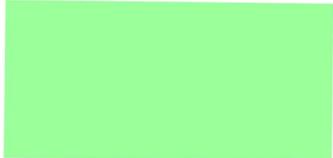


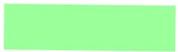


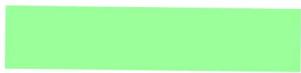
U.S. Citizenship  
and Immigration  
Services

(b)(6)



DATE: JAN 30 2015 OFFICE: ATHENS, GREECE

FILE: 

IN RE: APPLICANT: 

APPLICATION: Application for Waiver of Grounds of Inadmissibility under section 212(a)(9)(B) of the Immigration and Nationality Act, 8 U.S.C. § 1182(a)(9)(B)

ON BEHALF OF APPLICANT:



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 the Field Office Director, Athens, Greece, and the Administrative Appeals Office (AAO) dismissed a subsequent appeal. The matter is now before the AAO on motion. The motion will be granted, and the underlying appeal will be sustained.

The applicant is a native and citizen of Lebanon 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 10 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 and three children.

The Field Office Director found the applicant had not established that a qualifying relative would experience extreme hardship given his continued inadmissibility and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) accordingly. *Decision of the Field Office Director*, dated August 6, 2010. In the same decision, the Field Office Director also denied the applicant's Application for Permission to Reapply for Admission after Deportation or Removal (Form I-212) solely based on the denial of the Form I-601.

On appeal, we found that although the applicant demonstrated that his spouse would experience extreme hardship if she were to remain in Lebanon, he did not submit sufficient evidence to show that she would experience extreme hardship in the event that she returned to the United States without him. *See AAO Decision*, October 4, 2012. The appeal was accordingly dismissed.

On motion, filed on November 5, 2012 and received by the AAO on October 9, 2014, the applicant submits: statements from himself, his spouse, and his spouse's parents; birth certificates; student loan documents; credit card bills; and printouts on apartment rentals. In the spouse's statement, she claims that she has since moved back to the United States without the applicant, and consequently she has faced financial, psychological, and family-related hardship.

The record includes, but is not limited to: the documents listed above; briefs in support; statements from the applicant and his spouse; letters of support; medical and educational records; financial documents; documentation of immigration and criminal proceedings; evidence of birth, marriage, residence, and citizenship; other applications and petitions; and articles on country conditions in Lebanon. The entire record was reviewed and considered in arriving at a decision on the motion.

Section 212(a)(9) of the Act provides, in pertinent 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.

(iii) Exceptions.- . . . .

(II) Asylees.-No period of time in which an alien has a bona fide application for asylum pending under section 208 shall be taken into account in determining the period of unlawful presence in the United States under clause (i) unless the alien during such period was employed without authorization in the United States.

(v) Waiver.-The [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 [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.

The record reflects that the applicant was admitted to the United States pursuant to a non-immigrant visa on June 24, 2001, with authorization to remain until December 23, 2001. The applicant remained past this date, and he was issued a Notice to Appear (NTA) on January 7, 2003. The applicant filed a Form I-589, Application for Asylum and Withholding of Removal (Form I-589), on November 17, 2003. An immigration judge denied his Form I-589 on November 21, 2003, and the Board of Immigration Appeals dismissed a subsequent appeal on May 24, 2005. The applicant was removed from the United States on March 20, 2007.

The applicant accrued unlawful presence from December 24, 2001, until November 17, 2003, when he filed his Form I-589, and from May 25, 2005, until his departure on March 20, 2007. As such, the applicant accrued more than one year of unlawful presence, and is inadmissible to the United States under section 212(a)(9)(B)(i)(II) of the Act until March 2017. The applicant's qualifying relative for a waiver of inadmissibility under section 212(a)(9)(B)(v) of the Act is his U.S. citizen spouse.

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.

On motion, the applicant's spouse indicates she has returned to the United States, and she is currently experiencing financial, psychological, and family-related hardship without the applicant present. The spouse explains that she and the applicant have two children, who were born in [REDACTED] and [REDACTED] and she is due to give birth to another child in [REDACTED]. Birth certificates, including one for the third child, are submitted on motion. The spouse states that she and her children are now living with her parents, but because they are older and have medical problems, they cannot assist her with her children, nor can they help her financially. She adds that the house, which is arranged for her parents' safety and ease of movement, is not safe for her children, and consequently, that her daughter has fallen down the stairs a couple of times. Letters from the spouse's parents are present in the record. In addition, the spouse submits online printouts on apartment rentals in her area to indicate that she will not be able to afford to move out of her parent's house. The spouse further claims that she owes over \$130,000 in student loans, and \$9,000 in credit card debt. She states that the only way she can pay this off is if she goes back to optometry school and gets a job as an optometrist, but with three small children to take care of without the applicant's support, she does not know how this will be possible. The spouse explains that the applicant is selling cars in Lebanon, but he does not make enough money to support them. She adds that he has a job offer in the United States which will allow them to be more financially comfortable. A job offer letter is present in the record. The spouse lastly claims that she and her daughter have been suffering from anxiety without the applicant present.

The applicant has submitted sufficient evidence to demonstrate that his spouse would experience extreme hardship in the event of continued separation. The record reflects that the spouse lives with their three children, who are six, two, and under a year old. The record further reflects that the spouse's parents cannot help take care of the children. Without assistance from her parents, who she lives with, or the applicant, the spouse has shown that she cannot take care of their children and earn a sufficient income, or finish optometry school. The applicant has also documented his spouse's student loan and credit card debt, as well as her difficulty making monthly payments on that debt. Moreover, the applicant has submitted a job offer letter from a family member indicating that he will be employed in the United States, and therefore, able to help his spouse financially.

We therefore find there is sufficient evidence of record to demonstrate that her hardship would rise above the distress normally created when families are separated as a result of inadmissibility or removal. In that the record establishes that the financial, family-related, or other impacts of separation on the applicant's spouse are cumulatively above and beyond the hardships commonly experienced, the AAO concludes that she would suffer extreme hardship if the waiver application is denied and the applicant remains in Lebanon without his spouse.

On appeal, we found that the applicant had demonstrated that his spouse would experience extreme hardship upon relocation to Lebanon. As there is nothing in the record indicating that this was erroneous, we affirm this finding on motion.

Considered in the aggregate, the applicant has established that his U.S. citizen spouse would face extreme hardship if the applicant's 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-Morales*, 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 negative factors include the applicant's unlawful presence, evidence of his employment without authorization in the United States, and his 2006 motor vehicle violations. The positive factors include the extreme hardship to his spouse, some evidence of hardship to his U.S. citizen children, and documentation of good moral character as stated in support letters.

Although the applicant's immigration violations are serious, the record establishes that the positive factors in this case outweigh the negative factors and a favorable exercise of discretion is warranted. 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 underlying appeal will be sustained.

We again note that the Field Office Director denied the applicant's Form I-212 in the same decision, and that the Form I-212 was denied solely based on the denial of the Form I-601. As we have now found the applicant eligible for a waiver of inadmissibility under section 212(a)(9)(B)(v) of the Act, we will adjudicate the appeal of the Field Office Director's decision as it relates to the Form I-212.

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

(A) Certain aliens previously removed.-

- (i) Arriving aliens.- Any alien who has been ordered removed under section 235(b)(1) or at the end of proceedings under section 240 initiated upon the alien's arrival in the United States and who again seeks admission within five years of the date of such removal (or within 20 years in the case of a second or subsequent removal or at any time in the case of an alien convicted of an aggravated felony) is inadmissible.

- (ii) Other aliens.-Any alien not described in clause (i) who-
  - (I) has been ordered removed under section 240 or any other provision of law, or
  - (II) departed the United States while an order of removal was outstanding, and who seeks admission within 10 years of the date of such alien's departure or removal (or within 20 years of such date in the case of a second or subsequent removal or at any time in the case of an alien convicted of an aggravated felony) is inadmissible.
- (iii) Exception.- Clauses (i) and (ii) shall not apply to an alien seeking admission within a period if, prior to the date of the alien's reembarkation at a place outside the United States or attempt to be admitted from foreign contiguous territory, the Secretary has consented to the alien's reapplying for admission.

The applicant last departed the United States on March 20, 2007, pursuant to an outstanding order of removal. Therefore, he is also inadmissible under section 212(a)(9)(A)(ii) of the Act until ten years after his last departure. The applicant currently requires permission to reapply for admission into the United States under section 212(a)(9)(A)(iii) of the Act.

A grant of permission to reapply for admission is a discretionary decision based on the weighing of negative and positive factors. We have found that the applicant warrants a favorable exercise of discretion related to the adjudication of the Form I-601. For the reasons stated in that finding, we find that the applicant merits a favorable exercise of discretion on his Form I-212 application.

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