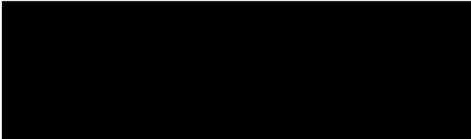




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FILE:



Office: PHOENIX, ARIZONA

Date:

**AUG 29 2007**

IN RE:

Applicant:



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.

Robert P. Wiemann, Chief  
Administrative Appeals Office

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

The applicant, [REDACTED], is a native and citizen of Romania 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 over one year. The applicant filed a self-petition, Form I-360, pursuant to section 204(a)(1)(B)(ii) of the Act; 8 U.S.C. § 1154(a)(1)(B)(ii). She sought a waiver of inadmissibility under section 212(a)(9)(B)(v) of the Act, 8 U.S.C. § 1182(a)(9)(B)(v), which the District Director denied, finding that hardship to a qualifying relative was not established. *Notice of Decision, dated July 12, 2006.* The applicant submitted a timely appeal.

The AAO will first address the finding of inadmissibility pursuant to section 212(a)(9)(B)(i)(II) of the Act, 8 U.S.C. § 1182(a)(9)(B)(i)(II).

Section 212(a)(9)(B)(i)(II) of the Act provides that any alien (other than an alien lawfully admitted for permanent residence) who has been unlawfully present in the United States for one year or more, and again seeks admission within 10 years of the date of such alien's departure or removal, is inadmissible.

Unlawful presence accrues when an alien is present in the United States after the expiration of the period of stay authorized by the Attorney General or is present in the United States without being admitted or paroled. Section 212(a)(9)(B)(ii) of the Act, 8 U.S.C. § 1182(a)(9)(B)(ii). The periods of unlawful presence under sections 212(a)(9)(B)(i)(I) and (II) are not counted in the aggregate.<sup>1</sup> For purposes of section 212(a)(9)(B) of the Act, time in unlawful presence begins to accrue on April 1, 1997.<sup>2</sup>

The three- and ten-year bars of sections 212(a)(9)(B)(i)(I) and (II) of the Act, 8 U.S.C. § 1182(a)(9)(B)(i)(I) and (II), are triggered by a departure from the United States following accrual of the specified period of unlawful presence. If someone accrues the requisite period of unlawful presence but does not subsequently depart the United States, then sections 212(a)(9)(B)(i)(I) and (II) of the Act, 8 U.S.C. § 1182(a)(9)(B)(i)(I) and (II), would not apply. *See* DOS Cable, note 1. *See also Matter of Rodarte*, 23 I&N Dec. 905 (BIA 2006)(departure triggers bar because purpose of bar is to punish recidivists). With regard to an adjustment applicant who had 180 days of unauthorized stay in the United States before filing an adjustment of status application, his or her return on an advance parole will trigger the three- and ten-year bar. Memo, Virtue, Acting Exec. Comm., INS, HQ IRT 50/5.12, 96 Act. 068 (Nov. 26, 1997).

The record reflects that the applicant entered the United States in December 1996 with a passport and a nonimmigrant visitor visa; after the authorized stay expired, she remained in the United States, accruing unlawful presence. The applicant married her spouse, a naturalized U.S. citizen, on September 22, 1999. The Petition for Alien Relative, Form I-130, filed by the applicant's former husband on November 5, 1999, was denied on July 9, 2002. She filed the Petition for Amerasian, Widow(er), or Special Immigrant (Form I-360)

<sup>1</sup> Memo, Virtue, Acting Assoc. Comm. INS, Grounds of Inadmissibility, Unlawful Presence, June 17, 1997 INS Memo on Grounds of Inadmissibility, Unlawful Presence (96Act.043); and Cable, DOS, No. 98-State-060539 (April 4, 1998).

<sup>2</sup> *See* DOS Cable, note 1; and IIRIRA Wire #26, HQIRT 50/5.12.

and accompanying documents on September 11, 2002; it was approved on August 21, 2003. The applicant filed the Form I-485, Application to Register Permanent Resident or Adjust Status, on February 19, 2004, by which time she had accrued more than one year of unlawful presence. She departed from the United States and re-entered on advance parole on February 21, 2001, April 12, 2004, and November 19, 2005, thereby triggering the ten-year-bar. *Notice of Decision, dated July 12, 2006.* Consequently, the applicant is inadmissible pursuant to section 212(a)(9)(B)(i)(II) of the Act, 8 U.S.C. § 1101(a)(9)(B)(i)(II).

Certain periods of presence in the United States are not considered unlawful. Section 212(a)(9)(B)(iii) of the Act, as amended by section 301(c)(1) of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA), provides an exception to unlawful presence for battered women and children. It states that unlawful presence shall not apply to spouse or children subjected to battery or extreme cruelty, if there is a relationship between the battery or cruelty and the violation of the term of the spouse or child's nonimmigrant stay. IIRIRA § 301(c)(2).

There is no evidence in the record that demonstrates a relationship between the battery or cruelty inflicted upon the applicant and the violation of the term of her nonimmigrant stay. The applicant entered the United States in 1996 with a valid passport and nonimmigrant visa, and remained in the United States after the expiration of authorized stay. The incidents that gave rise to the Domestic Violence Temporary Orders occurred in 2000 and 2001; thus, the battery or cruelty did not have any connection with the violation of the term of nonimmigrant stay, which occurred at an earlier date.

The IIRIRA § 301(c)(2) included a "transition for battered spouse or child provision," which reads as follows:

The requirements of subclauses (II) and (III) of section 212(a)(6)(A)(ii) of the Immigration and Nationality Act, as inserted by paragraph (1), shall not apply to an alien who demonstrates that the alien first arrived in the United States before the title III-A effective date (described in section 309(a) of this division).

The transition period provided at IIRIRA § 301(c)(2) applies to IIRIRA § 212(a)(6)(A), Aliens present without admission or parole. The transition period does not apply to IIRIRA § 212(a)(9)(B) (Aliens Unlawfully Present), which is the applicant's ground of inadmissibility.

The AAO will now address the finding that a waiver of inadmissibility is not warranted.

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

- (v) Waiver. – The Attorney General [now Secretary, 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) is dependent upon a showing that the bar to admission imposes an extreme hardship on a qualifying relative, *i.e.*, the U.S. citizen or lawfully resident

spouse or parent of the applicant. Hardship to the applicant is not a permissible consideration under the statute and will be considered only insofar as it results in hardship to a qualifying relative, which in this case are the applicant's parents who are lawful permanent residents. If extreme hardship to the qualifying relative is established, the Secretary then assesses whether an exercise of discretion is warranted. *See Matter of Mendez-Morales*, 21 I&N Dec. 296 (BIA 1996).

The applicant's March 16, 2006 letter states that her siblings live in the United States. In the letter the applicant indicates that she is "taking care of my parents that are old and ill." She states that her mother is 77 years old and that her father who is 89 years old is ill. The applicant indicates that her siblings have families of their own and are not able to care for their parents.

The permanent resident cards of the applicant's parents indicate that they have been permanent residents in the United States since April 6, 1994. The record contains naturalization certificates and a passport page belonging to three of the applicant's four siblings. It also contains a Decree of Dissolution of Marriage, income tax records, pay statements, W-2 Forms, character reference letters, court records, and other documents.

This case arises within the jurisdiction of the United States Court of Appeals for the Ninth Circuit, therefore decisions from the Ninth Circuit will be given appropriate weight in this proceeding.

"Extreme hardship" is not a definable term of "fixed and inflexible meaning"; establishing extreme hardship is "dependent upon the facts and circumstances of each case." *Matter of Cervantes-Gonzalez*, 22 I&N Dec. 560, 565 (BIA 1999). The Board of Immigration Appeals (BIA) in *Matter of Cervantes-Gonzalez* lists the factors it considers relevant in determining whether an applicant has established extreme hardship pursuant to section 212(i) of the Act. 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.* at 565-566. The BIA indicated that these factors relate to the applicant's "qualifying relative." *Id.* at 565-566.

In *Matter of O-J-O*, 21 I&N Dec. 381, 383 (BIA 1996), the BIA stated that the factors to consider in determining whether extreme hardship exists "provide a framework for analysis," and that the "[r]elevant factors, though not extreme in themselves, must be considered in the aggregate in determining whether extreme hardship exists." It further stated that "the trier of fact must consider the entire range of factors concerning hardship in their totality" and then "determine whether the combination of hardships takes the case beyond those hardships ordinarily associated with deportation." (citing *Matter of Ige*, 20 I&N Dec. 880, 882 (BIA 1994)).

Applying the *Cervantes-Gonzalez* factors here, extreme hardship to the applicant's mother or father must be established in the event that she or he joins the applicant; and in the alternative, that she or he remains in the United States. A qualifying relative is not required to reside outside of the United States based on the denial of the applicant's waiver request.

Courts in the United States have stated that “the most important single hardship factor may be the separation of the alien from family living in the United States,” and also, “[w]hen the BIA fails to give considerable, if not predominant, weight to the hardship that will result from family separation, it has abused its discretion.” *Salcido-Salcido v. INS*, 138 F.3d 1292, 1293 (9th Cir. 1998) (citations omitted); *Cerrillo-Perez v. INS*, 809 F.2d 1419, 1424 (9th Cir. 1987) (remanding to BIA) (“We have stated in a series of cases that the hardship to the alien resulting from his separation from family members may, in itself, constitute extreme hardship.”) (citations omitted).

However, in *Hassan v. INS*, 927 F.2d 465, 468 (9th Cir. 1991), the Ninth Circuit upheld the BIA’s finding that deporting the applicant and separating him from his wife and child was not conclusive of extreme hardship as it “was not of such a nature which is unusual or beyond that which would normally be expected from the respondent’s bar to admission.” (citing *Patel v. INS*, 638 F.2d 1199, 1206 (9th Cir.1980) (severance of ties does not constitute extreme hardship). The Ninth Circuit in *Perez v. INS*, 96 F.3d 390 (9th Cir. 1996), held that the common results of deportation are insufficient to prove extreme hardship and defined extreme hardship as hardship that was unusual or beyond that which would normally be expected upon deportation.

The record fails to establish that the applicant’s mother or father would endure extreme hardship if she or he remained in the United States without the applicant.

The applicant’s parents make no claim of relying on their daughter’s earnings to meet their basic household expenses. Furthermore, U.S. courts have universally held that economic detriment alone is insufficient to establish extreme hardship. *See, e.g., INS v. Jong Ha Wang*, 450 U.S. 139, 144 (1981) (upholding BIA finding that economic loss alone does not establish extreme hardship) and *Mejia-Carrillo v. United States INS*, 656 F.2d 520, 522 (9th Cir. 1981) (economic loss alone does not establish extreme hardship, but it is still a fact to consider).

The applicant asserts that her parents are ill. The AAO finds that the record contains no medical records or other supporting documents that would establish that either of the applicant’s parents has a serious medical condition. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *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)).

The applicant states that her parents are very concerned about separation from her. The AAO is thoughtful of and sympathetic to the emotional hardship that is undoubtedly endured as a result of separation from a loved one. However, the AAO finds the situation of the applicant’s mother or father, if she or he remains in the United States, is typical to individuals separated as a result of deportation or exclusions and does not rise to the level of extreme hardship as defined by the Act. The record before the AAO is insufficient to show that the emotional hardship to be endured by either of the applicant’s parents, while separated from their daughter, is unusual or beyond that which is normally to be expected upon removal. *See Hassan and Perez, supra*. The AAO further notes that the applicant’s parents will not be alone in the United States as one of their sons lives in Peoria, Arizona, where they reside.

The applicant’s parents make no hardship claim about joining their daughter in Romania.

In considering the hardship factors raised here, the AAO examines each of the factors, both individually and cumulatively, to determine whether extreme hardship has been established. It considers whether the

cumulative effect of claims of economic and emotional hardship would be extreme, even if, when considered separately, none of them would be. It considers the entire range of factors concerning hardship in their totality and then determines whether the combination of hardships takes the case beyond those hardships ordinarily associated with removal.

In the final analysis, the AAO finds that the requirement of significant hardships over and above the normal economic and social disruptions involved in removal has not been met so as to warrant a finding of extreme hardship. Having carefully considered each of the hardship factors raised, both individually and in the aggregate, it is concluded that these factors do not in this case constitute extreme hardship to a qualifying family member for purposes of relief under 212(a)(9)(B)(v) of the Act, 8 U.S.C. § 1182(a)(9)(B)(v).

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)(v) of the Act, the burden of proving eligibility remains entirely with the applicant. *See* Section 291 of the Act, 8 U.S.C. § 1361. The applicant has not met that burden. Accordingly, the appeal will be dismissed.

**ORDER:** The appeal is dismissed.