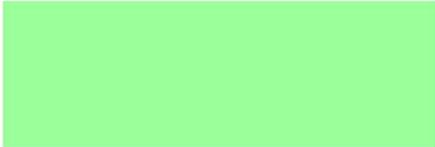




U.S. Citizenship
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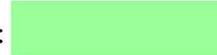
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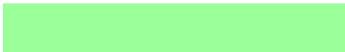
Date: JUL 28 2014

Office: DETROIT, MI

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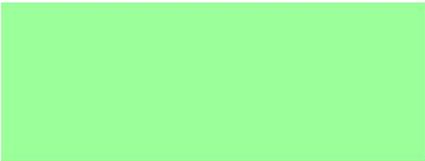


IN RE:



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

ON BEHALF OF APPLICANT:



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 the Field Office Director, Detroit, Michigan and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained.

The applicant is a native and citizen of Lithuania who was found to be inadmissible under section 212(a)(2)(A)(i)(II) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(2)(A)(i)(II), for having been convicted of violating a law relating to a controlled substance. The applicant is the spouse of a U.S. citizen. He seeks a waiver of inadmissibility pursuant to section 212(h) of the Act, 8 U.S.C. §1182(h).

In a decision, dated January 17, 2014, the field office director found that the applicant had failed to establish extreme hardship to his U.S. citizen spouse as a result of his inadmissibility. The application was denied accordingly.

On appeal, counsel states that the applicant was not afforded the opportunity to submit hardship documentation after his adjustment interview and that the questions asked by the adjudications officer during the interview were not adequate for ascertaining whether extreme hardship would be experienced. Counsel submits evidence of hardship on appeal.

Section 212(a)(2)(A)(i) of the Act states in pertinent part:

- (1) Criminal and related grounds. —
 - (A) Conviction of certain crimes. —
 - (i) In general. — Except as provided in clause (ii), any alien convicted of, or who admits having committed, or who admits committing acts which constitute the essential elements of —
 - (I) a crime involving moral turpitude (other than a purely political offense) or an attempt or conspiracy to commit such a crime, or
 - (II) a violation of (or conspiracy or attempt to violate) any law or regulation of a State, the United States, or a foreign country relating to a controlled substance (as defined in section 102 of the Controlled Substances Act (21 U.S.C. 802)), is inadmissible.

Section 212(h) of the Act states:

The Attorney General may, in his discretion, waive the application of subparagraphs (A)(i)(I), (B), (D), and (E) of subsection (a)(2) of this section and subparagraph (A)(i)(II) of such subsection insofar as it relates to a single offense of simple possession of 30 grams or less of marijuana if—

(1)(A) in the case of any immigrant it is established to the satisfaction of the Attorney General that—

(i) the alien is inadmissible only under subparagraph (D)(i) or (D)(ii) of such subsection or the activities for which the alien is inadmissible occurred more than 15 years before the date of the alien's application for a visa, admission, or adjustment of status,

(ii) the admission to the United States of such alien would not be contrary to the national welfare, safety, or security of the United States, and the alien has been rehabilitated; or

(B) in the case of an immigrant who is the spouse, parent, son, or daughter of a citizen of the United States or an alien lawfully admitted for permanent residence if it is established to the satisfaction of the Attorney General that the alien's denial of admission would result in extreme hardship to the United States citizen or lawfully resident spouse, parent, son, or daughter of such alien

On May 1, 2006, the applicant was convicted of possession of marijuana under Michigan Common Law section 333.7411. The police report related to the applicant's arrest indicated that the amount of marijuana involved in the arrest was three grams. The applicant was sentenced to one year probation and 48 hours of community service. Thus, the record establishes that the applicant's conviction relates to *simple* possession of 30 grams or less of marijuana and the applicant is eligible to apply for a section 212(h) waiver of his inadmissibility.

Section 212(h) of the Act provides that a waiver of the bar to admission is dependent first upon a showing that the bar imposes an extreme hardship on a qualifying family member. In the applicant's case his qualifying family member is his United States citizen spouse. 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).

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.

The record of hardship includes: counsel's brief; a letter from the applicant's spouse; a letter from the applicant's mother-in-law; a letter from the Associate Dean of Student Affairs at [REDACTED]; [REDACTED] tuition information regarding [REDACTED]; country conditions information for Lithuania; a letter from the applicant's spouse's psychotherapist; a psychological evaluation for the applicant's spouse; letters from colleagues and friends of the applicant's spouse regarding her emotional suffering; a letter from the applicant's employer; financial documentation; and a letter from the applicant.

The record establishes that the applicant's spouse will suffer extreme hardship as a result of the applicant's inadmissibility. The record shows that extreme hardship will be experienced in the event of relocation and in the event of separation.

In the event of relocation, the record indicates that the applicant's spouse will suffer extreme emotional, financial, and professional hardship. The applicant's spouse has close ties to the United States as she moved to the United States from Bulgaria when she was ten years old. She has received almost all of her education in the United States and recently completed her second year of medical school at Michigan State University. The record states that the applicant's spouse is the only child to her mother, a U.S. citizen, who after having a brain tumor removed, requires her daughter's care and attention. The record indicates that the applicant's spouse feels that she is her mother's only source of support. The family has no other relatives living in the United States. The record states that after the applicant's spouse's parents divorced, the applicant's father-in-law moved to Germany with his new wife and children. The applicant's spouse states that she has not been able to see her father since his departure and the separation has been very traumatic for her.

Moreover, the applicant's spouse has significant professional ties to the United States as she has completed two years out of a five year program at [REDACTED]. The record indicates that she is very involved in her school, holding leadership roles and working as a tutor to other medical students. In addition, the record shows that the applicant has invested approximately \$130,000 in her education in the United States in the form of student loans and her medical school education requires approximately \$45,000 per year in loans to be taken out. If she were to relocate to Lithuania, she states that her medical school credits would not be able to transfer to a foreign university. Furthermore, the applicant's spouse is originally from Bulgaria and does not speak Lithuanian. The record indicates that it would be difficult for her to find employment in Lithuania because she does not know the language and the unemployment rate in the country is approximately 13-14%. The record indicates that the applicant would also have problems finding employment as he does not have a college degree. Therefore, the record establishes that when taking into account the applicant's spouse's familial, professional, and financial ties to the United States and her lack of any ties to Lithuania, she would suffer extreme hardship upon relocation.

In the event of separation, the record establishes that the applicant's spouse would suffer extreme emotional and financial hardship. The record indicates that the applicant's spouse has been seeing a psychotherapist for six months. The record states that the applicant's spouse first sought therapy to address issues surrounding her parent's divorce when she was 16 years old and to address the symptoms of anxiety and depression she is experiencing. The letter from the applicant's spouse's therapist indicates that the applicant's spouse has suffered numerous traumatic losses in her life, including separating from her extended family to move to the United States when she was 10 years old, the divorce of her parents when she was 16 years old, and then the departure of her father to live in Germany with his new wife and children. She states that given the condition of the applicant's mother-in-law, the applicant's spouse feels that the applicant is her only form of support. The record indicates that if the applicant were removed, his spouse would be alone in managing the pressures of medical school and caring for her mother's needs. The record indicates that emotionally, the applicant's spouse is more vulnerable than the average person undergoing separation due to immigration. The record includes numerous documents that support these assertions. A psychological

evaluation, performed by a psychologist not associated with her current therapist, found that the applicant's spouse was suffering from Major Depressive Disorder, Single Episode, Moderate. In addition, a letter from the Associate Dean of Students at [REDACTED] a letter from a medical student the applicant's spouse tutors; and a letter from the applicant's spouse's friend, indicate that the applicant's spouse's demeanor has changed since the applicant's waiver was denied, that she has lost her focus and drive in regards to her studies, and that she has become lethargic and sad.

Exacerbating the emotional hardship the applicant's spouse would face as a result of separation would be the financial difficulties she is likely to face as a result of separation. The record indicates that although the applicant's spouse's medical school loans cover some living expenses, the applicant's income pays for 75% of the couple's expenses. Therefore, taking into consideration the extreme emotional hardship the applicant's spouse would face as a result of separation together with the financial difficulties she would face, the record establishes that she would also suffer extreme hardship upon separation. Thus, considered in the aggregate, the applicant has 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 for section 212(h)(1)(B) relief 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 will suffer as a result of his waiver application being denied, his lack of any other criminal record since the incident in 2006; the applicant's value to his employer as a motivated and dedicated employee; and the emotional and financial support he provides his spouse. The unfavorable factors in the applicant's case include his illegal residence in the United States after he overstayed his authorized period of stay on his visitor's visa and his criminal conviction in 2006.

Although the applicant's immigration violations are serious, 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 her burden and the appeal will be sustained.

ORDER: The appeal is sustained.