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

(b)(6)

U.S. Citizenship and Immigration Services

[redacted]

DATE: FEB 25 2013 OFFICE: ATHENS FILE: [redacted]

IN RE: [redacted]

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:

[redacted]

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 in accordance with the instructions on 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,

Ron Rosenberg
Acting 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 Greece 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 her last departure from the United States. The applicant is a beneficiary of an approved Petition for Alien Relative, as the spouse of a lawful permanent resident, who seeks a waiver of inadmissibility in order to reside in the United States with her spouse and children.

The Field Office Director concluded that the record failed to establish the existence of extreme hardship for a qualifying relative upon separation from the applicant. The Field Officer Director denied the application accordingly. *See Decision of the Field Office Director*, dated August 11, 2011.

On appeal, counsel for the applicant asserts that the applicant's spouse is suffering extreme hardship due to separation from the applicant and their children. Counsel contends that the applicant's spouse is suffering financially, medically, and psychologically, as he misses and worries about his family members.

In support of the waiver application and appeal, the applicant submitted identity documents, medical documentation concerning the applicant's spouse, a letter from the applicant, a letter from the applicant's spouse, legal documents, background country conditions reports concerning Greece, and medical documentation concerning the applicant's child. The entire record was reviewed and considered in rendering a decision on the appeal.

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

The applicant is a native and citizen of Greece who entered the United States with a tourist visa in 1995 and remained in the United States beyond her authorized period of stay. The applicant states that she departed the United States and reentered in 1997, remaining until 2003. The applicant also reports that she entered the United States in 2006 and remained until her last departure in January 2007. Accordingly, the applicant accrued over one year of unlawful presence in the United States, and she is inadmissible under section 212(a)(9)(B)(i)(II) of the Act. The applicant does not contest her inadmissibility on appeal.

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 her 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-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 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 is a year-old native and citizen of Greece. The applicant's spouse is a 48 year-old native of Greece and lawful permanent resident of the United States. The applicant and their children are currently residing in Greece and the applicant's spouse is residing in .

Counsel for the applicant asserts that the applicant's spouse suffers from medical ailments that could worsen due to the strain of separation from his family. The applicant's spouse asserts that if his family joined him in the United States, he would be much more relaxed and his symptoms would lessen. The record contains a letter from the applicant's spouse's physician stating that he suffers from impaired glucose tolerance and hypertension for which he takes medication and has

a controlled diet. There is no indication that the applicant's spouse has been unable to address his medical issues through the medications and treatment plans prescribed by his physician. Further, there is no medical documentation concerning the effect of the applicant's absence on her spouse's physical health.

Counsel for the applicant asserts that the applicant's spouse is financially suffering because he is charged with providing for the needs of two households. Counsel contends that the applicant's spouse is paying for his own and his children's travel expenses, which creates a financial hardship. It is noted that the applicant's spouse states that he owns three different businesses and rental properties in the United States. The record contains legal documents pertaining to these assets, but there is no financial documentation concerning the applicant's spouse. There is no indication that the applicant's spouse has been unable to meet the financial obligations of himself or his family.

The applicant's spouse asserts that he misses his family and is concerned with his children's level of education. The applicant's spouse also asserts that he worries about the health of his second child, who was born with a serious kidney condition. The applicant's spouse contends that his child underwent an operation, but his condition has improved with age. The applicant's spouse further contends that the same child has been diagnosed with dyslexia, but has received no treatment in Greece. The record contains a letter from a physician stating that the applicant's child was seen at the University of Massachusetts Medical Center on August 21, 2009 and was scheduled for a follow-up in August 2011.

It is initially noted that the applicant's children are not qualifying relatives in the context of this application so that any hardship they are suffering will be considered only insofar as it impacts the applicant's spouse. It is also noted that the applicant's child is a U.S. citizen and has travelled to the United States for previous medical appointments. Further, the applicant's child's follow-up appointment was scheduled for a period two years after his last appointment, so there is no indication that he is required to make frequent visits to his medical practitioner in the United States. The record contains no evidence concerning the applicant's child's diagnosis of dyslexia.

The applicant's spouse asserts that he is concerned that his children will be at an educational disadvantage should they decide to pursue future education in the U.S. after their education in Greece because of the different teaching styles. The applicant's concern in this regard is speculative and, further, unsupported by the record. In the aggregate, there is insufficient evidence in the record to demonstrate that the applicant's spouse is suffering from hardship due to separation from the applicant that is beyond the common results of inadmissibility or removal of a spouse.

The Field Office Director determined that the applicant demonstrated that her spouse would experience extreme hardship if he relocated to Greece. The AAO concurs with this finding. It is noted that the applicant's spouse is a native of Greece, but has resided in the United States since 1981. The applicant's spouse has demonstrated strong ties to the United States based upon his

ownership of several businesses and rental properties. The applicant's spouse contends that he is responsible for the care and maintenance of his extensive business holdings.

The applicant's spouse also asserts that he would lose his permanent resident status in the United States if he relocated to Greece and would face a financial crisis that would not allow him to support himself and his family. The record contains country conditions reports indicating the depth of the economic crisis in Greece and the corresponding rise in the levels of unemployment. In this case, the record contains sufficient evidence to show that the hardships faced by the qualifying relative, if he were to relocate to Greece, rise to the level of extreme hardship.

The applicant has demonstrated that her spouse would suffer extreme hardship upon relocation to Greece. The record, however, does not contain sufficient evidence to show that the hardships faced by the qualifying relative upon separation, considered in the aggregate, rise beyond the common results of removal or inadmissibility to the level of extreme hardship. We can find extreme hardship warranting a waiver of inadmissibility only where an applicant has demonstrated extreme hardship to a qualifying relative in the scenario of separation *and* the scenario of relocation. A claim that a qualifying relative will relocate and thereby suffer extreme hardship can easily be made for purposes of the waiver even where there is no actual intention to relocate. *Cf. Matter of Ige*, 20 I&N Dec. 880, 886 (BIA 1994). Furthermore, to relocate and suffer extreme hardship, where remaining the United States and being separated from the applicant would not result in extreme hardship, is a matter of choice and not the result of inadmissibility. *Id., also cf. Matter of Pilch*, 21 I&N Dec. 627, 632-33 (BIA 1996). As the applicant has not demonstrated extreme hardship upon separation, we cannot find that refusal of admission would result in extreme hardship to the qualifying relative in this case.

The AAO therefore finds that the applicant has failed to establish extreme hardship to her lawful permanent resident spouse as required under section 212(a)(9)(B)(v) of the Act. As the applicant has not established extreme hardship to a qualifying family member, no purpose would be served in determining whether the applicant merits this waiver as a matter of discretion.

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 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 and the underlying application will remain denied.

ORDER: The appeal is dismissed.