



U.S. Citizenship  
and Immigration  
Services

(b)(6)

[REDACTED]

DATE: APR 15 2014 Office: BALTIMORE, MD [REDACTED]

IN RE: [REDACTED]

APPLICATION: Application for Waiver of Grounds of Inadmissibility pursuant to 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:

[REDACTED]

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.

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 District Director, Baltimore, Maryland, and a subsequent appeal to the Administrative Appeals Office (AAO) was dismissed. The matter is now before the AAO on motion. The motion will be granted and the appeal sustained.

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 more than one year and seeking readmission within ten years of his last departure from the United States. The applicant seeks a waiver of inadmissibility in order to reside in the United States with his U.S. citizen spouse.

In a decision, dated July 25, 2012, the district director found that the applicant had failed to establish that his U.S. citizen spouse would suffer extreme hardship as a result of his inadmissibility. Specifically, the district director found that many of the articles related to the treatment of women and Jews in Egypt did not support the applicant's assertions of hardship and that the record failed to establish a connection between a doctor's letter and medical test results in regards to the applicant's spouse. The application was denied accordingly.

On appeal, counsel stated that the applicant was not inadmissible under section 212(a)(9)(B)(i)(II) of the Act because he was granted admission into the United States at the port of entry after his almost two year overstay. Counsel stated that this admission should have operated as a waiver of any section 212(a)(9)(B)(i)(II) inadmissibility. He also asserted that the applicant's spouse would suffer extreme hardship as a result of the applicant's inadmissibility.

In our decision, dated November 27, 2013, we found counsel's assertions regarding the applicant's re-entry into the United States operating as a waiver of his inadmissibility to be unpersuasive as he cited no law or statute to support his assertions, and the record did not indicate that the applicant revealed his inadmissibility (or that it was discovered) and that he applied for and received a waiver thereof. We also found that although the applicant had shown that his spouse would suffer extreme hardship upon relocation to Egypt, he did not show that she would suffer extreme hardship upon separation. We dismissed the appeal accordingly.

On motion, counsel submits new evidence to show hardship to the applicant's spouse upon separation, he asserts that in our decision, we overlooked evidence of hardship upon separation and that the applicant is deserving of a favorable exercise of discretion.

A motion to reopen must state the new facts to be proved in the reopened proceeding and be supported by affidavits or other documentary evidence. 8 C.F.R. § 103.5(a)(2). A motion to reconsider must state the reasons for reconsideration and be supported by any pertinent precedent decisions to establish that the decision was based on an incorrect application of law or Service policy. A motion to reconsider a decision on an application or petition must, when filed, also establish that the decision was incorrect based on the evidence of record at the time of the initial decision. 8 C.F.R. § 103.5(a)(3). A motion that does not meet applicable requirements shall be dismissed. 8 C.F.R. § 103.5(a)(4).

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-

(I) was unlawfully present in the United States for a period of more than 180 days but less than 1 year, voluntarily departed the United States (whether or not pursuant to section 244(e) prior to the commencement of proceedings under section 235(b)(1) or section 240), and again seeks admission within 3 years of the date of such alien's departure or removal, or

(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 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 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 regarding a waiver under this clause.

As we previously stated, the applicant entered the United States on December 13, 2001 as a B2 nonimmigrant visitor with an authorized period of stay until June 12, 2002. The applicant did not depart the United States until September 30, 2004. On July 21, 2006, the applicant reentered the United States, again with his nonimmigrant visa and has not departed the United States. The applicant is therefore inadmissible under section 212(a)(9)(B)(i) of the Act for having been unlawfully present in the United States. The applicant does not contest his inadmissibility on motion.

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. 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.

On appeal the record of hardship included: medical documentation, a statement from the applicant's spouse, financial documentation, a psychological evaluation, and country conditions information.

On motion, the record of hardship includes: counsel's brief, a psychosocial assessment from a licensed social worker, medical documentation indicating that the applicant's spouse is one month pregnant as of December 2013, and emails between the applicant's spouse and her family.

As previously stated, we found in our decision on appeal that the applicant's spouse would suffer extreme hardship as a result of relocation to Egypt because of the loss of her employment, the loss of other ties to the United States, unstable political conditions in Egypt, the lack of or difficulty in finding the proper medical care for her medical conditions in Egypt, and, in consideration of the applicant's spouse's Jewish heritage, her well-founded concerns regarding Anti-Semitism in Egypt.

The record now establishes that the applicant's spouse will suffer extreme emotional hardship as a result of separation. The applicant's spouse previously stated that she has feelings of sadness and depression and has suffered depression in the past due to her medical conditions. In our decision on appeal, we acknowledged the psychological evaluation in the record, dated May 4, 2011, but found that it failed to show that the applicant's spouse's emotional hardship would rise to the level of extreme hardship. The psychosocial evaluation, dated December 12, 2013 and submitted on motion, indicates that the applicant's spouse suffered Major Depressive Disorder in or around 2010 when she left New York, separating from her family because they disapproved of her relationship with the applicant. The evaluation indicates that the applicant's spouse is now experiencing increased concerns and stress over the applicant's immigration status and that being estranged from her family while also being separated from the applicant would likely lead to another depressive episode. Similarly, a letter, dated August 9, 2012 from the applicant's spouse's doctor, indicates that stress worsens the applicant's spouse's physical problems. Furthermore, the record establishes that exacerbating the applicant's spouse's situation is the fact that she is pregnant and without the applicant, she would not only be faced with raising her child on her own, but would also have to find someone to manage the business that she and the applicant own, but the applicant manages, or she would face the stress involved in selling the business. Thus, the applicant has established that his spouse would suffer extreme emotional hardship as a result of separation. Considered in the aggregate, the applicant has now established that his spouse would face extreme hardship if his waiver request is denied.

Extreme hardship is a requirement for eligibility, but once established it is but one favorable discretionary factor to be considered. *Matter of Mendez-Moralez*, 21 I&N Dec. 296, 301 (BIA 1996). For waivers of inadmissibility, the burden is on the applicant to establish that a grant of a waiver of inadmissibility is warranted in the exercise of discretion. *Id.* at 299. The adverse factors evidencing an alien's undesirability as a permanent resident must be balanced with the social and humane considerations presented on his behalf to determine whether the grant of relief in the exercise of discretion appears to be in the best interests of this country. *Id.* at 300.

The AAO notes that *Matter of Marin*, 16 I & N Dec. 581 (BIA 1978), involving a section 212(c) waiver, is used in waiver cases as guidance for balancing favorable and unfavorable factors and this cross application of standards is supported by the Board of Immigration Appeals (BIA). In *Matter of Mendez-Moralez*, the BIA, assessing the exercise of discretion under section 212(h) of the Act, stated:

We find this use of *Matter of Marin, supra*, as a general guide to be appropriate. For the most part, it is prudent to avoid cross application, as between different types of relief, of particular principles or standards for the exercise of discretion. *Id.* However, our reference to *Matter of Marin, supra*, is only for the purpose of the approach taken in that case regarding the balancing of favorable and unfavorable factors within the context of the relief being sought under section 212(h)(1)(B) of the Act. *See, e.g., Palmer v. INS*, 4 F.3d 482 (7th Cir.1993) (balancing of discretionary factors under section 212(h)). We find this guidance to be helpful and applicable, given that both forms of relief address the question of whether aliens with criminal records should be admitted to the United States and allowed to reside in this country permanently.

*Matter of Mendez-Moralez* at 300.

In *Matter of Mendez-Moralez*, in evaluating whether section 212(h)(1)(B) relief is warranted in the exercise of discretion, the BIA stated that:

The factors adverse to the applicant include the nature and underlying circumstances of the exclusion ground at issue, the presence of additional significant violations of this country's immigration laws, the existence of a criminal record and, if so, its nature, recency and seriousness, and the presence of other evidence indicative of an alien's bad character or undesirability as a permanent resident of this country. . . . The favorable considerations include family ties in the United States, residence of long duration in this country (particularly where the alien began his residency at a young age), evidence of hardship to the alien and his family if he is excluded and deported, service in this country's Armed Forces, a history of stable employment, the existence of property or business ties, evidence of value and service to the community, evidence of genuine rehabilitation if a criminal record exists, and other evidence attesting to the alien's good character (e.g., affidavits from family, friends, and responsible community representatives). .

*Id.* at 301.

The BIA further states that upon review of the record as a whole, a balancing of the equities and adverse matters must be made to determine whether discretion should be favorably exercised. The equities that the applicant must bring forward to establish that he merits a favorable exercise of administrative discretion will depend in each case on the nature and circumstances of the ground

of exclusion sought to be waived and on the presence of any additional adverse matters, and as the negative factors grow more serious, it becomes incumbent upon the applicant to introduce additional offsetting favorable evidence. *Id.* at 301.

The favorable factors in the applicant's case include: the extreme hardship his U.S. citizen spouse would face as a result of his waiver being denied; the lack of any criminal record; his success in owning and operating a business in the United States; and his attributes as a loving and supportive husband. The unfavorable factors in the applicant's case include his unlawful presence and unauthorized employment in the United States.

Although the applicant's violations of immigration law cannot be condoned, the positive factors in this case outweigh the negative factors. In these proceedings, the burden of establishing eligibility for the waiver rests entirely with the applicant. *See* section 291 of the Act, 8 U.S.C. § 1361. In this case, the applicant has met his burden. The motion will be granted and the appeal will be sustained.

**ORDER:** The motion is granted and the appeal sustained.