 16, 2005. On June 13, 2006, an immigration judge ordered the applicant removed from the United States. On November 8, 2007, the Board of Immigration Appeals (BIA) dismissed the applicant's appeal. The applicant divorced his first wife on August 15, 2008. The applicant married his current wife on September 29, 2008, and filed his second Form I-485 on November 27, 2009. The applicant was removed from the United States on March 1, 2010. Thus the applicant also accrued over a year of unlawful presence in the United States between September 16, 2005, the date his initial Form I-485 was denied, and March 1, 2010, the date he was removed. The applicant does not contest his inadmissibility.

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 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. Although the applicant submits evidence of hardship to his U.S. citizen step-children resulting from his inadmissibility, under this provision of the law, children are not deemed to be qualifying relatives. Though children are not qualifying relatives under this statute, U.S. Citizenship and Immigration Services (USCIS) does consider that a child's hardship can be a factor in the determination whether a qualifying relative experiences extreme hardship. 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 BIA 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 BIA 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 BIA 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 BIA 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 1292, 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.

Counsel contends that the applicant's spouse is suffering psychological hardship on account of her separation from the applicant. The record includes a medical receipt dated November 18, 2010,

indicating that the applicant's spouse consulted a psychologist for depression eight months after the applicant was removed from the United States. A letter from the applicant's spouse's family doctor on November 4, 2011, indicates that she was being treated for depression. The record shows that on April 3, 2013, the applicant's spouse was admitted to the hospital for panic and anxiety attacks. The applicant's spouse subsequently consulted both a psychiatrist and a psychologist. The psychiatrist's report indicates that the applicant's spouse is suffering from major depressive disorder, post-traumatic stress disorder (PTSD), and panic disorder. The psychologist's report is consistent with the psychiatrist's report; the psychologist, however, adds that the applicant's spouse also has panic disorder with agoraphobia. Both the psychiatrist and the psychologist state that the applicant's spouse's mental conditions are exacerbated due to her separation from the applicant.

The record also contains a psychological evaluation for the applicant's step-daughter, who was sexually assaulted by her uncle. The applicant's step-daughter was diagnosed with adjustment disorder with mixed anxiety and depressed mood. While the applicant's step-daughter is no a qualifying relative under the provisions of section 212(a)(9)(B)(v) of the Act, USCIS considers a child's hardship a factor in determining whether a qualifying relative experiences extreme hardship. The psychologist report indicates that the applicant's spouse's mental conditions are further exacerbated by the traumatic experience suffered by the applicant's step-daughter and the step-daughter's current psychological condition.

The record shows that the applicant's spouse has been undergoing psychological treatment since 2010 and that she has been prescribed with antidepressants, anti-anxiety medication, and anti-insomnia medication, establishing that the applicant's spouse is suffering psychological hardship.

The applicant's spouse states that she needs the applicant's income to support herself and her children and that she will suffer from financial hardship if the applicant's waiver application is not approved. Financial documentation, including copies of federal income tax returns, indicates that the applicant contributed to the household's family income through his employment as a limousine driver prior to his removal. While the record shows that the applicant's spouse is currently employed as a marketing representative, the applicant's spouse states that she has been unable to concentrate fully on her work due to her depression and has been forced to take leave as a result. The record includes evidence that the applicant's spouse took a leave of absence twice: 14 days in 2011 and one month in 2013. A psychiatric report states that the applicant's spouse's depression and anxiety symptoms interfere with her overall functioning, including her ability to work. A co-worker indicates that the applicant's spouse became depressed and sad after the applicant was removed and that her physical appearance and work habits have declined. Additionally, according to work-production reports from the applicant's spouse's employer, her productivity has decreased and her work now contains errors. The applicant's spouse states that she is concerned that she will lose her job due to her mental-health problems.

The record includes evidence of medical conditions suffered by the applicant's spouse. A letter from the applicant's spouse's family physician states that the applicant's spouse suffers from obesity, hypertension, arrhythmia, fibromyalgia, arthritis, and severe migraines.

The record establishes that the applicant's spouse is experiencing psychological, medical, and financial hardships that are related to the applicant's absence. Her hardship, which the record shows intensified after the applicant's removal, has affected her day-to-day functioning professionally and psychologically. These hardships, when considered in the aggregate, are beyond the common results of removal and would rise to the level of extreme hardship if she remains in the United States without the applicant.

With respect to hardship the applicant's spouse would experience if she were to relocate to Egypt, counsel asserts that Egypt has been plagued with social turmoil, civil unrest, and constant threats of violence, and the applicant's spouse would live in constant fear for her life and safety there. The AAO notes that the U.S. Department of State has issued a travel warning for Egypt, which states that the State Department warns U.S. citizens to defer travel to Egypt and U.S. citizens living in Egypt to depart at this time because of the continuing political and social unrest. *See Travel Warning-Egypt, U.S. Department of State*, dated August 15, 2013.

The applicant's spouse also asserts that she cannot relocate to Egypt because of her family ties to the United States. Though her children are adults, she fears she would be abandoning them if she left the United States, because their biological father maintains no contact with them and their other family connections are limited. She also expresses concern about leaving her mother, age 71, alone, because of her mother's psychological and medical problems, which became exacerbated after her daughter was abused and she became estranged from her maternal relatives. Evidence in the record corroborates claims that the applicant's mother-in-law has multiple psychological and medical problems, including depression and Alzheimer's disease, that she lives with his spouse, and that his spouse is the only family member who assists her.

Based on the evidence on the record, the applicant has established that his spouse would suffer hardship if she were to relocate to Egypt based upon her strong ties to the United States, lack of ties to Egypt, and safety concerns were she to reside in Egypt with the applicant. The applicant's spouse entered the United States in 2001, became a U.S. citizen in 2006, and resided in the United States for over 10 years. The applicant's spouse's mother and children reside with her in the United States, and she alone cares for her elderly mother. Moreover, the applicant's spouse has no ties to Egypt and is unfamiliar with the language and the culture of Egypt. These hardships, when considered in the aggregate, would rise to the level of extreme hardship if the applicant's spouse were to relocate to Egypt.

The AAO thus finds that the situation presented in this application rises to the level of extreme hardship. However, the grant or denial of the waiver does not turn only on the issue of the meaning of "extreme hardship." It also hinges on the discretion of the Secretary and pursuant to such terms, conditions and procedures as she may by regulations prescribe. 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 . . . 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-Moralez, 21 I&N Dec. 296, 301 (BIA 1996). The AAO must then, "balance 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 favorable factors in this case are as follows:

- The applicant's U.S. citizen wife lives in the United States, and the record indicates that the applicant's spouse will suffer hardship as a result of her separation from the applicant.
- The applicant is the beneficiary of a Form I-130, Petition for Alien Relative (Form I-130) filed by his spouse.
- Letters of reference submitted by relatives and friends of the applicant.

The AAO recognizes that the applicant's spouse will endure hardship as a result of separation from the applicant. However, the 7th Circuit Court of Appeals held in *Garcia–Lopes v. INS*, 923 F.2d 72 (7th Cir. 1991), that less weight is given to equities acquired after a deportation order has been entered. Further, the equity of a marriage and the weight given to any hardship to the spouse is diminished if the parties married after the commencement of deportation proceedings, with knowledge that the alien might be deported. It is also noted that the Ninth Circuit Court of Appeals, in *Carnalla-Munoz v. INS,* 627 F.2d 1004 (9th Cir. 1980), held that an after-acquired equity, referred to as an after-acquired family tie in *Matter of Tijam*, 22 I&N Dec. 408 (BIA 1998), need not be accorded great weight by the district director in a discretionary determination. Moreover, in *Ghassan v. INS,* 972 F.2d 631, 634-35 (5th Cir. 1992), the Fifth Circuit Court of Appeals held that giving diminished weight to hardship faced by a spouse who entered into a marriage with knowledge of the alien's possible deportation was proper. The AAO finds these legal decisions establish the general principle that "after-acquired equities" are accorded less weight for purposes of assessing favorable equities in the exercise of discretion. In this case the applicant was ordered removed on

June 13, 2006, and the appeal that the applicant filed with the BIA was dismissed on November 8, 2007. The applicant married his current U.S. citizen spouse on September 29, 2008; his spouse entered into the marriage with the knowledge of the applicant's possible removal. The AAO therefore accords factors related to his current spouse diminished weight.

Concerning the applicant's unfavorable factors, the record indicates that the applicant did not depart the United States when his period of authorized stay expired, and he did not apply to extend or change his non-immigrant status. He and his former spouse failed to appear for a scheduled interview concerning the Form I-130 she had filed on his behalf. On June 13, 2006, an immigration judge ordered the applicant removed from the United States. On November 8, 2007, the applicant's appeal was dismissed. On four occasions between October 2009 and January 2010, Immigration and Customs Enforcement (ICE) officials attempted to serve the applicant with Form I-229(a), Warning For Failure to Depart (Form I-229(a)), and after refusing to sign the form the first three times, the applicant signed Form I-229(a) on January 11, 2010.

On January 29, 2010, ICE officers escorted the applicant to John F. Kennedy International Airport to remove him to Egypt. The record indicates that the applicant initially refused to exit the van and subjected the ICE officers to verbal abuse. After the applicant voluntarily exited the van, in the departure area the applicant then refused to board the airplane. The record indicates that the applicant issued a threat, stating, "I will do something to this plane while in the air." The pilot refused to allow the applicant to board the plane, and the applicant was returned to ICE detention. The applicant subsequently was removed from the United States on March 1, 2010.

The unfavorable factors in this case are as follows:

- The applicant remained in the United States after his initial period of authorized stay expired on April 12, 2001 without extending his stay or applying for a change of status.

- Although the applicant was the beneficiary of a Form I-130 filed by his first U.S. citizen wife, the applicant and she failed to appear for a scheduled interview in pursuit of that application.

- The applicant did not depart the United States after being ordered removed by an immigration judge and after his appeal was denied by the BIA.

- The applicant refused to depart the United States on January 29, 2010, initially by refusing to leave the ICE van, and then by threating to "do something" to the airplane if he were forced to board the plane.

Thus, while the AAO acknowledges the hardship that the applicant's spouse will face as a result of a denial of the applicant's waiver request, it does not find the favorable factors in the present matter to outweigh the negative and will not favorably exercise the Secretary's discretion.

In discretionary matters, the applicant bears the full burden of proving his or her eligibility for discretionary relief. *See Matter of Ducret,* 15 I&N Dec. 620 (BIA 1976). Here, the applicant has not met that burden.

ORDER: The appeal is dismissed.