



U.S. Citizenship  
and Immigration  
Services

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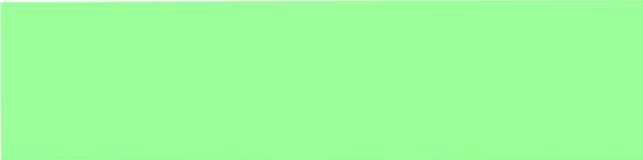
DATE: **MAR 22 2018** Office: AMMAN, JORDAN

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 (the Act), 8 U.S.C. section 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

(b)(6)

**DISCUSSION:** The waiver application was denied by the Field Office Director, Amman, Jordan. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native and citizen of Jordan. He 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 one year or more and seeking admission within 10 years of his last departure. He is married to a United States citizen. 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).

The Field Office Director concluded that the applicant had failed to establish that the bar to his admission would impose extreme hardship on a qualifying relative, his U.S. citizen spouse, and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) on July 8, 2012.

On appeal, counsel for the applicant asserts that the Field Office Director's decision was incorrect as a matter of law and made incorrect factual conclusions. *Form I-290B*, received on July 31, 2012.

The record includes, but is not limited to: counsel's brief; a statement from the applicant's and her spouse's daughter; two statements from [REDACTED] LCSW-R, one dated September 18, 2012, pertaining to the applicant's spouse; a statement from [REDACTED] MS CMH, undated, and pertaining to the mental health status of the applicant's spouse; 3 notices to vacate a residential premises addressed to the applicant's spouse; a statement from the applicant; an employment letter for the applicant from a Jordanian employer; bank account statements in the applicant's name; copies of three AAO decisions in other cases; country conditions materials on Jordan; two statements from [REDACTED] RPA-C, one dated August 15, 2011; a copy of a prescription medication list for the applicant's spouse; and copies of photographs of the applicant, her spouse and their family. The entire record was reviewed and all relevant evidence 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 such alien's departure or removal from the United States, is inadmissible.

The record indicates that the applicant entered the United States in B nonimmigrant status on July 27, 2007. There is no evidence in the record indicating the length of stay for which the applicant was authorized, but it is clear that the applicant did not apply for an extension, and as such, his authorized

period of stay would have expired no later than January 26, 2008. The applicant did not depart the United States until May 2009. Therefore, the applicant was unlawfully present in the United States for over a year from at least January 27, 2008, until May 2009, and is now seeking admission within 10 years of his last departure from the United States. Accordingly, the applicant is inadmissible to the United States under section 212(a)(9)(B)(i)(II) of the Act. The applicant does not contest this finding.

Section 212(a)(9)(B)(v) of the Act provides for a waiver of section 212(a)(9)(B)(i) inadmissibility as follows:

The Attorney General [now Secretary of Homeland Security] 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 . . . 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) 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 any 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-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 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 Field Office Director concluded that the applicant’s spouse would experience extreme hardship upon relocation. The AAO finds the record sufficiently documented to support the Field Office Director’s conclusion and will not disturb the finding in this regard.

On appeal, and with regard to hardship upon separation, counsel for the applicant asserts the applicant’s spouse will experience extreme physical and financial hardship due to separation from the applicant. *Statement in Support of Appeal*, received September 27, 2012.

Counsel refers to several unpublished AAO decisions and asserts that the fact pattern of this case is similar to those and the appeal should be sustained. It is first noted that unpublished decisions of the AAO are not binding on the present matter. Counsel submitted copies of the AAO decisions referred to, but the AAO notes that, while the factual *assertions* of this case may be similar to those cited, the

applicant must be able to establish his assertions as facts with probative evidence. Unlike the cases submitted by counsel, the record in this case does not contain sufficiently probative evidence to corroborate assertions of hardship impacts.

Counsel asserts that the applicant's absence has resulted in separation between his spouse and her daughter because the applicant counseled his spouse's daughter through bullying experiences in her high school and that she had to move in with her biological father when the applicant departed the United States. The AAO does not find the record sufficiently documented to corroborate this assertion, and even in the event there was sufficient evidence to establish that the applicant's daughter was being abused at school and mentally and emotionally supported by her step-father, it would not be sufficient to demonstrate that the applicant's spouse's daughter's experience was uncommon or rose to such a degree that it impacted a qualifying relative in this proceeding, the applicant's spouse. As it stands, the applicant's spouse's daughter is now an adult, and the AAO does not find the record to establish that the applicant's spouse's daughter was so mentally or emotionally dependent on the applicant that it would result in a substantial impact on the applicant's spouse. Based on the evidence in the record, the applicant's daughter no longer lives with her. When these observations are taken into consideration, the AAO does not find that the applicant's spouse will experience any uncommon physical or emotional hardship as an indirect result of any emotional or mental hardship imposed on her adult daughter.

As noted by the Field Office Director, there is insufficient evidence to establish that the applicant's spouse provided any income to support his spouse while he resided in the United States. Counsel responds to this on appeal by stating the applicant's spouse's affidavit stated the applicant had used savings to help support them. An unsupported assertion by the applicant's spouse does not constitute sufficient evidence to demonstrate that the applicant supported his spouse financially or made any significant financial contributions to the household. Although the record includes some bank account statements in the applicant's name, there is nothing which indicates that this was an account used to support the applicant's spouse (the dates of the account antecede the applicant's departure), nor is there documentation showing the applicant paid any bills or provided any financial support for his spouse.

The record also includes three documents which purport to be a notice of eviction for a residential property. While the applicant's spouse relies on these documents as evidence of financial hardship, the AAO notes that they are without any other contextual support for the applicant's assertions. There is no evidence of the applicant's spouse's income, no evidence of her current living arrangements, and no tax returns or any other documentation which indicates the applicant's spouse is unable to meet her financial obligations. As such, the AAO does not find the record to establish to what degree, if any, the applicant's spouse will experience any financial impact.

Counsel has asserted that the applicant's spouse is experiencing emotional hardship due to separation from the applicant and refers to several mental health evaluations and witness statements in the record. The record does contain statements from [REDACTED] indicating the applicant's spouse has visited him to seek counseling for emotional hardship. The most recent statement from

(b)(6)

Page 6

states that the applicant's spouse is suffering from Major Depression and Anxiety. There are also witness statements in the record which state that the applicant's spouse is suffering emotionally due to separation from the applicant. Based on this evidence, the AAO will give some consideration to the emotional impact on the applicant's spouse when aggregating the impacts due to separation.

The AAO acknowledges that the applicant's spouse will experience emotional hardship if she remains in the United States without the applicant, but the applicant has failed to demonstrate that this hardship, even when combined with other hardship factors, will be extreme. The AAO recognizes the significance of family separation as a hardship factor, but concludes that the hardship articulated in this case, based on the evidence in this record, does not rise above the common result of removal or inadmissibility and thus does not constitute extreme hardship. U.S. court decisions have repeatedly held that the common results of removal or inadmissibility are insufficient to prove extreme hardship. *See Hassan v. INS*, 927 F.2d 465, 468 (9th Cir. 1991). In addition, *Perez v. INS*, 96 F.3d 390 (9th Cir. 1996), held that the common results of deportation are insufficient to prove extreme hardship and defined extreme hardship as hardship that was unusual or beyond that which would normally be expected upon deportation.

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 rests with the applicant. *See* 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.