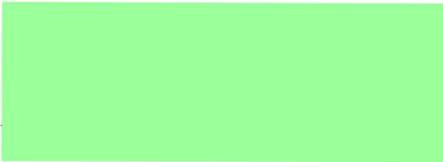




**U.S. Citizenship
and Immigration
Services**

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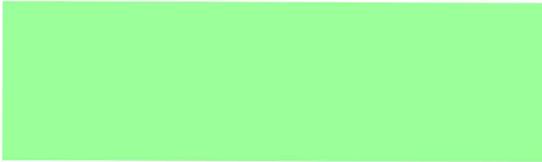
DATE: MAR 08 2013 OFFICE: ATHENS, GREECE

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, 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. 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 record reflects the applicant is a native and citizen 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 one year or more and seeking admission within 10 years of his last departure from the United States. The applicant is the spouse of a lawful permanent resident and is the beneficiary of an approved Petition for Alien Relative (Form I-130). The applicant, through counsel, does not contest this finding of inadmissibility. Rather, he 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), in order to reside with his wife, children, and adult son in the United States.¹

The Field Office Director concluded the applicant failed to establish extreme hardship would be imposed on a qualifying relative and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) accordingly. *See Decision of the Field Office Director*, dated August 31, 2012.

On appeal, counsel asserts the U.S. Citizenship and Immigration Services (USCIS) abused its discretion in denying the applicant's waiver application by failing to consider the totality of the circumstances and disregarding caselaw concerning family factors and the evidence submitted in support of the application. *See Notice of Appeal or Motion (Form I-290B)*, dated September 26, 2012; *see also Counsel's Brief, supra*.

The record includes, but is not limited to: a brief and correspondence from counsel; letters of support from the applicant's spouse and son; identity and medical documents; photographs; and documents on conditions in Egypt. The entire record was reviewed and considered in rendering a decision on the appeal.

Section 212(a)(9) of the Act provides, in relevant part:

(B) ALIENS UNLAWFULLY PRESENT.-

(i) In General.- Any alien (other than an alien lawfully admitted for permanent residence) who-

¹ The AAO notes counsel's brief submitted in support of the applicant's appeal indicates the applicant also was found to be inadmissible under section 212(a)(6)(C)(i) of the Act. *See Brief in Support of Appeal*, dated September 26, 2012. The AAO also notes the record indicates the applicant was found inadmissible only under section 212(a)(9)(B)(i)(II) and not 212(a)(6)(C)(i) of the Act. Accordingly, the AAO will consider on appeal a waiver of inadmissibility pursuant to section 212(a)(9)(B)(v) of the Act.

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...

(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 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. No court shall have jurisdiction to review a decision or action by the Attorney General [Secretary] regarding a waiver under this clause.

The record reflects the applicant was last admitted to the United States as a B-2 visitor on November 22, 2003, with permission to remain until May 21, 2004. The record also reflects the applicant did not depart the United States until October 23, 2005 and has remained in Egypt to date. The applicant accrued unlawful presence from May 22, 2004 until October 23, 2005, a period in excess of one year. As the applicant is seeking admission within 10 years of departure, he is inadmissible pursuant to section 212(a)(9)(B)(i)(II) of the Act.

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, his children, and his adult son can be considered only insofar as it results in hardship to a qualifying relative. The applicant's lawful permanent resident spouse is the only demonstrated 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 BIA 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 BIA 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 BIA 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; *In re 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 BIA 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., In re Bing Chih Kao and Mei Tsui Lin*, 23 I&N Dec. 45, 51 (BIA 2001) (distinguishing *In re 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, 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.

Counsel contends the applicant's spouse has suffered extreme emotional, psychological, physical, and financial hardship in the applicant's absence as: she and the applicant have been together for almost 20 years; she has strong family ties in the United States and needs the applicant to assist in the support and care of her family; she is receiving treatment for tremendous psychological anguish which is likely to become more severe in the applicant's continued absence; she is suffering from pain in her knee and finds it difficult to cope with the physical and emotional demands of a fulltime job; she is providing housing for the applicant and their children; she is providing financial assistance to their son, who is attending university and is unable to be a caregiver to his younger siblings or to provide the same assistance that the applicant, as a father, would be able to provide;

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and she works a fulltime, low paying job and must care for a disfigured child, suffering from a severe scalp disease. The applicant's spouse also indicates she is suffering spiritual and physical hardship as: she has a close-knit family in which the applicant has served as its head, he has always taken care of her, and he has been physically and emotionally involved in their children's lives; she craves the physical love and affection only the applicant could provide as her husband; the support from her family church is not enough; she was diagnosed with lower joint pain and Achilles tendinitis as well as Achilles bursitis for which she has been receiving treatment; she is continuously on her feet as a housekeeper at the [REDACTED] which is taking a physical toll on her; phone calls to Egypt are expensive; the applicant has been suffering psychologically and emotionally since their separation; the applicant is unable to send her money due to the need to support himself and the conversion of the Egyptian pound; her family receives \$375/month in food stamps; she brought her children and son to the United States so that they could obtain a better education and be free from the persecution of Christians; she has difficulty attending her children's school and doctor's appointments; and her daughter has undergone surgery and continues to receive treatment and subsequent surgeries for scarring alopecia. The applicant's son further discusses: his inability to assist his mother with the care of his younger siblings; his fears for his mother's emotional wellbeing in his father's absence given the situation of Coptic Christians in Egypt; the financial costs associated with his academic studies at [REDACTED] and the financial burden his mother must endure as she must taxi to work because they are unable to afford a second car.

Although the applicant's spouse may be experiencing hardship in the applicant's absence, the AAO finds the record does not establish that the hardship goes beyond what is normally experienced by qualifying relatives of inadmissible individuals. The record is sufficient to establish the applicant and his spouse have been married for 20 years, his spouse has been diagnosed with Major Depressive Order, Moderate, and she has been prescribed Voltaren and Flexeril. *See Medical Letter and Prescriptions Issued by [REDACTED]*, dated September 24, 2012. However, the record does not contain a sufficient discussion concerning the evaluative method used to make the diagnosis or a description of the course of treatment for the applicant's spouse's mental health. Also, the record is sufficient to establish the applicant's spouse has been experiencing neck pain resulting in muscle ache in her left arm and numbness in her fingers. However, the record does not include any evidence of her self-reported knee and leg conditions or sufficient evidence of her daughter's scalp condition. Absent an explanation in plain language from the treating physician and mental health professional of the current nature and severity of any condition and a description of any treatment or family assistance needed, the AAO is not in the position to reach conclusions concerning the severity of a medical or mental health condition or the treatment needed. Moreover, the record does not include any evidence of the applicant's current mental health as reported by his spouse. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)).

Further, the record does not include any evidence of the applicant's spouse's current income and financial obligations other than what has been self-reported. Also, the AAO notes the record does not include specific evidence of labor or employment conditions for agricultural engineers in Egypt, showing whether he faces challenges in securing employment or contributing to the maintenance of

his and his spouse's households. Accordingly, the AAO cannot conclude the record establishes the applicant's spouse's financial hardship would go beyond the normal consequences of inadmissibility.

The AAO notes the concerns regarding the applicant's spouse's hardship, but finds even when this hardship is considered in the aggregate, the record fails to establish the applicant's spouse would suffer extreme hardship as a result of separation from the applicant.

Counsel contends that the applicant's spouse would suffer extreme hardship upon relocating to Egypt to be with the applicant as she must remain in the United States to support and care for her family, and she would experience trauma and the expense of moving if she uprooted her family. The applicant's spouse also discusses: the medical insurance her family receives through her employment; the opportunities her family has in the United States; and the experiences of her nephew and other Coptic Christians in Egypt.

The AAO notes that in his decision regarding the applicant's Form I-601 waiver application, the Field Office Director determined the applicant's spouse would suffer extreme hardship upon relocation to Egypt due to social conditions. The AAO also notes the circumstances concerning social conditions in Egypt have not improved since filing the waiver application currently on appeal. The U.S. Department of State has issued a travel alert to Egypt: "Political unrest, which intensified prior to the constitutional referendum in December 2012 and the anniversary in 2013 of Egypt's 25th January Revolution, is likely to continue in the near future. Additionally, violent protests followed the January 2013 sentencing of persons involved in deaths and injuries at a February 2012 soccer match in Port Said. These demonstrations have, on occasion, degenerated into violent clashes between police and protesters, resulting in deaths, injuries, and extensive property damage. Participants have thrown rocks and Molotov cocktails and security forces have used tear gas and other crowd control measures against demonstrators. There are numerous reports of the use of firearms as well. In at least three cities, curfews have been imposed." *Travel Alert, Egypt*, issued February 6, 2013. In the aggregate, the AAO finds the applicant's spouse would suffer extreme hardship if she were to relocate to Egypt.

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 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. In re Pilch*, 21 I&N Dec. at 632-33. As the applicant has not demonstrated extreme hardship from separation, we cannot find that refusal of admission would result in extreme hardship to the qualifying relative in this case.

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In this case, the record does not contain sufficient evidence to show that the hardship faced by the qualifying relative, considered in the aggregate, rises beyond the common results of removal or inadmissibility to the level of extreme hardship. The AAO therefore finds the applicant has failed to establish extreme hardship to his 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 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.