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U.S. Department of Homeland Security
Citizenship and Immigration Services
Administrative Appeals Office MS 2090
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**U.S. Citizenship
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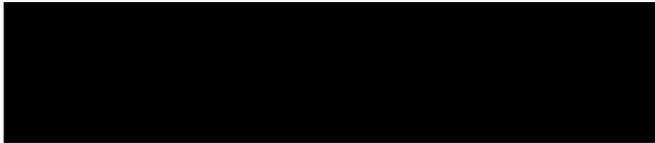
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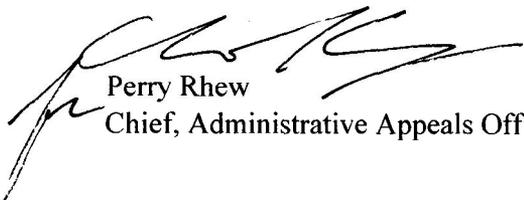
APPLICATION: Application for Waiver of Grounds of Inadmissibility under section 212(a)(9)(B) of the Immigration and Nationality Act, 8 U.S.C. § 1182(a)(9)(B)

ON BEHALF OF APPLICANT:



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.


Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the District Director, Baltimore, Maryland. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained.

The applicant is a native and citizen of the United Kingdom 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 for more than one year and seeking readmission within 10 years of his last departure. The applicant seeks a waiver of inadmissibility in order to reside in the United States with his U.S. citizen wife and daughter.

The district director found that the applicant failed to establish extreme hardship to his U.S. citizen wife and denied the Form I-601 application for a waiver accordingly. *Decision of the District Director*, dated January 7, 2008.

On appeal, counsel for the applicant asserts that the applicant's wife will experience extreme hardship should the present waiver application be denied. *Statement from Counsel on Form I-290B*, dated February 4, 2008. Counsel notes that the applicant has submitted probative medical documentation to show that his wife will suffer significant physical and emotional hardship should the applicant depart the United States. *Id.* at 2. Counsel contends that the district director failed to consider all hardships to the applicant's wife cumulatively, or to apply relevant precedent decisions. *Id.*

The record contains briefs and correspondence from counsel; statements from the applicant, the applicant's wife, and friends and relatives of the applicant and his wife; letters and reports on the applicant's wife's physical and mental health from medical professionals; letters showing that applications for medical insurance for the applicant's wife were rejected; articles regarding the declining housing market in the United States; copies of birth certificates for the applicant, the applicant's wife, and the applicant's daughter; copies of the applicant's and his wife's passports; tax and business documents for the applicant's wife; documentation regarding the applicant's wife's purchase of real property; copies of bills for the applicant and his wife; a copy of the applicant's marriage certificate; information regarding the applicant's wife's employment, and; documentation regarding the applicant's unlawful presence in the United States. The entire record was reviewed and considered in rendering a decision on the appeal.

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.

....

(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 Attorney General [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 on February 10, 1992 the applicant entered the United States in B-2 status as a visitor for pleasure, with authorization to remain until August 9, 1992. He did not depart until September 24, 1998. Accordingly, he accrued unlawful presence from April 1, 1997, the date the unlawful presence provisions in the Act took effect, until his departure on September 24, 1998, totaling over one year. He now seeks admission pursuant to his Form I-485 application to adjust his status to permanent resident. He was deemed inadmissible to the United States under section 212(a)(9)(B)(i)(II) of the Act for having been unlawfully present for more than one year and seeking readmission within 10 years of his last departure. The applicant does not contest his inadmissibility on appeal.

A section 212(a)(9)(B)(v) waiver of the bar to admission resulting from section 212(a)(9)(B)(i)(II) of the Act is dependent first upon a showing that the bar imposes an extreme hardship to the U.S. citizen or lawfully resident spouse or parent of the applicant. Hardship the applicant experiences upon being found inadmissible is not a basis for a waiver under section 212(a)(9)(B)(v) of the Act. Once extreme hardship is established, it is but one favorable factor to be considered in the determination of whether the Secretary should exercise discretion. See *Matter of Mendez*, 21 I&N Dec. 296 (BIA 1996).

Matter of Cervantes-Gonzalez, 22 I&N Dec. 560 (BIA 1999) provides a list of factors the Board of Immigration Appeals deems relevant in determining whether an alien has established extreme hardship to a qualifying relative. These 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.

On appeal, counsel asserts that the applicant's wife will experience extreme hardship should the present waiver application be denied. *Statement from Counsel on Form I-290B*, dated February 4, 2008.

The applicant's wife explains that she suffers from extreme anxiety, insomnia, Crohn's disease, and neck pain. *Statement from the Applicant's Wife*, dated November 5, 2009. She states that she and the applicant have been diligent in keeping their health coverage, including paying for a group plan that was previously provided by the applicant's employer. *Id.* at 1. She notes that the group plan became unaffordable, but that they have been denied by two other health insurance providers due to her preexisting conditions. *Id.* She expresses concern for her health care should the applicant depart and she lose access to employer-provided health care, or should she relocate abroad and lose access to quality health care in the United States. *Id.*

The applicant's wife states that she and the applicant purchased a home, but that recession and the revocation of the applicant's work authorization have significantly reduced their savings and prohibited them from selling their home. *Id.* at 2. She explains that she took an assignment in Ethiopia for November 2009 to help meet her and the applicant's needs, but that such work would be impossible without the applicant's availability to care for their young daughter. *Id.* She states that her company is showing a loss for the previous two quarters, and as the largest revenue producer she is needed to keep the organization operating. *Id.* She provides that the company and her livelihood are threatened. *Id.*

The applicant's wife explains that her parents, both who are 88-years-old, reside in New York which in part prompted her and the applicant to relocate to Maryland from New Orleans. *Id.* at 3. She provides that her mother has Parkinson's disease which has worsened significantly, and that her father does not think clearly which required her to assume limited power of attorney. *Id.* She explains that she and her sisters have helped her parents in their legal and personal affairs. *Id.*

The applicant's wife previously stated that she has no friends or support in the United Kingdom. *Prior Statement from the Applicant's Wife*, dated September 20, 2007. She noted that the applicant has been the primary care giver for their daughter and she has earned the majority of the family's income. *Id.* at 3. She explained that she fears she will suffer unusual emotional hardship if she departs the United States, given her history of anxiety, the hardship of leaving ailing parents, and her prior traumatic experience of having to leave her home in New Orleans due to hurricane Katrina. *Id.* at 4.

The applicant's wife expressed that she is close with the applicant and that he has been a source of strength and support for her. *Personal Statement from the Applicant's Wife*, dated September 2007.

The applicant provided extensive documentation of his wife's physical and mental health care. He submitted a letter from [REDACTED] who indicated that he saw the applicant's wife for a psychiatric consultation in June 1997, and that she presented with symptoms of anxiety, mild depression, and relational issues. *Letter from [REDACTED]* dated September 13, 2007. [REDACTED] stated that the applicant's wife received psychotherapy on a regular basis for the following

two years. *Id.* at 1. He noted that he remained in contact with the applicant's wife after she relocated to New Orleans, and that she continued to have problems with anxiety and stress which would cause bouts of insomnia. *Id.* He noted that the applicant's wife responded well to her symptoms with the occasional use of anti-anxiety medication. *Id.* He posited that the applicant's wife would suffer extreme hardship if the applicant's husband departs the United States. *Id.*

The applicant provided a psychological report for his wife from [REDACTED] Dr. [REDACTED] stated that the applicant's wife suffers from a disorder of the Thyroid, Crohn's disease, and sciatica in her mid foot region. *Psychological Report*, undated. He indicated that these conditions reduce the applicant's wife's endurance and exacerbate her depression and anxiety which would make it difficult for her to relocate to a new country. *Id.* at 1. He stated that the applicant's wife requires stability and support, or stress will inflame her chronic diseases to an unmanageable degree. *Id.* He explained that the applicant's wife suffers from severe anxiety, severe insomnia, and depression. *Id.* He noted that the applicant's wife is medicated with antidepressants which places her at risk of suicide. *Id.* [REDACTED] provided that there is complete physical and emotional dependency between the applicant and his wife, and that they have a needy young child who is one year old. *Id.* He posited that the applicant's wife will relocate with the applicant if the applicant departs the United States but that without an income, family support, or goals other than survival, the applicant's wife's emotional stability will rapidly deteriorate involving mental and physical illness. *Id.*

[REDACTED] recounted the applicant's wife's history of treatment, including treatment for anxiety and depression from her primary care physician, [REDACTED], throughout 2009. *Id.* at 2. He noted that the applicant's wife received treatment for depression from a psychotherapist, [REDACTED]¹ since 2003. *Id.* He explained that the applicant's wife received care from [REDACTED] a gastroenterologist and head of the department of gastroenterology at the Ochsner Medical Center in Louisiana, who diagnosed her with Crohn's disease in 1995. *Id.* He noted that the applicant's wife takes medication for Crohn's disease and that it remains largely controlled when she is not stressed. *Id.*

[REDACTED] explained that the applicant's wife's anxiety and depression has been the most severe in her current circumstances, but that they represent an ongoing mental illness for the past 20 years. *Id.* at 2-3. He notes that [REDACTED] treated the applicant in the 1990s with psychiatric therapy and medication. *Id.* at 2.

The applicant provided a letter from [REDACTED] who has been the applicant's wife's primary care physician since 2007. *Letter from [REDACTED]*, dated September 13, 2007. [REDACTED] stated that on each of several consultations she has had with the applicant's wife there have been indications of depression and anxiety. *Id.* at 1. She indicated that treatments have included referral to local support groups for new mothers, education about post partum depression, prescription of anti-depressants, and prescription of sleep aids. *Id.*

¹ It is noted that the applicant provided a letter from [REDACTED] regarding treatment for anxiety, and it is presumed that [REDACTED] in fact referred to [REDACTED] when he referenced [REDACTED]

She explained that the applicant's wife has managed well with the support of the applicant, but that the applicant's wife experienced significantly increased stress levels when the applicant worked in New Orleans for two months. *Id.* [REDACTED] stated that extended separation of the applicant and his wife would cause a significant increase in her depression and anxiety. *Id.*

The applicant provided a letter from [REDACTED] who attested that she treated the applicant's wife for anxiety beginning in 2003. *Letter from* [REDACTED] dated September 16, 2007.

The applicant provided documentation of his wife's treatment for physical health problems including Crohn's disease. The applicant provided a letter from [REDACTED] describing Chron's disease. [REDACTED] stated that the applicant's wife's disease is, in general, under control using medical therapy, but that he has "genuine and real concerns" that her health will be severely affected if the applicant departs the United States. *Letter from* [REDACTED] at 1, dated September 18, 2007. He explained that Crohn's disease is "notoriously associated with stress, such that severe stress can cause an aggravation of the disease." *Id.* He indicated that Crohn's disease is more than a nuisance, as it can lead to very severe medical problems, surgery, and morbidity. *Id.*

The applicant presented letters and documentation to support that his wife shares a close bond with her family members in the United States.

Upon review, the applicant has established that his wife will suffer extreme hardship if he is prohibited from residing in the United States. The applicant has provided numerous documents to show his wife's history of mental and physical health problems that have required regular medical care. The applicant's wife's health presents an unusual circumstance that is not ordinarily faced by families who relocate or are separated due to inadmissibility.

The applicant's wife has a history of anxiety and depression for which she has sought treatment from medical professionals for over 12 years, including psychiatric therapy and medication. The record shows that the applicant's wife's mental health problems have been significantly exacerbated by the possibility that the applicant will be compelled to depart the United States.

The AAO acknowledges that the applicant's wife would face many challenges should she remain in the United States without the applicant. She would face difficulty caring for her young child alone. Her business and work activities would be impacted by the need to act as a single parent, reducing or eliminating her ability to engage in extended work-related travel. She may face economic hardship due to the impact on her business and the need to hire childcare services. She would face the loss of the applicant's daily presence and support. She would experience additional emotional hardship due to sharing in her daughter's loss of the applicant, her primary caregiver. While these consequences are a common result when a spouse is compelled to depart the United States due to inadmissibility, the applicant's wife's history of mental and physical health problems distinguish the hardship she would experience from that which is ordinarily expected. The record clearly shows that she would face significant stressors that would further deepen her anxiety and depression, and possibly aggravate her Crohn's disease which can cause serious detriment to her health.

The applicant's wife would experience significant hardship should she relocate abroad to maintain family unity. The record shows that the applicant's wife has a history of medical care in the United States with doctors who are familiar with her conditions. While it is assumed that there are medical professionals in the United Kingdom who are capable of addressing the applicant's wife's mental and physical health issues, relocating abroad would separate her from her present care. Given that the applicant's wife suffers from anxiety and depression, the AAO recognizes that stability is an important component of her care, and that the need to reestablish care in a new country would constitute an emotional and physical hardship for her. The AAO further acknowledges that the applicant's wife has faced difficulty obtaining medical insurance, and that she has concern for the continuity of her coverage that may be affected should she relocate abroad.

The record shows that the applicant's wife would face many other emotional and financial challenges should she relocate to the United Kingdom to maintain family unity. While she does not presently reside in the same town as her elderly parents, she would face emotional hardship in relocating a much further distance away where she would be unable to assist them effectively. The applicant has shown that his wife shares a close relationship with her family members in the United States, and thus she would experience emotional hardship if she is separated from them. The applicant's wife's business and work activities would be seriously impacted, as she presently is a co-owner in a business based in the United States. The possible failure of her business and financial detriment due to the need to sell one or both of her houses at a loss constitutes emotional and economic hardship for her.

It is noted that the applicant's wife has experience traveling to less developed countries outside the United States, including Costa Rica and Ethiopia. Thus, it is evident that she is capable of adapting to unusual environments and cultures. However, the AAO recognizes that visiting a foreign country for a temporary work assignment does not involve the level of disruption and restructuring of one's life that is required when establishing a residence abroad for an indefinite period of time.

The consequences noted above are commonly anticipated when a family relocates out of the United States due to inadmissibility. However, the applicant's wife's history of mental and physical health problems distinguish the hardship she would experience from that which is ordinarily expected. As stated above, the applicant has shown that his wife would face significant stressors that would further deepen her anxiety and depression, and possibly aggravate her physical ailments including Crohn's disease.

All elements of hardship to the applicant's wife have been considered in aggregate. Based on the foregoing, the applicant has shown by a preponderance of the evidence that his wife will experience extreme hardship should he be compelled to depart the United States, whether she remains without him or relocates abroad. Accordingly, the applicant has shown that denial of the present waiver application "would result in extreme hardship" to his wife, as required for a waiver under section 212(a)(9)(B)(v) of the Act.

In *Matter of Mendez-Morales*, 21 I&N Dec. 296 (BIA 1996), the BIA held that establishing extreme

hardship and eligibility for a waiver of inadmissibility does not create an entitlement to that relief, and that extreme hardship, once established, is but one favorable discretionary factor to be considered. The Attorney General (now Secretary of the Department of Homeland Security) has the authority to consider all negative factors in deciding whether or not to grant a favorable exercise of discretion. *See Matter of Cervantes-Gonzalez, supra*, at 12.

The negative factors in this case consist of the following:

The applicant remained in the United States without a legal immigration status for approximately six years.

The positive factors in this case include:

The record does not reflect that the applicant has been convicted of a crime; the applicant's U.S. citizen wife would experience extreme hardship if he is prohibited from residing in the United States; the applicant's U.S. citizen daughter will experience hardship if she resides in the United States without the applicant; the applicant has shown a propensity to assist his community, such as making substantial efforts to help victims of Hurricane Katrina; the applicant has worked and paid taxes in the United States, and; the applicant has cared for his U.S. citizen wife and daughter, and cultivated a strong family unit.

While the applicant's violation of U.S. immigration law cannot be condoned, the positive factors in this case outweigh the negative factors.

In proceedings for an application for waiver of grounds of inadmissibility under section 212(a)(9)(B)(v) of the Act, the burden of establishing that the application merits approval remains entirely with the applicant. Section 291 of the Act, 8 U.S.C. § 1361; *see also Matter of Mendez-Morales*, 21 I&N at 301 (finding that, in addition to establishing extreme hardship, an applicant must show that he or she merits a favorable exercise of discretion). In this case, the applicant has met his burden that he merits approval of his application.

ORDER: The appeal is sustained.