



U.S. Citizenship
and Immigration
Services

(b)(6)

Date: JAN 09 2013 Office: ATHENS, GREECE

FILE: [REDACTED]

IN RE: Applicant: [REDACTED]

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

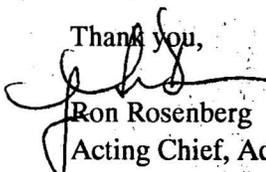
ON BEHALF OF APPLICANT:

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.

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, or a request for a fee waiver. 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

(b)(6)

DISCUSSION: The waiver application was denied by the Acting 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 Turkey 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. The applicant is the spouse of a U.S. citizen and seeks a waiver of inadmissibility in order to return to the United States.

The Acting Field Office Director concluded that the applicant failed to establish that a denial of his waiver application would result in extreme hardship to his U.S. citizen spouse and denied the application accordingly. *See Decision of Field Office Director.*

On appeal, the applicant, through counsel, submits a brief and additional documentation in support of his claim that denial of his waiver application would result in extreme hardship to his spouse. Specifically, counsel states that the applicant's spouse would have to leave her family and relocate to Turkey where she has no ties and would be unable to receive adequate medical care. *See Appeal Brief at 4.* Counsel also states that the applicant's spouse would be impacted by the lower standard of living and danger on account of anti-American sentiments in Turkey. *Id.* at 8-9.

The record contains, in relevant part, the above-mentioned brief and supporting documentation, the applicant's Form I-601, Application for Waiver of Grounds of Inadmissibility, and the documents submitted in support of the waiver application. The entire record was reviewed *de novo* and considered in rendering a decision on the appeal.

Section 212(a)(9) of the Act 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 [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 [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. No court shall have jurisdiction to review a decision or action by the [Secretary] regarding a waiver under this clause.

In the present case, the record reflects, and the applicant does not dispute, that the applicant was unlawfully present in the United States from 2003 until his departure in 2009. The applicant is therefore inadmissible under section 212(a)(9)(B)(i)(II) of the Act for having been unlawfully present in the United States for over a year. The applicant's qualifying relative is his U.S. citizen spouse.

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 (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 v. I.N.S.*, 138 F.3d 1292 (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.

The applicant maintains that his U.S. citizen spouse would face extreme hardship should the waiver application be denied. In this regard, the applicant claims, in relevant part, that his spouse would suffer extreme hardship due to her medical condition, her lack of ties to Turkey, the lower standard of living and potential danger in Turkey.

The evidence in the record does not support the applicant's claim that his spouse would face extreme hardship should she remain in the United States, separated from the applicant. As noted by the acting field office director, the hardship he faces due to the separation from his spouse is the common results of inadmissibility experienced by other individuals in this situation, and does not rise to the level of extreme hardship. The record establishes that the applicant's spouse has a sister who provides her with emotional support. See Affidavit of Applicant's Spouse at 3. The applicant's spouse has "savings, investments and a well-paying job." *Id.* at 6. The applicant's spouse has respiratory problems, reflux and high cholesterol, but her medical condition is being treated with medication and under control. *Id.* at 7. The record contains a psychological evaluation conducted for the purpose of establishing the emotional impact of the couple's separation on the applicant's spouse. See Evaluation by [REDACTED] Ms. [REDACTED] noted in her evaluation that the applicant's spouse had been previously diagnosed with major depressive disorder and was being treated with out-patient psychotherapy for several months. *Id.* Ms. [REDACTED] recommended, in relevant part, continued psychotherapy. *Id.* at 5. The evidence submitted does not indicate that the applicant's spouse's condition amounts to emotional hardship beyond that normally experienced by others in her circumstances.

The applicant also claims that his spouse would face extreme hardship should she relocate to Turkey. In this regard, the applicant notes his spouse's medical condition, the lower standard of living in Turkey, and the potential danger for Americans living in Turkey. The evidence in the record, however, does not support the applicant's claim. First, the AAO notes that 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 in 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). The record does not establish that medical treatment would be unavailable for the applicant's spouse's medical conditions. Moreover, the applicant's spouse currently visits the applicant in Turkey twice a year. *See* Affidavit of Applicant's Spouse at 3. There is no indication in the record that the applicant's spouse's relocation to Turkey would be any more difficult than others in her circumstances who would also face a lower standard of living, separation from family in the United States, possible anti-American sentiment and difficulty adjusting to different social and cultural norms.

The AAO finds that the applicant has failed to establish extreme hardship to her qualifying relative, because of either separation or relocation, as required under section 212(a)(9)(B)(v) of the Act. As the applicant has not established extreme hardship to a qualifying relative no purpose would be served in determining whether the applicant merits a 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.

ORDER: The appeal is dismissed.