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

DATE: JAN 02 2013

Office: ATHENS

File: [REDACTED]

IN RE: Applicant: [REDACTED]

APPLICATIONS: 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. § 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.

Thank you,

Ron Rosenberg
Ron Rosenberg
Acting Chief, Administrative Appeals Office

DISCUSSION: The waiver application and application for permission to reapply for admission were denied by the Field Office Director, Athens, Greece, and the waiver denial¹ is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained.

The applicant is a native and citizen of Egypt who was admitted for 30 days to the United States as a B-1 visitor on October 18, 1992. He failed to depart timely and applied for asylum on May 5, 1993. An Immigration Judge denied the asylum application on March 31, 1998, granted voluntary departure until April 30, 1998, and the applicant appealed timely to the Board of Immigration Appeals (BIA). After the BIA dismissed the appeal, a removal order became final on June 26, 2002. Meanwhile, the applicant married on July 29, 2001, failed to depart as ordered, and was removed from the country on June 11, 2010. When the applicant sought an immigrant visa as the beneficiary of an approved Petition for Alien Relative (Form I-130), he was found to be inadmissible to the United States under 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 one year or more, and under section 212(a)(9)(A)(ii) of the Act, 8 U.S.C. § 1182(a)(9)(A)(ii), as an alien previously removed. He is seeking a waiver of inadmissibility in order to immigrate to the United States before June 10, 2020.

The field office director concluded the applicant had failed to establish that extreme hardship would be imposed on a qualifying relative and, accordingly, denied the Application for Waiver of Grounds of Inadmissibility (Form I-601). *Decision of Field Office Director*, October 4, 2011.

On appeal, counsel for the applicant contends that the denial decision erred in overlooking the extreme hardships that the applicant's wife is suffering, and will continue to suffer, as a result of her husband's inadmissibility. In support of the appeal, counsel submits a brief referring to documentation previously submitted, including, but not limited to: hardship statements and other support statements; birth, naturalization, and marriage certificates; financial records; a psychological evaluation; school records; and country condition information. The entire record was reviewed and 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

¹ Due to denial of the Form I-601, the Form I-212 was also denied in a separate decision. As the applicant appealed only the waiver denial and a separate Notice of Appeal would be necessary for the denial of the Form I-212, we are unable to revisit denial of consent to reapply for admission. It is noted that the field office director may reconsider the Form I-212 denial, based on this decision.

such alien's departure or removal from the United States, is inadmissible.

(v) Waiver. – The Attorney General [now the Secretary of Homeland Security (Secretary)] 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 (Secretary) 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) 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 his children 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. 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 applicant has established extreme hardship to a qualifying relative. 22 I&N Dec. 560, 565 (BIA 1999). 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; the Board added that not all of these factors need be analyzed in any given case and emphasized that the list is 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, while 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, or cultural readjustment 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, although 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 (quoting *Contreras-Buenfil v. INS*, 712 F.2d 401, 403 (9th Cir. 1983)); conversely, 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 case-by-case whether denial of admission would result in extreme hardship to a qualifying relative.

The applicant’s wife contends she will continue to suffer physical, emotional, and financial hardship if the applicant is unable to reside in the United States. The emotional hardship claim focuses on the qualifying relative’s assertion that she suffers from depression due to separation from the applicant, as well as from having become a single parent to their two children as a result. Based on symptoms including excessive eating, insomnia, fatigue, inability to concentrate, and frequent crying, a licensed clinical counselor diagnoses her with major depression and concludes the condition is serious enough to make her susceptible to a serious mental breakdown and a serious physical health problem, which would likely lead to chronic depression. *Psychological Evaluation*, December 28, 2010. The qualifying relative claims to be working full-time as a cashier and part-time in a fast-food restaurant to make ends meet and that, as both require her to be constantly on her feet, she has experienced swelling in her lower legs and feet. The counselor confirms having observed the patient’s swollen ankles.

The applicant’s wife reports feeling burdened by concerns about other members of her family. Due to her husband’s 2006 heart attack and a heart-related problem shortly after his 2010 arrival back in Egypt, she is worried about his health. She also expresses desperation at feeling unable to properly nurture two young children, whom she leaves in the care of her mother. School records show that

their 8 year-old son is having learning difficulties, which the counselor attributes to his observed hyperactivity and to the stress the qualifying relative displays. As her own mother neither speaks English nor drives a car, her assistance is so limited that, as the record shows, the qualifying relative investigated other childcare options before concluding she could not afford them.

Regarding financial hardship caused by separation, the record reflects that the applicant's wife qualifies for public assistance and food stamps. W-2 statements show that, although she was the family's primary breadwinner in the year preceding the applicant's removal, her husband contributed over one-third of household earnings. Besides imposing the burden of additional work to make up for lost income, the applicant's presence in Egypt where he is unable to find work has required her to help support a second household. Counsel asserts this is due to the combined effect of the applicant having been abroad for nearly 18 years and, as a Coptic Orthodox Christian, being ineligible for government employment. The applicant's educational credentials establish he is a lawyer in Egypt, and his 1998 testimony in removal proceedings confirms that his professional activities on behalf of the Coptic community brought him into conflict with local Islamic authorities. Official U.S. government reporting substantiates the problematic current situation of Copts in Egypt. *See Egypt--Country Specific Information*, U.S. Department of State (DOS), July 27, 2012; *see also International Religious Freedom Report, 2012*, DOS, July 30, 2012. The applicant states that his family is too fearful of being caught up in anti-Copt violence to visit him in Egypt to ease the pain of separation.

For all these reasons, the cumulative effect of the physical, emotional, and financial hardships the applicant's wife is experiencing due to her husband's inadmissibility rises to the level of extreme. The AAO concludes based on the evidence provided that, were his wife to remain in the United States without the applicant due to his inadmissibility, she would suffer extreme hardship beyond those problems normally associated with family separation.

The qualifying relative contends that she would experience hardship if she relocated abroad to reside with the applicant. Regarding ties to the United States, both of the applicant's wife's children were born here and she claims they, along with her mother, live in her home. There is evidence that the entire family, including the applicant before his departure, is active in their local Coptic Orthodox Church. Although there is little evidence regarding any other ties, support network, or specific plans here, the record reflects that the qualifying relative immigrated from Egypt in 1999 at the age of 30 after winning the diversity visa lottery and became a naturalized citizen less than six years later. She expresses worry about her U.S. citizen children's futures in her home country due to lack of the high cost of education for foreigners, lack of U.S. standard healthcare, and current unrest in Egypt.

The applicant's wife claims to fear for the entire family's safety there, in view of documented discrimination and violence toward members of the Coptic Orthodox Christian community in Egypt. She cites in particular the New Year's Day 2011 killing of Copts in Alexandria. Although DOS has no current travel advisories for the country, its website substantiates her concern by stating that, "[o]n January 1, 2011, a bombing attack occurred in Alexandria at a Coptic church. More than 20 deaths were reported and almost 100 were injured ...", and:

CRIME: Since the January 25, 2011 revolution, there have been increased reports of crime. While the majority of incidents reported are crimes of opportunity, such as purse snatching and theft, there is growing concern of more serious incidents that involve weapons, including carjackings.

Egypt—Country Specific Information, DOS, July 27, 2012.

The U.S. Embassy site has published five “Emergency/Security Messages for U.S. Citizens” since December 1, 2012 regarding current threats, while a 2012 DOS annual report confirms recent violence toward Copts in Egypt:

[...]sectarian tensions and violence increased during the year, along with an overall increase in violence and criminality. This report documents both the Egyptian government’s failure to curb rising violence against Coptic Christians and its involvement in violent attacks. For example, on October 9, 2011, the Egyptian security forces attacked demonstrators in front of the Egyptian radio and television building in the Maspiro area of Cairo. Twenty-five people were killed and 350 injured, most of whom were Coptic Christians. To date, government officials have not been held accountable for their actions, and there were indications in early 2012 of mounting Coptic emigration.

The United States was active around the world promoting religious freedom, and challenging threats to such freedom. For example, senior U.S. officials [...] raised deep U.S. concerns about increased religious violence and discrimination against Copts with senior Egyptian officials, including concerns about the government’s failure to prosecute perpetrators of sectarian violence.

International Religious Freedom Report (IRFR), 2012, DOS, July 30, 2012.

In a section entitled “Government Inaction,” the IRFR noted,

The government did not arrest the perpetrators of an attack that led to the death of two Coptic Christians in Al Ghorayzat village, Sohag. In late November, following an unrelated land dispute in a neighboring village, a group of seven to nine Muslim villagers attacked the home of Kamel and Kameel Sergious, killing both. The attackers beat other family members and threatened to kill them while ransacking the house and stealing valuables. Although survivors identified the perpetrators, authorities did not detain or prosecute them.

We observe that the qualifying relative’s concerns regarding personal safety are substantiated by U.S. government information on the country. Based on a totality of the circumstances, the AAO concludes the applicant has established that his wife would suffer extreme hardship were she and her children to relocate abroad to reside with the applicant.

Review of the documentation on record, when considered in its totality, reflects the applicant has established that his U.S. citizen spouse would suffer extreme hardship were the applicant unable to reside in the United States. Accordingly, the AAO 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 matter are the extreme hardships the applicant's wife and children would face if the applicant were to reside in Egypt, regardless of whether they accompanied the applicant or remained here; the applicant's lack of any criminal record; supportive statements; history of employment and payment of taxes in the United States; and passage of more than 20 years since the applicant's overstay of his original admission to the United States. The only unfavorable factors in this matter are the applicant's failure to voluntarily depart after final dismissal of his asylum claim, subsequent removal, and consequent unlawful presence.

Although the applicant's violations of the immigration laws cannot be condoned, the positive factors in this case outweigh the negative factors. Given the passage of time since the applicant's violations of immigration law, the AAO finds that a favorable exercise of discretion is warranted.

The AAO notes that, in a separate decision, the field office director also denied the applicant's Application for Permission to Reapply for Admission Into the United States After Deportation or Removal (Form I-212) based solely on the denial of the Form I-601. The applicant still needs an

approved Form I-212 and the field office director should reconsider his decision based on the fact that, as the AAO has now found the applicant eligible for a waiver of inadmissibility under section 212(a)(9)(B)(v) of the Act, the applicant is no longer inadmissible under section 212(a)(9)(B)(i)(II).

On June 11, 2010, the applicant was removed from the United States. As such, he is inadmissible under section 212(a)(9)(A) of the Act and must obtain permission to reapply for admission. A grant of permission to reapply for admission is a discretionary decision based on the weighing 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 asks the field office director to reconsider the applicant's Form I-212 as a matter of discretion.

In proceedings for application for waiver of grounds of inadmissibility, the burden of proving eligibility remains entirely with the applicant. Section 291 of the Act, 8 U.S.C. § 1361. Here, the applicant has met that burden and, accordingly, the appeal will be sustained.

ORDER: The appeal is sustained. The waiver application is granted.