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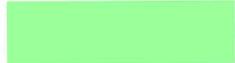
U.S. Department of Homeland Security  
U.S. Citizenship and Immigration Services  
Office of Administrative Appeals MS 2090  
20 Massachusetts Avenue NW  
Washington, DC 20529-2090  
**U.S. Citizenship  
and Immigration  
Services**



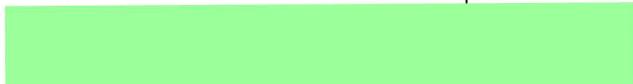
DATE: **FEB 01 2013**

Office: ATHENS, GREECE

FILE:



IN RE: Applicant:



APPLICATION:

Application for Waiver of Grounds of Inadmissibility pursuant to section 212(a)(9)(B)(v) of the Immigration and Nationality Act, 8 U.S.C. § 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) of the Immigration and Nationality Act, 8 U.S.C. § 1182(a)(9)(A).

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.

Thank you,

*f. Ron Rosenberg*

Ron Rosenberg  
Acting Chief, Administrative Appeals Office

**DISCUSSION:** The applications were denied by the Field Office Director, Athens, Greece, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained.

The applicant is a native of Egypt who was found to be 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 more than one year and seeking readmission within 10 years of his last departure from the United States, and section 212(a)(9)(A)(ii) of the Act, 8 U.S.C. § 1182(a)(9)(A)(ii), for seeking admission within 10 years of his removal. The applicant seeks a waiver of inadmissibility in order to reside in the United States with his U.S. citizen spouse and daughter.

The Director concluded that the applicant had failed to demonstrate extreme hardship to his qualifying spouse and denied the application accordingly. *See Decision of Field Office Director*, dated December 1, 2011.

On appeal, the qualifying spouse asserts that she has experienced extreme hardship since the applicant was removed to Egypt. She states that she has no income and relies on donations and government assistance to support herself and her two children. She also claims that she suffers from serious medical problems for which she has undergone surgeries. She states that her illnesses have caused her pain and disabilities and have made it very difficult for her to care for her children.

The record includes, but is not limited to: statements from the qualifying spouse; letters from the qualifying spouse's son, mother, father, ex-husband, and former mother-in-law; letters of recommendation for the applicant; medical records relating to the qualifying spouse; and financial and employment records. Although the qualifying spouse indicated in her letter of April 25, 2012 that she intended to file a brief with additional documentation, as of the date of this decision no additional evidence has been filed. Therefore, the record will be considered complete. The entire record was reviewed and considered in rendering a decision on the appeal.

Section 212(a)(9) 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.

.....

(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.

In the present case, the record reflects that the applicant entered the United States without inspection in 1995. On November 10, 1996, he married a U.S. citizen, [REDACTED] who filed a Form I-130, Petition for Alien Relative, on his behalf. The applicant also filed a Form I-485, Application to Register Permanent Residence or Adjust Status, on June 26, 1997. The Form I-130 and Form I-485 were denied on July 24, 2002 due to the applicant's failure to appear for a scheduled interview. On June 20, 2003, the applicant was arrested and placed in removal proceedings. On September 16, 2003, he received an order of voluntary departure with instructions to leave the United States by January 14, 2004. The applicant failed to depart by that date so the voluntary departure order became an order of removal.

On November 7, 2003, the applicant divorced [REDACTED]. On May 6, 2004, he married [REDACTED]. On July 12, 2006, the applicant was arrested and on November 29, 2006 he pled guilty to Failure to Depart in violation of 8 U.S.C. § 1253. He remained in custody until his removal to Egypt on May 25, 2007. Therefore, the applicant accrued one year or more of unlawful presence and is inadmissible under section 212(a)(9)(B)(i) of the Act for a period of 10 years from his departure from the United States. The applicant does not contest this finding of inadmissibility on appeal.

While the applicant was detained, his qualifying spouse gave birth to his U.S. citizen daughter on September 27, 2006. The applicant divorced [REDACTED] on March 24, 2009 and married his qualifying spouse in Egypt on January 11, 2010.

The applicant is eligible to apply for a waiver of inadmissibility under section 212(a)(9)(B)(v) of the Act as the spouse of a U.S. citizen. In order to qualify for this waiver, however, he must first prove that the refusal of his admission to the United States would result in extreme hardship to his qualifying spouse. Hardship to the applicant or his U.S. citizen child is not directly relevant under the statute and will be considered only insofar as it results in hardship to the applicant's spouse. 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 of Immigration

Appeals (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 U.S. 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 v. INS*, 138 F.3d 1292, 1293 (9th Cir. 1998) (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.

On appeal, the qualifying spouse states that she suffers from serious medical problems and physical disabilities. She notes that she has back injuries for which she has undergone surgery. She states that she is in pain, has difficulty carrying out her daily tasks and caring for her children, and is unable to work. Additionally, she states that she has fibromyalgia, depression and anxiety, bipolar disorder, problems with her gall bladder, and other medical issues. She asserts that she needs additional surgery and treatment for her health problems but that no one is available to care for her children while she is in the hospital and recuperation will be too difficult without the applicant's support.

The qualifying spouse also states that her young daughter suffers from health problems and that her son has emotional and behavioral problems. Additionally, the qualifying spouse contends that she has suffered from extreme financial hardship in the applicant's absence. She states that she has no income, lives in government-subsidized housing, and depends on donations from friends and family to survive. She notes that her car was repossessed and that she has applied for disability benefits. She indicates that she lost custody of her son due to her inability to provide for him. She contends that she needs the applicant's assistance in caring and providing for her children.

The AAO finds that the qualifying spouse will suffer extreme hardship on separation from the applicant if the waiver application is denied. Evidence in the record supports the qualifying spouse's claim that she suffers from serious medical problems which have hindered her ability to work, carry out her daily responsibilities, and care for her children. The qualifying spouse's parents confirm that the qualifying spouse needs back surgery but cannot obtain it without the help of the applicant in caring for her children while she is in the hospital and during her recuperation. *See Letters from* [REDACTED] The qualifying spouse's doctor also notes that the qualifying spouse is disabled due to a back injury for which she has undergone surgery and needs to undergo additional procedures. The doctor states that the qualifying spouse has great difficulty in caring for her children on her own. *See Letters from* [REDACTED] dated January 30, 2011 and March 13, 2007. Furthermore, the doctor indicates that in addition to chronic back pain, the qualifying spouse has been diagnosed with attention deficit disorder, bipolar affective disorder, fibromyalgia, and chronic insomnia. *Letter from* [REDACTED] dated March 10, 2010.

The evidence also demonstrates that the qualifying spouse has suffered serious financial hardship in the applicant's absence. Medical documentation in the record indicates that she is a Medicaid recipient. The qualifying spouse also submitted a copy of a utility assistance check she receives from the managing company of her government-subsidized apartment. The qualifying spouse's son also submitted a letter in which he stated that the applicant needs to help "ke[e]p the power on in our house." *Letter from* [REDACTED] In the aggregate, the qualifying spouse's medical and economic difficulties constitute extreme hardship for her on separation from the applicant.

The AAO also finds that the qualifying spouse would suffer extreme hardship upon relocation to Egypt. A divorce decree in the record indicates that the qualifying spouse shares custody of her son with her ex-husband, who has visitation rights. It therefore appears that the qualifying spouse would be unable to take her son to Egypt, so she would be separated from him if she were to relocate. The qualifying spouse was also born and raised in the United States and has family ties here, whereas she has no ties to Egypt other than the applicant. The qualifying spouse also suffers from disabling back injuries which would make travel and relocation difficult. In the aggregate, these factors would create extreme hardship for the qualifying spouse if she were to relocate. The AAO therefore finds that the applicant has established extreme hardship to his U.S. citizen spouse as required under section 212(a)(9)(B)(v) of the Act.

In that the applicant has established that the bars to his admission would result in extreme hardship to a qualifying relative, the AAO now turns to a consideration of whether the applicant merits a waiver of inadmissibility as a matter of discretion. In discretionary matters, the applicant 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).

*Matter of Mendez*, 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 include the extreme hardship the qualifying spouse would suffer if the applicant's waiver application were denied, as well as the hardship that the applicant's young U.S. citizen daughter and step-son would suffer without his emotional and financial support. Additionally, the record contains an offer of employment for the applicant upon his return to the United States, as well as several letters of recommendation from the applicant's friends and the qualifying spouse's relatives. The unfavorable factors are the

applicant's entry without inspection and unlawful presence in the United States, his failure to depart under an order of voluntary departure, and his conviction for Failure to Depart.

Although the applicant's violations of immigration law are serious and cannot be condoned, the positive factors in this case outweigh the negative factors. In these proceedings, the burden of establishing eligibility for the waiver rests entirely with the applicant. See section 291 of the Act, 8 U.S.C. § 1361. In this case, the applicant has met his burden and the appeal will be sustained.

The AAO notes that the Field Office Director also denied the applicant's Form I-212, Application for Permission to Reapply for Admission into the United States After Deportation or Removal in the same decision denying the Form I-601 waiver application. The Form I-212 was denied solely based on the denial of the Form I-601. As the AAO has now found the applicant eligible for a waiver of inadmissibility under section 212(a)(9)(B)(v) of the Act, it will withdraw the Field Office Director's decision on the Form I-212 and render a new decision.

Section 212(a)(9)(A) of the Act states:

Aliens previously removed.-

(A) Certain aliens previously removed.-

(ii) Other aliens.- Any alien not described in clause (i) who-

(I) has been ordered removed under section 240 or any other provision of law, or

(II) departed the United States while an order of removal was outstanding, and seeks admission within 10 years of the date of such alien's departure or removal (or within 20 years of such date in the case of a second or subsequent removal or at any time in the case of an alien convicted of an aggravated felony) is inadmissible.

(iii) Exception.- Clauses (i) and (ii) shall not apply to an alien seeking admission within a period if, prior to the date of the alien's reembarcation at a place outside the United States or attempt to be admitted from foreign continuous territory, the Attorney General [now, Secretary, Department of Homeland Security] has consented to the alien's reapplying for admission.

On May 25, 2007 the applicant was removed from the United States. As such, he is inadmissible under section 212(a)(9)(A)(ii) of the Act and must request permission to reapply for admission. A grant of permission to reapply for admission is a discretionary decision based on the weighing

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of negative and positive factors. The AAO has found that the applicant warrants a favorable exercise of discretion related to the adjudication of the Form I-601. For the reasons stated in that finding, the AAO finds that the applicant's Form I-212 should also be granted as a matter of discretion.

**ORDER:** The appeal is sustained.