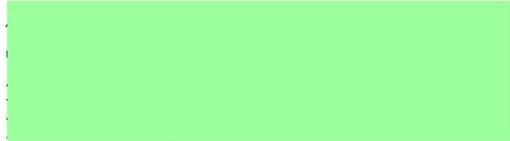


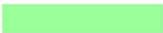


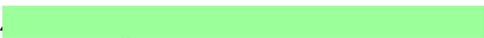
**U.S. Citizenship
and Immigration
Services**

(b)(6)



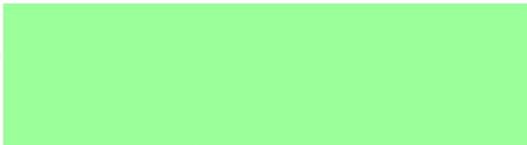
DATE: **MAR 15 2013** OFFICE: ATHENS, GREECE

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) and Application for Permission to Reapply for Admission into the United States after Deportation or Removal under Section 212(a)(9)(A) of the Immigration and Nationality Act, 8 U.S.C. § 1182(a)(9)(A)

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 also was found to be inadmissible pursuant to section 212(a)(9)(A)(ii) of the Act, 8 U.S.C. § 1182(a)(9)(A)(ii), for having been ordered removed from the United States and seeking admission within the proscribed period. The applicant is the spouse of a U.S. citizen and is the beneficiary of an approved Petition for Alien Relative (Form I-130). The applicant, through counsel, does not contest the findings 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), and an exception to inadmissibility pursuant to section 212(a)(9)(A)(iii) of the Act, 8 U.S.C. § 1182(a)(9)(A)(iii) in order to reside with his wife in the United States.

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. 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) as no purpose would be served in providing consent to reenter the United States given the Form I-601 was denied. *See Decisions of the Field Office Director*, dated October 3, 2011.

On appeal, counsel asserts the U.S. Citizenship and Immigration Services (USCIS) failed to apply the proper standard of review in determining extreme hardship and erred in denying the waiver application and the application for permission to reapply for admission into the United States by ignoring, in the aggregate, the evidentiary documentation of the applicant's spouse's desires to have children, her mental health, her family's financial circumstances, and her commitment to assist in the care of her parents. *See Form I-290B, Notice of Appeal or Motion*, dated October 25, 2011; *see also Brief in Support of Appeal*, dated November 22, 2011. The AAO notes the applicant is appealing the denial of his Form I-601 and Form I-212. However, only one Form I-290B and fee have been submitted. A Form I-290B and filing fee must be filed for each individual application appealed. Therefore, the AAO will consider the Form I-601 on appeal.¹

¹ In situations where an applicant files both a Form I-212 and a Form I-601, the Adjudicator's Field Manual (AFM) states that the Form I-601 is to be adjudicated first. Chapter 43.2(d) of the AFM states, "If the alien has filed both applications (Forms I-212 and I-601), adjudicate the waiver application first. If the Form I-601 waiver is approved, then consider the Form I-212 on its merits; if the Form I-601 is denied (and the decision is final), deny the Form I-212 since its approval would serve no purpose." Accordingly, pursuant to Chapter 43.2(d) of the AFM, the AAO will consider the applicant's Form I-601.

(b)(6)

The record includes, but is not limited to: briefs and correspondence from counsel; letters of support; identity, medical, psychological, employment, and financial documents; 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-

...

(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 admitted to the United States as a D-1 crewman on July 16, 2000, not to exceed 29 days. However, the applicant did not report to his ship and timely depart from the United States. Rather, he remained until March 24, 2010, when he was removed pursuant to an order of removal. The record also reflects he has remained in Egypt to date. The applicant accrued unlawful presence from about August 15, 2000, until November 20, 2008;² 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 or his in-laws can be considered only insofar as it results in hardship to a qualifying relative. The applicant's U.S. citizen spouse is the only demonstrated qualifying relative in this case. If extreme hardship to

² The record reflects the applicant filed an Application to Register Permanent Residence or Adjust Status (Form I-485) on November 20, 2008.

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 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 been suffering extreme emotional, medical, and financial hardship in the applicant's absence as: her mental and physical health have been worsening and have deteriorated since the applicant's departure; she has desperately wanted children, but has experienced three miscarriages; she feels culturally compelled to have children and would feel disgraced if she were unable to raise a family with the applicant; she has been experiencing thoughts of death and suicide; she has been paying little attention to her nutrition and has increased her level of smoking; she does not have health insurance to pay for necessary medical and mental health-related treatments; she has been having difficulty at her job and has been unable to maintain steady work; she has become homeless as she and the applicant have lost their marital home, resulting in her living with her sister; she has been barely able to maintain herself above the poverty line and has been forced to charge food, take out personal loans, and accrue additional credit card debt; and she uses her income to help pay for her parents' end-of-life care and to support the applicant in Egypt. The applicant's spouse also discusses: her courtship with the applicant, and their efforts to have children; her physical conditions, and her inability to take Ambien and Xanax; her worries for the applicant's safety in Egypt; her employment capacity and approximate monthly earnings at [REDACTED]; her monthly financial obligations and the consequences of her residential rental contract; and the daily and financial assistance the applicant provided to her and her parents. The applicant's spouse's sister further indicates she fears the applicant's spouse will physically and mentally deteriorate further, and she is unable to afford the financial costs of living on her own.

Although the applicant's spouse may experience some hardship in the applicant's absence, the AAO finds the record does not establish the hardship goes beyond what is normally experienced by qualifying relatives of inadmissible individuals. The record is sufficient to establish the applicant's spouse has been diagnosed with Major Depressive Disorder – severe and Anxiety Disorder, has been experiencing abruxing jaw, and has undergone three miscarriages. *See Letter of Support and Visit Note Issued by [REDACTED], LCSW*, dated December 13, 2011; *see also Initial Assessment Form*, dated January 3, 2011. The record also is sufficient to establish the applicant's spouse has been a patient at [REDACTED] since May 2006, and is currently being treated for hypertension. *See Medical Letter Issued by Dr. [REDACTED] M.D.*, dated July 1, 2012. The record also establishes Dr. [REDACTED] believes the applicant's spouse is suffering from Post-Traumatic Stress Disorder (PTSD). However, the record does not contain a sufficient discussion concerning the evaluative methods used to determine the applicant's spouse's current mental health diagnoses or Dr. [REDACTED] speculation that she may be undergoing PTSD, and it does not contain sufficient evidence of a specific course of treatment for her mental health conditions, indicating whether the applicant's participation is advantageous for that treatment. Absent an explanation in plain language from the treating mental health and medical professional of the nature and severity of any

mental or physical conditions 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 mental health or medical condition or the treatment needed. Moreover, the record does not include any evidence the applicant's spouse's current mental health conditions have affected her ability to perform her employment obligations or of cultural norms regarding Jordanian women and childrearing. 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)). Without documentary evidence to support the claim, the assertions of counsel will not satisfy the applicant's burden of proof. The unsupported assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980).

Additionally, the record is sufficient to establish the applicant's spouse has been employed by [REDACTED] since November 7, 2009, and currently works in the bakery department. And, she has been employed by [REDACTED] since October 22, 2009 in a part-time capacity. The record also includes evidence of the applicant's spouse's financial obligations, including credit card bills and remittances to Egypt. However, the record does not include any evidence of specific labor or employment conditions in Egypt and the applicant's inability to contribute to his and his spouse's households. Moreover, the AAO notes the record is unclear concerning whether the applicant's spouse receives employment-based medical coverage as her [REDACTED] (pay date February 17, 2011) indicates a payroll deduction of \$37.10 for Medical Insurance. And, the record is unclear concerning the applicant's spouse's financial obligations as agreed to in her residential rental contract given the contract indicates a 30-day written notice to terminate the contract, and not three-months notice as indicated by the applicant's spouse. The AAO is thus unable to conclude the record establishes the applicant's spouse's financial hardship would go beyond that which is commonly expected.

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

Counsel contends the applicant's spouse would suffer extreme hardship upon relocating to Egypt to be with the applicant as: she has very few ties in Egypt, a country on the brink of civil war; she would be subjecting herself to a life of poverty and possible death, and as a U.S. citizen, she would be subjected to sexual harassment, verbal abuse, and rape; she would be unable to obtain the necessary mental healthcare; and she plays a critical role in the physical and financial care of her ailing parents.

The record is sufficient to establish the applicant's spouse would suffer hardship if she were to relocate to Egypt. The AAO notes the record is unclear concerning the applicant's spouse's ties to Egypt. Nevertheless, the record reflects the applicant's spouse maintains strong family and community ties to the United States, and she has maintained steady employment. She serves an essential role in the care of her parents, who have been diagnosed with various medical conditions.

Also, the U.S. Department of State issued a travel alert, stating: "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.

In this case, the record does not contain sufficient evidence to show 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 U.S. citizen 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.