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

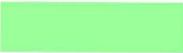


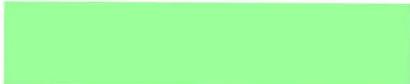
U.S. Citizenship
and Immigration
Services



Date: OCT 23 2013

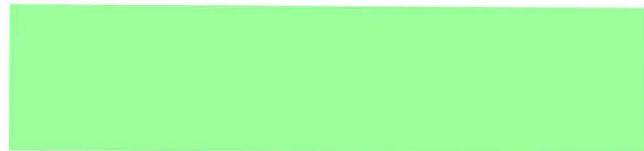
Office: ATHENS, GREECE

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 (AAO) in your case.

This is a non-precedent decision. The AAO does not announce new constructions of law nor establish agency policy through non-precedent decisions. If you believe the AAO incorrectly applied current law or policy to your case or if you seek to present new facts for consideration, you may file a motion to reconsider or a motion to reopen, respectively. Any motion must be filed on a Notice of Appeal or Motion (Form I-290B) within 33 days of the date of this decision. **Please review the Form I-290B instructions at <http://www.uscis.gov/forms> for the latest information on fee, filing location, and other requirements. See also 8 C.F.R. § 103.5. Do not file a motion directly with the AAO.**

Thank you,

A handwritten signature in black ink that reads "Ron Rosenberg".

Ron Rosenberg
Chief, Administrative Appeals Office

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

The record reflects that the applicant, a native and citizen of the Czech Republic, 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. The applicant 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), to reside in the United States with her U.S. citizen spouse.

The Field Office Director concluded that the applicant had failed to establish that 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, March 22, 2013.*

On appeal, counsel contends that the denial of the Form I-601 was incorrect in its application of precedent law and an abuse of discretion. Counsel submits a joint affidavit of the applicant and her spouse and country conditions evidence about Lebanon.

The record contains the following documentation: a brief in support of Form I-290B, Notice of Appeal or Motion, affidavits filed by the applicant and her spouse, a medical report for the applicant and her spouse, photographs, and country conditions information on Lebanon. The entire record was reviewed and considered in rendering a decision on the appeal.

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

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.

....

The applicant entered the United States in March 2001 as a non-immigrant and did not depart the United States upon expiration of the period of her authorized stay. The applicant married a U.S. citizen on January 6, 2005, and the applicant filed an Application to Register Permanent Residence or Adjust Status (Form I-485) on July 25, 2005. Thus, the applicant accrued unlawful presence from

2001 until July 25, 2005, a period of more than one year. The applicant initially was granted conditional lawful permanent resident status in July 2005, but this status was terminated on December 4, 2007, after she divorced her ex-husband. The applicant subsequently married her current spouse on March 25, 2008, and filed a second Form I-485 on May 5, 2008. After the applicant's conditional lawful permanent resident status was terminated, the applicant was placed into removal proceedings. The immigration judge granted the applicant's request for voluntary departure, and the applicant departed the United States on May 4, 2010. The applicant does not contest her inadmissibility.

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 can be considered only insofar as it results in hardship to a qualifying relative. Although the applicant submits evidence of hardship to her U.S. citizen children, the applicant's U.S. citizen spouse is the only qualifying relative in this case. Under this provision of the law, children are not deemed to be qualifying relatives. However, though children are not qualifying relatives under this statute, U.S. Citizenship and Immigration Services (USCIS) does consider that a child's hardship can be a factor in the determination whether a qualifying relative experiences extreme hardship. 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.*

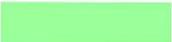
The actual hardship associated with an abstract hardship factor such as family separation, economic disadvantage, cultural readjustment, et cetera, differs in nature and severity depending on the unique circumstances of each case, as does the cumulative hardship a qualifying relative experiences as a 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 v. INS*, 138 F.3d 1292, 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 record indicates that the applicant and her family are currently residing in Beirut, Lebanon. With respect to hardship the applicant's spouse would experience upon relocation, the Field Office Director noted that while the applicant claimed that her spouse is suffering hardship in Lebanon, his country of origin, the applicant is a citizen of the Czech Republic. In order to find hardship to a qualifying relative based upon relocation, the applicant must show hardship to her spouse in the Czech Republic rather than Lebanon.

Counsel asserts that the applicant and her family “could never live” in the Czech Republic “since the [applicant’s parents’] apartment was in the countryside where they would have to live for the family to help each other”; the applicant’s spouse has no hope of finding employment; and her spouse and children do not speak or understand the Czech language. Counsel further asserts that the applicant’s spouse has no family support in the Czech Republic. In the joint affidavit filed by the applicant and her spouse, they state that they “cannot have a better life” in the Czech Republic, as the applicant’s spouse and children do not speak the language. They further state that the applicant’s spouse would not be able to find work to support the family. Although the assertions of the applicant and her spouse are relevant and have been taken into consideration, little weight can be afforded them in the absence of supporting evidence. See *Matter of Kwan*, 14 I&N Dec. 175 (BIA 1972) (“Information in an affidavit should not be disregarded simply because it appears to be hearsay; in administrative proceedings, that fact merely affects the weight to be afforded it.”). 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)).

The AAO has long interpreted the waiver provisions of the Act to require a showing of extreme hardship warranting a waiver of inadmissibility only where an applicant has shown extreme hardship to a qualifying relative in the scenario of relocation *and* the scenario of separation. The evidence in the record is focused on the hardship that the applicant’s spouse is experiencing in Lebanon. As the Field Office Director noted, USCIS is required to consider the applicant’s qualifying relative’s hardship in the applicant’s country of origin and in the United States. On appeal the applicant submits additional country-conditions reports about Lebanon without submitting corroborating evidence regarding hardships that her qualifying relative would experience in the Czech Republic. The record lacks sufficient evidence to demonstrate that the applicant’s spouse would experience financial hardship or would be unable to find work in the Czech Republic. The evidence also does not reflect to what extent the applicant and her family would receive financial and emotional assistance from family members in the Czech Republic. Based on the evidence in the record, the applicant has not established that her spouse would suffer hardship beyond the common results of removal if he were to relocate to the Czech Republic to reside with her.

Moreover, no evidence in the record shows the hardships the applicant’s spouse would face were he to reside in the United States while separated from the applicant. The record includes financial documentation showing that prior to his moving to Lebanon, the applicant’s spouse earned approximately \$20,000 annually. The record does not support concluding that the qualifying spouse would be unable to meet his financial obligations in the applicant’s absence. Additionally, it is not possible to evaluate his potential emotional or psychological hardship, because the March 2012 medical report by a Beirut-based neurology specialist does not note difficulties that the applicant’s spouse would experience if he were to be separated from the applicant. Finally, there is no indication in the record that the applicant’s spouse has medical conditions that would result in hardship to him if he were separated from the applicant. The AAO recognizes that the applicant’s spouse will endure hardship as a result of separation from the applicant. However, his situation if he returns to the United States is typical to individuals separated as a result of inadmissibility of a spouse and does not rise to the level of extreme hardship based on the record.



The record, reviewed in its entirety and in light of the *Cervantes-Gonzalez* factors, cited above, does not support a finding that the applicant's U.S. citizen spouse will face extreme hardship if the applicant is unable to reside in the United States. Rather, the record demonstrates that he will face no greater hardship than the unfortunate, but expected disruptions and difficulties arising whenever a spouse is refused admission to the United States. Although the AAO is not insensitive to the applicant's spouse's situation, the record does not establish that the hardship he would face rises to the level of extreme as contemplated by statute and case law.

In application proceedings, it is the applicant's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361. Here, that burden has not been met.

ORDER: The appeal is dismissed.