

identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

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



U.S. Citizenship
and Immigration
Services

PUBLIC COPY



H2

FILE: [REDACTED] Office: NEW YORK CITY, NEW YORK

Date: **JAN 08 2010**

IN RE: [REDACTED]

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:

SELF-REPRESENTED

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. Please refer to 8 C.F.R. § 103.5 for the specific requirements. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$585. Any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen, as required by 8 C.F.R. § 103.5(a)(1)(i).


Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the District Director, New York, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The record reflects that the applicant is a 40-year-old native and citizen of Grenada who was found to be inadmissible to the United States for having been unlawfully present in the United States for more than one year, 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). Although the director incorrectly cited to the misrepresentation ground of inadmissibility found at section 212(a)(6)(C)(i) of the Act, 8 U.S.C. § 1182(a)(6)(C)(i), this error is harmless because the AAO reviews these proceedings de novo. See 5 U.S.C. § 557(b). The applicant is married to a citizen of the United States, and she seeks a waiver of inadmissibility under section 212(a)(9)(B)(v) of the Act, 8 U.S.C. § 1182(a)(9)(B)(v), in order to reside with her husband and stepchildren in the United States.

The director found that the applicant failed to establish extreme hardship to her spouse, and denied the application accordingly. *Decision of the Director*, dated April 21, 2008. On appeal, the applicant contends that denial of the waiver would result in extreme financial psychological, and other hardships to her U.S. citizen husband. See *Statement of* _____ *in Support of Appeal*, dated May 20, 2008.

The record contains, *inter alia*, a copy of the couple's marriage certificate, indicating that they were married on September 18, 2006, in New York; statements from the applicant and her husband in support of the waiver application; financial statements and tax documents; evidence of the applicant's husband's medical coverage; photographs of the couple; letters related to the applicant's travel to Grenada; and a statement in support of the appeal. The entire record was reviewed and considered in rendering this decision on appeal.

Section 212(a)(9)(B) of the Act provides:

(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 [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 supports the director's determination that the applicant is inadmissible under section 212(a)(9)(B)(i)(II) of the Act based on her unlawful presence in the United States for more than one year after April 1, 1997, and her departure from the United States. *See Matter of Rodarte-Roman*, 23 I&N Dec. 905, 911 (BIA 2006) (recognizing the April 1, 1997 effective date of the unlawful presence bars). The record shows that the applicant was admitted to the United States on August 22, 1986, as a nonimmigrant visitor (B-2) with authorization to remain until February 21, 1987. *See Form I-94*. In April, 2001, the applicant filed an Application to Register Permanent Resident or Adjust Status (Form I-485) based on her former marriage. *See Form I-485*, filed in Apr., 2001. This application was denied on November 24, 2003. *See id.*; *see also Decision of the Director*, dated Nov. 24, 2003. In October, 2002, the applicant filed a second Form I-485 based on the previous marriage. *See Form I-485*, filed in Oct., 2002. U.S. Citizenship and Immigration Services (USCIS) terminated this application on November 9, 2007. *See id.* The applicant's current spouse filed a Petition for Alien Relative (Form I-130), on her behalf on December 14, 2006, and USCIS approved the petition on July 9, 2007. *See Form I-797, Notice of Action*, dated July 9, 2007. The related Application to Register Permanent Resident or Adjust Status was filed on April 8, 2007. *See Form I-485*, filed Apr. 8, 2007. The record reflects that the applicant made multiple trips abroad beginning in or around 2004. *See Passport for [REDACTED]*. The applicant accrued unlawful presence during the period from April 1, 1997, to April, 2001, when she did not have a pending application for adjustment of status.

In order to obtain a section 212(a)(9)(B)(v) waiver, an applicant must show that the ten-year bar imposes an extreme hardship on the applicant's U.S. citizen or lawful resident spouse or parent. *See* 8 U.S.C. § 1182(a)(9)(B)(v).¹ Under the plain language of the statute, hardship to the applicant, or to his or her children or other family members, may not be considered, except to the extent that this hardship affects the applicant's qualifying relative. *See id.* (specifically identifying the relatives whose hardship is to be considered); *see also INS v. Hector*, 479 U.S. 85, 88 (1986). Additionally, extreme hardship to the qualifying relative must be established in the event that he or she remains in the United States and in the event that he or she accompanies the applicant to the home country. *See Matter of Cervantes-Gonzalez*, 22 I&N Dec. 560, 565-68 (BIA 1999) (en banc) (considering the hardships of family separation and relocation). Once extreme hardship is established, it is but one favorable factor to be considered in the determination of whether the Secretary should exercise discretion in favor of the waiver. *See Matter of Mendez-Morales*, 21 I&N Dec. 296, 301 (BIA 1996) (en banc).

¹ Although the director incorrectly referred to the waiver provision set forth in section 212(i) of the Act, 8 U.S.C. § 1182(i), which is inapplicable to this appeal, the error is harmless because both waiver provisions require the same showing of extreme hardship to a qualifying relative.

The concept of extreme hardship to a qualifying relative “is not . . . fixed and inflexible,” and the determination is based on an examination of the facts of each individual case. *Matter of Cervantes-Gonzalez*, 22 I&N Dec. at 565. In *Matter of Cervantes-Gonzalez*, the Board of Immigration Appeals (BIA) set forth a non-exhaustive list of factors relevant to determining whether an alien has established extreme hardship to a qualifying relative. These factors include: the presence of family ties to U.S. citizens or lawful permanent residents in the United States; family ties outside the United States; country conditions where the qualifying relative would relocate and family ties in that country; the financial impact of departure; and significant health conditions, particularly where there is diminished availability of medical care in the country to which the qualifying relative would relocate. *Id.* at 565-66. Family separation is also an important calculation in the extreme hardship analysis. *See, e.g., Salcido-Salcido v. INS*, 138 F.3d 1292, 1293 (9th Cir. 1998) (per curiam) (“When the BIA fails to give considerable, if not predominant, weight to the hardship that will result from family separation, it has abused its discretion.”); *Matter of Lopez-Monzon*, 17 I&N Dec. 280 (Commr. 1979) (noting in the context of a waiver under section 212(i) of the Act that the intent of the waiver is to provide for the unification of families and to avoid the hardship of separation).

Additionally,

Relevant factors, though not extreme in themselves, must be considered in the aggregate in determining whether extreme hardship exists. In each case, the trier of fact 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, e.g., economic detriment due to loss of a job or efforts ordinarily required in relocating or adjusting to life in the native country. Such ordinary hardships, while not alone sufficient to constitute extreme hardship, are considered in the assessment of aggregate hardship.

Matter of O-J-O-, 21 I&N Dec. 381, 383 (BIA 1996) (internal quotation marks and citation omitted). However, “[t]he common results of deportation or exclusion are insufficient to prove extreme hardship.” *Hassan v. INS*, 927 F.2d 465, 468 (9th Cir. 1991). For example, in *Matter of Pilch*, 21 I&N Dec. 627 (BIA 1996), the BIA held that mere economic detriment and emotional hardship caused by severing family and community ties are common results of deportation and do not constitute extreme hardship. In *Perez v. INS*, 96 F.3d 390 (9th Cir. 1996), the Ninth Circuit held that economic hardship and adjustment difficulties did not constitute hardship that was unusual or beyond that which would normally be expected upon deportation. In *INS v. Jong Ha Wang*, 450 U.S. 139 (1981), the U.S. Supreme Court held that the mere showing of economic detriment to qualifying family members is insufficient to warrant a finding of extreme hardship.

The record reflects that the applicant’s spouse, [REDACTED] is a 59-year-old native of Grenada and citizen of the United States. *See Form I-485*, filed Apr. 8, 2007. The applicant and [REDACTED] have been married for three years. *See Marriage Certificate*. [REDACTED] has a 23-year-old son and a 22-year-old daughter from a previous marriage. *See Form I-601, Application for Waiver of Grounds of Inadmissibility; Health Benefits Application*. The applicant’s husband is an attorney with his own immigration practice in New York. *See Form G-325A, Biographic Information; Form*

G-28, *Notice of Entry of Appearance*, dated July 10, 2003. contends that the denial of the waiver would cause extreme hardship to him and his adult children.

Regarding family separation, the applicant's husband asserts that he will suffer extreme emotional, physical, and financial hardships as a result of the applicant's removal from the United States. In support of the psychological hardship claim, the applicant's husband states that he lost his first spouse in 2001, and that the denial of a waiver "would be equivalent to the los[s] of a second spouse." *Statement in Support of Appeal*. states that after the death of his first wife, he and his children "suffered through a deep and devastating depression" which impacted his ability to work and his children's ability to function at school. *Letter of* , dated Nov. 26, 2007. claims that depression consumed his life until 2005, when he fell in love with the applicant, and that her "goodness, strength, unselfishness and sincere love" has helped him to regain his ability to function. *Id.* The applicant works as the secretary in ; law office, and is his "cook and caretaker," his "daily prayer partner," and "evening companion." *Id.* states that he needs the daily presence of the applicant to function and survive, and to take care of his office, his clients, and his children. *Id.*

In support of the financial hardship claim, states that if the applicant is returned to Grenada, his "income would decrease considerably and [his] expenses would increase astronomically" because the applicant works without pay at his law office. *Statement in Support of Appeal*. fears that without the applicant, he would have to "either close [his] office when [he is] not there or hire a third party at a cost that [he] cannot now afford." *Id.* The applicant's husband states that his "standard income" is \$33,000, and that there are months when they "barely make the rent of \$1,500.00 with the additional expenses of office telephone, fax, and office supplies and water." *Id.*; see also *Letter from* , dated Nov. 27, 2006 (regarding past due mortgage payments); *Five-Day Notice to Tenant*, dated May 9, 2008; *Warrant for Unpaid Taxes*, dated Mar. 2, 2008. Additionally, the applicant claims that he took \$53,000 from his deferred compensation pension in 2006, to take his home out of foreclosure, and to pay college expenses for his two children. *Id.*

Here, the evidence presented regarding family separation is not sufficient to support a claim of hardship that rises beyond the common results of removal or inadmissibility to the level of extreme hardship. See *Perez*, 96 F.3d at 392; *Matter of Pilch*, 21 I&N Dec. at 631. First, the Board has held that the emotional hardship caused by severing family ties is a common result of deportation and does not constitute extreme hardship. *Matter of Pilch*, 21 I&N Dec. 627. Although the applicant's husband states that he suffered from severe depression after the death of his first wife until he met the applicant, there is no evidence in the record, such as medical or treatment records, to substantiate this claim. See *Matter of Soffici*, 22 I&N Dec. 158, 165 (Commr. 1998) (going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings).

Further, any hardships to the applicant's stepchildren are not calculated in the extreme hardship analysis, except to the extent that these hardships impact the applicant's husband. See 8 U.S.C. § 1182(a)(9)(B)(v) (omitting consideration of hardship to the applicant and to his or her children).

Although [REDACTED] contends that his children have formed a strong bond with the applicant, there is insufficient evidence to conclude that the impact of separation on the applicant's adult stepchildren would cause extreme emotional hardship to him.

Finally, the record does not contain sufficient evidence to support a finding that family separation would cause extreme financial hardship to [REDACTED]. Mr. [REDACTED] claimed an annual income of \$50,000 in 2007, and \$49,000 in 2006, and indicated that he had real estate holdings valued at \$450,000. *See Form I-864, Affidavit of Support*, dated Mar. 31, 2007. Although the record indicates that [REDACTED] has received past due notices for some of his financial obligations, *see Letter from [REDACTED] Five-Day Notice to Tenant; Warrant for Unpaid Taxes*, the evidence does not show that he is unable to meet his financial needs. Additionally, although the applicant has worked for her husband's law office without taking a salary, the record lacks specific information regarding the financial benefit of this arrangement, or the potential cost of hiring an individual to replace the applicant. In sum, there is insufficient evidence to show that family separation would cause [REDACTED] to suffer extreme financial hardship.

Regarding relocation, the applicant's husband claims that a move to Grenada would not be an option. *Statement in Support of Appeal*. [REDACTED] states that he is qualified to practice law in New York, and that he would have to attend school for at least one year in order to practice law in Grenada. *Id.* Additionally, moving to Grenada "would mean abandoning [his] office and [his] children in the USA, who need [his] financial, moral and spiritual support." *Id.* Further, [REDACTED] states that his health insurance would not provide medical coverage in Grenada. *Id.* Finally, he claims that "the level of care in Grenada would not be of the level here in the USA," and the cost of travel to the United States for medical treatment would be prohibitive. *Id.*

Given [REDACTED] ties to his law practice and to his children in the United States, it appears that relocation to Grenada could impose adjustment difficulties. However, there is insufficient evidence in the record to support a finding that the applicant's husband would suffer extreme hardship upon relocation to his homeland. First, although [REDACTED] claims that he would not be able to immediately practice law in Grenada, he indicates that he could continue with his legal career after one additional year of schooling. *See Statement in Support of Appeal*. Second, while relocation could entail separation from his adult children in the United States, the record does not contain sufficient evidence to support a finding that the hardship of family separation would be unusual or extreme. Third, [REDACTED] did not provide any evidence to support his contention that there is a diminished availability of suitable health care in Grenada. *See Matter of Soffici*, 22 I&N Dec. at 165. Additionally, the record does not reflect any significant health conditions that would be jeopardized by relocation. *See Matter of Cervantes-Gonzalez*, 22 I&N Dec. at 565 (noting relevance of significant health conditions and diminished availability of medical care).

In sum, although the applicant's spouse has presented claims of harm based on family separation or relocation, the record does not contain sufficient evidence to support these claims and to show that the difficulties, considered in the aggregate, would rise beyond the common results of removal or inadmissibility to the level of extreme hardship. *See Perez*, 96 F.3d at 392; *Matter of Pilch*, 21 I&N Dec. at 631. The AAO therefore finds that the applicant has failed to establish extreme hardship to her spouse, as required under section 212(a)(9)(B)(v) of the Act. Because the applicant has not

shown extreme hardship to a qualifying relative, no purpose would be served in determining whether the applicant merits a waiver as a matter of discretion. *Matter of Cervantes-Gonzalez*, 22 I&N Dec. at 568.

Section 291 of the Act, 8 U.S.C. § 1361, provides that the burden of proof is on the applicant to establish eligibility for the benefit sought. Here, the applicant has not met that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.