



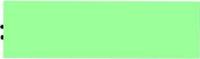
U.S. Citizenship
and Immigration
Services

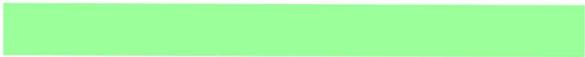
(b)(6)



DATE: **FEB 19 2013**

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 (the Act), 8 U.S.C. section 1182(a)(9)(B)(v).

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,

Ron Rosenberg
Acting Chief, Administrative Appeals Office

212(a)(9)(B)(v)

212(a)(9)(B)

H6

unlawful presence

DISCUSSION: The waiver application was denied by the Acting Field Office Director, Athens, Greece. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained.

The applicant is a native and citizen of Egypt. 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 one year or more and seeking admission within 10 years of her last departure. She is married to a United States citizen. She 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).

The Acting Field Office Director concluded that the applicant had failed to establish that the bar to her admission would impose extreme hardship on a qualifying relative, her U.S. citizen spouse, and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) on January 30, 2012.

On appeal, the applicant's spouse contests the director's conclusions and asserts that the record demonstrates he will experience extreme hardship due to the applicant's inadmissibility. *Attachment, Form I-290B*, received on February 29, 2012.

The record includes, but is not limited to, a statement from the applicant's spouse; an initial brief from former counsel for the applicant; background articles on the economic and political conditions in Egypt; country conditions materials including the U.S. State Department's World Wide Caution section on Egypt; a statement from [REDACTED] dated February 24, 2012, pertaining to the applicant's spouse's mental health status; a psychological exam of the applicant's spouse by [REDACTED] dated September 16, 2011; and a picture of the applicant, her husband and their two daughters. The entire record was reviewed and all relevant evidence considered in rendering this decision.

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. . . .

The record indicates that the applicant entered the United States as a visitor for pleasure on November 5, 2006. She was authorized to remain until May 4, 2007, but remained beyond that date until she departed the United States on August 10, 2008. Therefore, the applicant was unlawfully present in the United States for over a year from May 5, 2007, until August 2008, and is now seeking

admission within 10 years of her last departure from the United States. Accordingly, the applicant is inadmissible to the United States under section 212(a)(9)(B)(i)(II) of the Act. The applicant does not contest this finding.

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 or any children can be considered only insofar as it results in hardship to a qualifying relative. The applicant's spouse is the only qualifying relative in this case. 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 applicant’s spouse asserts on appeal that he is experiencing extreme emotional hardship due to the applicant’s inadmissibility. *Written Statement for Consideration*, dated February 25, 2012. He states that he has been diagnosed with Major Depression, and he has to seek therapy and take medication due to his emotional state.

The record contains a psychological examination of the applicant conducted in 2011 by [REDACTED] [REDACTED] surveyed the applicant’s spouse’s life, background and current family situation and concluded that he was experiencing an episode of severe Major Depression. The record contains an additional statement from [REDACTED] stating that the applicant’s spouse has sought counseling with her office, and stating that he has been diagnosed with Major Depression and has submitted to a therapy plan and medicinal evaluation. Based on this evidence the AAO can discern from the record that the applicant’s spouse will experience significant emotional hardship due to separation from the applicant.

The applicant's spouse also expresses great concern over the violent and uncertain conditions in Egypt where the applicant resides with their two daughters. He refers to a World Wide Caution issued by the U.S. State Department, published January 24, 2012, noting the continued threat of terrorist attacks, demonstrations, and other violent actions against Americans. The AAO also takes note of the threats to personal security generally, discussed in the Country Specific Information on Egypt, published July 27, 2012, by the Bureau of Consular Affairs, U.S. State Department. The State Department reported a persistent threat of violent outbursts in the form of political protests, sports violence and general crime and corruption flowing in the wake of Egypt's recent revolution. The background information submitted by the applicant also demonstrates that Egypt's economy is struggling to evolve, resulting in high unemployment and further raising the risk of violence.

Based on the evidence in the record, the AAO finds that the dangerous and unstable conditions in Egypt present an uncommon risk to the applicant and their two daughters, heightening the emotional impact of separation on the applicant's spouse. One of the applicant's children was born in the United States. When these factors are considered in the aggregate, the AAO finds them sufficient to demonstrate that the applicant's spouse will experience extreme hardship due to separation from the applicant and their two daughters.

With regard to relocation, the AAO notes that many of the same hardship impacts apply. While the applicant's spouse has family connections to Egypt, the unstable conditions there would present an uncommon physical and economic impact on the applicant's spouse.

The applicant's spouse also asserts that he would suffer financial and economic hardship if he relocated to Egypt, and states he would not be able to support his spouse and daughters or obtain medical care without national health care coverage. As noted above, the U.S. State Department has noted that some major cities do not have adequate emergency services, ambulance service is not reliable throughout the country and most facilities expect payment in cash up front for medical services.

The AAO also notes that, at times in the past two years, the U.S. embassy has been closed due to threats of violence, making it more difficult for U.S. citizens seeking embassy services or Egyptian citizens wishing to travel to the United States. The record contains a biographical questionnaire from the applicant's spouse indicating that he has maintained employment with his current company since 2007, enrolled in a college degree program in January 2009 and has resided in the United States since at least 2001.

When the heightened physical and economic impacts of relocation are considered in the aggregate with the common impacts of relocation, in this case severing community ties to work and school, the AAO finds them to rise above the common impacts to a degree constituting extreme hardship.

As the record indicates a qualifying relative will experience extreme hardship, the AAO may now examine whether the applicant warrants a waiver as a matter of discretion.

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-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 AAO finds that the unfavorable factors in this case include the applicant's stay in the United States without a legal immigration status. The favorable factors in this case include the presence of the applicant's spouse, the extreme hardship the applicant's spouse would experience due to the applicant's inadmissibility, the country conditions in which the applicant would have to reside and the lack of any criminal record while residing in the United States. Although the applicant's overstay is a serious violation of immigration law, the favorable factors in this case outweigh the negative factors, therefore favorable discretion will be exercised. The acting field office director's decision will be withdrawn and the appeal will be sustained.

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 rests with the applicant. *See* section 291 of the Act, 8 U.S.C. § 1361. Here, the applicant has met that burden. Accordingly, the appeal will be sustained.

ORDER: The appeal is sustained.