



U.S. Citizenship
and Immigration
Services

(b)(6)

DATE: **MAR 07 2013**

Office: NEW YORK, NY

FILE: [REDACTED]

IN RE: [REDACTED]

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) and section 212(h) of the Immigration and Nationality Act, 8 U.S.C. § 1182(h)

ON BEHALF OF APPLICANT:
[REDACTED]

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

Thank you,

f. Ron Rosenberg
Acting Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the District Director, New York, New York and the Administrative Appeals Office (AAO) dismissed a subsequent appeal. The matter is again before the AAO as a motion to reopen and a motion to reconsider. The motion will be dismissed.

The applicant is a native and citizen of Georgia 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 her last departure from the United States and pursuant to section 212(a)(2)(D)(i) of the Act, 8 U.S.C. § 1182(a)(2)(D)(i), for having engaged in prostitution. The applicant's spouse and child are U.S. citizens and she seeks a waiver of inadmissibility in order to reside in the United States.

The District Director determined that the applicant had failed to establish extreme hardship to a qualifying relative and denied the Form I-601, Application for Waiver of Grounds of Inadmissibility, accordingly. *Decision of the District Director*, dated December 5, 2008. On appeal, the AAO also found the record to lack sufficient evidence to establish the existence of extreme hardship to a qualifying relative and dismissed the appeal. *Decision of the AAO Chief*, dated August 12, 2011.

On motion, counsel asserts that the applicant has demonstrated extreme hardship and that he is unable to relocate to Georgia in light of country conditions and because of a medical problem that cannot be treated in Georgia. *Form I-290B, Notice of Appeal or Motion*, dated September 9, 2011.

In support of the motion, the record includes, but is not limited to, statements from the applicant and her spouse, letters of support and country conditions information on Georgia. The entire record was reviewed and all relevant evidence considered in reaching a decision in this matter.

The requirements for a motion to reopen are set forth in the regulation at 8 C.F.R. § 103.5(a)(2):

(2) *Requirements for motion to reopen.* 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

The requirements for a motion to reconsider are found in the regulation at 8 C.F.R. § 103.5(a)(3):

(3) *Requirements for motion to reconsider.* 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.

On motion, counsel submits a brief, a copy of the U.S. Department of State's Country Specific Information for Georgia, dated July 27, 2011, as well as a statement from the applicant's spouse, originally submitted in support of the Form I-601 on September 25, 2008. In our August 12, 2011

decision, the AAO discussed the applicant's inadmissibility pursuant to section 212(a)(9)(B)(i)(II) and section 212(a)(2)(D)(i) of the Act. As the applicant's motion does not contest his inadmissibility, we will confine our consideration of the record to the applicant's hardship claim under section 212(a)(9)(B)(v) of the Act.

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

.....

(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.

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, the U.S. citizen or lawfully resident spouse, parent or child of an applicant. The qualifying relatives in this proceeding are the applicant's spouse and child. Accordingly, hardship to the applicant or other family members will be considered only insofar as it results in hardship to one or more of these qualifying relatives. If extreme hardship to a qualifying relative is established, the applicant is statutorily eligible for a waiver, and United States Citizenship and Immigration Services (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 BIA 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 BIA 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 BIA 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,

(b)(6)

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 BIA 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.

In the brief submitted in support of the motion, counsel states that the applicant’s spouse speaks only English and that he would be unable to communicate or make a living in Georgia. Counsel also asserts that the copy of the July 27, 2011 Country Specific Information indicates that the applicant’s spouse’s life would be in constant danger in Georgia and that, when these hardships are combined with the “horror of forcing a United States citizen child to live in [a] land of terror and crime,” the applicant has established that relocation would result in extreme hardship for her spouse. Counsel does not further address the medical condition that the Form I-290B indicates could not be treated in Georgia.

On motion, counsel also asserts that the applicant’s return to Georgia would result in extreme hardship for her U.S. citizen son as he would be required to relocate to a country where the U.S. Department of State has warned of the dangers of child kidnapping. Counsel further contends that,

in 2008 during a visit to Georgia, the applicant's son witnessed the horrors of the Russian invasion and that, as a result, he suffers from Post-Traumatic Stress Disorder and is being treated with Prozac.

The submitted copy of the Country Specific Information for Georgia, dated July 27, 2011 warns U.S. citizens against travel to the separatist regions of South Ossetia in north-central Georgia and Abkhazia in northwest Georgia, noting the volatility of the political situation, the high levels of crime and the inability of U.S. embassy officials to travel to these areas. While the AAO acknowledges this warning and the security concerns for U.S. citizens in South Ossetia and Abkhazia, the applicant's most recent Form G-325A, Biographic Information, dated February 22, 2008, indicates that she was born in Tbilisi, Georgia's capital, and that her parents continue to reside in Tbilisi. As the record indicates that the applicant and her family would be likely to reside in Tbilisi if they returned to Georgia, the submitted country conditions information regarding the dangers of traveling to and in South Ossetia and Abkhazia does not establish that the applicant's spouse or child would be at risk upon relocation. While the July 27, 2011 report does state that crime is a concern in Tbilisi, we do not find it to indicate that the level of economic and property-based crimes noted in the report exceeds that in most of the world's large cities. Moreover, we do not find the report to indicate, as counsel claims, that the kidnapping of children is a specific danger in Georgia.

Although the Country Specific Information does report that the medical treatment in Georgia meeting Western standards is limited, the record does not document that the applicant's spouse or son have any medical conditions that could not be treated in Tbilisi. In reaching this conclusion, we have noted counsel's assertion that the applicant's son is suffering from PTSD as a result of a 2008 visit to Georgia. Although counsel references a statement to this effect from a Dr. [REDACTED] Director, [REDACTED], no statement from Dr. [REDACTED] is found in the record. Going on record without supporting documentation is not sufficient to meet the applicant's burden of proof in this proceeding. See *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)).

Having considered the additional evidence submitted in support of the motion, as well as that previously provided by the applicant, the AAO continues to find it insufficient to establish that relocation would result in extreme hardship for either the applicant's spouse or son. As indicated in our August 12, 2011 decision, we acknowledge that the applicant's qualifying relatives may face difficulties in relocating to Georgia, but find the record to lack the documentary evidence of emotional, financial, medical or other types of adversity that, when considered in the aggregate, establishes hardship beyond that normally created by relocation to a new country.

On motion, counsel asserts that the applicant's spouse has had trouble with drug addiction but that the applicant has helped him become and remain "clean and sober." He also contends that the applicant gives her spouse the strength to deal with the "difficulties in his soul." Counsel further maintains that if the applicant is removed from the United States, there will be no one to care for her son who suffers from PTSD. No additional documentary evidence has been submitted to demonstrate how separation would affect the applicant's spouse or son.

The AAO notes that we have previously considered the applicant's spouse's 2008 statement, as well as the hardship statements submitted by the applicant, finding the record to lack the documentary evidence to support their hardship claims. Although, on motion, counsel asserts that the applicant's son is suffering from PTSD, we do not find the record to provide documentary evidence of any medical conditions affecting the applicant's son. Moreover, it also fails to establish that the applicant's removal would leave her son, born in 2001, without a caregiver as we cannot conclude from the record that the applicant is solely responsible for her son's care. The record contains a lease agreement signed by the applicant and her spouse on May 6, 2008, which is accompanied by a statement signed by the applicant's spouse that indicates no child under ten-years-of-age is living with them. The record also includes a number of the applicant's earnings statements from 2007 and 2008 that do not reflect any deductions for a dependent. Further, the Form I-864, Affidavit of Support Under Section 213A of the Act, signed by the applicant's spouse on January 16, 2008, does not indicate there are any dependent children in his household. Accordingly, we do not find the record to demonstrate that there would be no one to care for the applicant's son in the event of her removal from the United States.

In that the applicant has submitted no documentary evidence to establish the claims made on motion, the AAO will, without further discussion, affirm our August 12, 2011 finding that the record lacks the documentary evidence necessary to establish that a qualifying relative would suffer extreme hardship if the waiver is denied and the applicant is removed from the United States.

The record fails to establish the existence of extreme hardship to a qualifying relative and the applicant has, therefore, failed to demonstrate eligibility for a waiver under section 212(a)(9)(B)(v) of the Act. Having found the applicant statutorily ineligible for relief, no purpose would be served in discussing whether she merits a waiver as a matter of discretion.

In proceedings for application for waiver of grounds of inadmissibility under section 212(a)(9)(B) of the Act, the burden of proving eligibility remains entirely with the applicant. *See* Section 291 of the Act, 8 U.S.C. § 1361. Here, the applicant has not met that burden. Accordingly, the motion will be dismissed.

ORDER: The motion is dismissed.