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



U.S. Citizenship
and Immigration
Services

H4

[Redacted]

FILE:

Office: CHICAGO, IL

Date: APR 06 2009

IN RE:

[Redacted]

APPLICATION: Application for Waiver of Grounds of Inadmissibility under section 212(a)(9)(B)(v) of the Immigration and Nationality Act (the Act), 8 U.S.C. section 1182(a)(9)(B)

ON BEHALF OF APPLICANT:

[Redacted]

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.

John F. Grissom, Acting Chief
Administrative Appeals Office

DISCUSSION: The waiver application was denied by the District Director, Chicago, Illinois. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained. Because the Form I-485 was denied on the basis of the denial of the Form I-601, the District Director shall reopen the applicant's Form I-485 for reconsideration in accordance with this decision.

The applicant is a native and citizen of the Czech Republic 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 10 years of his last departure from the United States. The applicant is married to a United States citizen and seeks a waiver of inadmissibility in order to reside in the United States with his wife and children.

The district director found that based on the evidence in the record, the applicant had failed to establish extreme hardship to his United States citizen spouse. The application was denied accordingly. *Decision of the District Director*, dated April 10, 2006.

On appeal, counsel asserts that the director failed to consider all of the facts of the case or to accord sufficient weight to evidence submitted in support of the application. Counsel further states the director applied the incorrect standard of proof in this case, the extremely unusual and exceptional hardship standard rather than the extreme hardship standard. *Form I-290B*, dated May 8, 2006. Counsel notes that though the district director stated that the applicant had no relatives in the United States except for his United States citizen child, this is not the case. *Brief from counsel*, page 26, dated September 27, 2007. The record contains evidence that the applicant has two United States citizen children, is married to a United States citizen and has numerous in-laws in the United States.

In support of these assertions, counsel submits a brief and voluminous additional evidence with the appeal as follows: a copy of the applicant's birth certificate and its English translation; affidavits from the applicant, his spouse, his mother-in-law, his father-in-law, and other in-laws; a copy of the applicant's spouse's birth certificate and other evidence that indicates that she is a United States citizen; a copy of the applicant's marriage license and certificate; copies of the applicant's sons' birth certificates; a letter from [REDACTED] who indicates that the applicant's son, [REDACTED] has a history of medical problems; documents regarding the applicant's sons' daycare facility; a letter from [REDACTED] and [REDACTED] regarding the applicant's mother-in-law's medical conditions; a letter from the director of the applicant's mother-in-law's assisted living facility; two reports from Dr. [REDACTED] containing a psychological evaluation of the applicant's spouse; letters from the applicant's spouse's co-workers and friends; documents pertaining to the applicant's spouse's financial responsibilities; bank documents from the applicant and his spouse; documents pertaining to the applicant's window cleaning business; documents pertaining to the applicant's spouse's employment history and benefits gained during that employment; letters from individuals attesting to the applicant's community involvement; tax documents from the applicant and his wife for the years 1997-2006; copies of family photographs; country conditions information regarding the Czech Republic, highlighting, among other things: discrimination against women and children; financial difficulties; harm to children; unavailability of mental health services; and difficulties obtaining

speech therapy in the Czech Republic. Though not every document will be noted in this analysis, the entire record was reviewed and considered in rendering a decision on the appeal.

Section 212(a)(9)(B) 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.

In the present application, the record indicates that the applicant entered the United States on a visitor visa in October 1996. At that time he was authorized to remain in the United States for six months, but stayed until December 1999, when he departed for the Czech Republic. *Brief from counsel*, dated September 27, 2007. The applicant returned to the United States in August of 2000 and has remained in the United States since that time. On April 29, 2004, the applicant filed an Application to Register Permanent Residence or Adjust Status (Form I-485). That application was denied on the basis that the applicant's Form I-601 had been denied.

The applicant accrued unlawful presence from April 1, 1997, the date of enactment of unlawful presence provisions under the Act, until December of 1999, when he departed the United States. In applying to adjust his status to that of Lawful Permanent Resident (LPR), the applicant is seeking admission within 10 years of his December 1999 departure from the United States. The applicant is, therefore, inadmissible to the United States under section 212(a)(9)(B)(II) of the Act for being unlawfully present in the United States for a period of more than one year.

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 United States citizen or lawfully resident spouse or parent of the applicant. Hardship the applicant himself experiences upon deportation is irrelevant to section 212(a)(9)(B)(v) waiver proceedings. 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 (BIA) deems relevant in determining whether an alien has established extreme hardship pursuant to section 212(i) of the Act. 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.

The BIA has also held that 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. *Matter of O-J-O*, 21 I&N Dec. 381, 383 (BIA 1996). (Citations omitted).

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).

Counsel states that the applicant's spouse would experience extreme hardship if a waiver is not granted both if she were to relocate with her husband to the Czech Republic or if she were to remain in the United States.

Counsel summarizes the hardship factors that the applicant's wife would experience if she were to relocate to the Czech Republic as follows: (1) her ongoing mental health issues may worsen as a result of the stress of moving overseas and she would have less access to required mental health care; (2) separation from her ailing 79-year-old mother would cause great stress; (3) she would be separated from other immediate family members, including her father and siblings, who are United States citizens by birth; (4) she would have difficulty adapting to life in the Czech Republic; and (5) her children have ongoing medical conditions and care that they require may not be available in the Czech Republic; and (6) the applicant's spouse would experience a lack of financial independence if she were to relocate. *Brief from counsel*, dated September 27, 2007.

(1) The applicant's spouse's mental health may worsen if she relocates

The applicant has submitted two reports from [REDACTED] detailing his wife's past mental health and current condition. [REDACTED] diagnosed the applicant's spouse with Major Depressive

Disorder Recurrent. *Report from* [REDACTED] dated July 5, 2006. The applicant's spouse has had at least three depressive episodes and suicidal ideology on at least two previous occasions and has sought ongoing treatment during those episodes. *Id.* The applicant's father was also committed to the Arizona State Mental Hospital when the applicant was very young. *Affidavit from* [REDACTED]

In addition to detailing the applicant's spouse's diagnosis, [REDACTED] provides a history of the applicant's spouse's childhood separation and neglect, stating that the applicant's mother abandoned her first husband and two children from that marriage to be with her biological father, who was living under an alias because he was in violation of his parole. However, her biological father and mother separated when she was two years old due to his drug dependency and his previously noted commitment to the Arizona State Mental Hospital. At this time, the applicant's spouse and her mother moved into a house with the [REDACTED] family. *Affidavit from* [REDACTED] Because of her mother's work schedule, the applicant spent most of her early childhood with this family, who she described as, "cohesive and stable." *Id.* She considered the children of [REDACTED] to be her brothers and sisters and she called [REDACTED] "Dad." *Id.* When the applicant's spouse married her stepfather when she was five years old, he did not want her to have further contact with the family. *Id.* The applicant's spouse detailed how her stepfather's disciplinarian manner and his insistence that she have no contact with the [REDACTED] family negatively impacted her. She further stated that because her mother was not working and had no means to support herself without her stepfather, though she wanted to leave him, she could not. Because of this, she vowed that she herself would never become a housewife without her own income. *Report from* [REDACTED] dated July 5, 2006.

[REDACTED] indicates that added stress to the applicant's spouse due to abandoning her mother upon relocation to the Czech Republic would also be great. *Report from* [REDACTED] dated July 5, 2006. [REDACTED] states that if the applicant's spouse were forced to choose to be separated from her husband or to leave her mother it is, "clear that she would suffer exacerbated depression with suicidal ideation, possibly worsening to the point of a suicide attempt." *Report from* [REDACTED] dated September 17, 2007.

Counsel has submitted country conditions information that indicates that mental health services in the Czech Republic are under-funded and that legislation regarding mental health services is lacking with regards to protecting patients' rights. "*Mental health in the Czech Republic: current problems, trends and future developments*" by [REDACTED], published in June 2006. Psychiatric illness is also stigmatized in the Czech Republic. *Id.*

(2) Separation from her 79-year-old mother, who has ongoing medical conditions

The applicant's spouse is also close with her 79-year-old elderly mother, [REDACTED]. Ms. [REDACTED] resided with the applicant's spouse from 1995 until April 2005. *Affidavit from* [REDACTED]; *Affidavit from* [REDACTED]. The applicant's spouse's mother has ongoing medical conditions including: breast cancer, chronic obstructive pulmonary disease, emphysema, congestive heart failure, deep vein thrombosis, impaired memory, depression, herpes simplex of the eye, and progressive dementia. *Letter from* [REDACTED]; *Letter from* [REDACTED]; *Letter from* [REDACTED]. The applicant's spouse has stated that she is the only family member who is able to make decisions

for her mother and to help her manage her medications, appointments, and overall healthcare. *Brief from counsel; Affidavit from [REDACTED]* Because [REDACTED] suffers from dementia, the applicant's spouse has medical power of attorney over her and must accompany her to doctor's visits to assist with explaining her medical history. *Affidavit from [REDACTED]*

The applicant's spouse visits her mother approximately every other day. *Affidavit from the applicant.* She also buys all of her mother's personal supplies and pays her phone bill. *Affidavit from [REDACTED]* The applicant's spouse's mother does have three other children. However, she abandoned her two eldest children when they were quite young and therefore, those children are not inclined to assist her. *Affidavits from the applicant; Affidavit from [REDACTED]* Ms. [REDACTED] has one other biological child who resides in Arizona. However, though [REDACTED] once lived in Arizona, she found the dry climate there greatly worsened the symptoms of her pulmonary disease. Therefore, she was forced to move from Arizona to Illinois. Because the applicant's spouse is the only family member who is willing and able to assist her mother, it would create a great hardship for her to be separated from her mother. *Affidavit from [REDACTED]; Affidavit from [REDACTED]*

Because of the applicant's mother's physical condition and her reliance on constant oxygen, it would not be possible for her to travel with the applicant and his spouse if they were both to relocate to the Czech Republic. *Affidavit from [REDACTED]*

(3) Separation from other immediate family members who are United States citizens by birth

The applicant is a United States citizen by birth, as are her parents and siblings. The applicant states that she was estranged from her biological father until she was 14 years old. *Affidavit from [REDACTED]*. However, she has established a relationship with her biological father, who is now 82 years old, and he has become part of her life. *Affidavit from [REDACTED]* The applicant also maintains relationships with two half-brothers and two half-sisters, all of whom are United States citizens by birth and all of whom have expressed concern regarding the possibility of the applicant's spouse relocating to the Czech Republic. The applicant's spouse's half-brothers and half-sisters have also stated that it would create a hardships for them if the were to be separated from the applicant and their sister. They further express concern for the applicant's spouse if she were to relocate to the Czech Republic and leave her mother behind. *Affidavit from [REDACTED]* *Affidavit from [REDACTED]; Affidavit from [REDACTED]* *Affidavit from [REDACTED]* Though the applicant's spouse's extended family are not qualifying family members themselves, the record establishes that their feelings of hardship would contribute to the applicant's spouse's hardship and, therefore, they are discussed here.

(4) Adaptation to life abroad

The applicant's spouse has never resided outside of the United States. *Affidavit from [REDACTED]*
Her mother, father and siblings all reside in the United States and she is close with them. *Affidavit from [REDACTED]* *Affidavit from [REDACTED]* *Affidavit from [REDACTED]*
Affidavit from [REDACTED] *Affidavit from [REDACTED]* The applicant's spouse is also involved with her church and a book group and also enjoys going to the theater. She feels that she would not be able to participate in any of these activities if she were to reside abroad, which would seriously

impact her quality of life. *Affidavit from* [REDACTED] She states that she would feel socially isolated if she were to relocate to the Czech Republic. *Id.* Though she previously attempted to learn the Czech language, she gave up after just two lessons because she found it too difficult to learn. *Affidavit from the applicant.* She states that she doubts she could easily learn the Czech language at her age and worries that not knowing the language, when combined with not being a citizen and being 48 years old would make her unemployable. *Affidavit from* [REDACTED] Because the applicant's spouse has expressed that it is very important to her to be able to maintain her own employment, the inability to obtain gainful employment, when combined with an inability to communicate in the Czech language would significantly contribute to hardships experienced by the applicant's spouse.

(5) Children's Medical Conditions

The applicant's children were both born with tight lingular frenulum, more commonly known as being, "tongue-tied." *Letter from* [REDACTED] As a result of this, they may require speech therapy. The applicant and his spouse are worried that their children may not be able to receive this therapy in the Czech Republic, which could have long-term consequences for their speech. *Affidavit from* [REDACTED] dated September 17, 2007. Country conditions indicate that as a result of the restructuring of the healthcare system, the financing outpatient care of voice and communication disorders has been negatively impacted. *Voice Research and Treatment in the Czech Republic*, dated May 2, 2006.

Further, the applicant's oldest child has myringotomy tubes in his ears and is undergoing continuing observation for recurrent ear infections due to the condition that necessitated the surgery. *Letter from* [REDACTED] The applicant and his spouse are also worried that he will not be able to obtain quality medical treatment for this condition if he were to relocate to the Czech Republic. *Report from* [REDACTED], dated September 17, 2007.

6) Financial hardships

The applicant has worked for her current employer for more than 20 years and has accrued benefits accordingly, including a pension plan, a 401K account, medical insurance that is needed to treat her children's ongoing medical conditions and cancer insurance. Because of her long employment with this company, the applicant's spouse states that she has made many close friends at work. *Affidavit from* [REDACTED]

The applicant's spouse is also the primary breadwinner for the family. [REDACTED], a licensed psychologist, has stated that due to the applicant's experience as a child of having a controlling and disciplinarian step-father from whom the applicant's mother would not separate because of her financial dependence on him, the applicant's spouse has stated that she will never become a housewife with no income. *Affidavit from* [REDACTED], dated July 5, 2006. The applicant's spouse has had a 20-year long career with her company. She would not be able earn a similar income in a new position in a country where she does not speak the language. Her mother's history of dependence on her abusive step-father's income has also had a negative effect on the applicant's spouse's mental health. Therefore, the record establishes that leaving her current place of employment would cause the applicant's spouse to experience hardship. She further states that the 8% unemployment rate in the Czech Republic causes her to worry that she and her husband will not

be able to secure employment there. *Affidavit from* [REDACTED]

Counsel also indicates that the applicant's spouse would face extreme hardship if she remained in the United States separated from her husband for the following reasons: (1) separation from her spouse would impact her mental health; and (2) without the applicant's help, she would have difficulty working full-time, caring for two young children and caring for her elderly and infirm mother.

1) Separation from the applicant would impact his spouse's mental health

In support of her assertion that the applicant's spouse would suffer from increased depression and experience emotion hardships if she were to be separated from the applicant, counsel submits the previously noted affidavits from [REDACTED]. Dr. [REDACTED] states that the applicant's spouse's own father left her and her mother when he was committed to a mental hospital when she was very young and that he subsequently served approximately three years in prison for grand theft auto. *Report from* [REDACTED] dated September 17, 2007. [REDACTED] states that because of this and other previously noted early childhood experiences, the thought of separation is more fearsome for the applicant's spouse than it would be for other individuals. [REDACTED] states that this increases the likelihood of exacerbated depression if she should be separated from either her husband or her mother. *Id.*

[REDACTED] states that separation from the applicant would "greatly exacerbate [her] depressive symptomology, to the point where she would be very likely to again experience suicidal ideation." *Report from* [REDACTED] dated July 5, 2006.

2) Difficulty maintaining responsibilities without the applicant

The applicant, his spouse, her siblings and [REDACTED] have provided details regarding the extent of the applicant's spouse's care for her mother, [REDACTED]. Due to the nature of [REDACTED] physical ailments, the applicant's spouse and the applicant frequently visit her and provide her with transportation to various medical appointments. The applicant's spouse also works full-time and has two small children. The applicant assists his spouse with her many responsibilities. *Affidavit from* [REDACTED]; *Affidavit from* [REDACTED]. Without both the applicant's income and his support, the record establishes that the applicant's spouse would not be able to maintain the same level of care for her mother and children while working full time. Further, as was previously noted, [REDACTED] has stated that because of her tenuous mental health situation, the added stress of attempting to do so while being separated from her husband would likely create a depressive episode with possible suicidal ideation. *Affidavit from* [REDACTED] dated September 17, 2007.

Upon a complete review of the evidence of record, the AAO finds that the applicant has established that his wife will experience extreme hardship if he is prohibited from remaining in the United States. The applicant has shown that his spouse would experience extreme hardship both if she were to relocate to the Czech Republic or if she were to remain in the United States separated from her spouse.

The applicant's wife has experienced significant stressors in her past, including being abandoned by her father when he left the family and entered a mental health facility and growing up with a disciplinarian step-father who forced her to leave a family that she resided with and formed a significant bond to. This has led to her experiencing depression upon separation from those she cares about. The record contains documentation to show that the applicant's wife suffers from mental health problems that began in her childhood. A licensed psychologist determined that she is at risk of major depression that "she would be very likely to again experience suicidal ideation" if she were to be separated either from the applicant, were she to remain in the United States, or if she were to be separated from her elderly and infirm mother, were she to relocate with her spouse to the Czech Republic. Country conditions further indicate that the applicant's spouse may not be able to receive comparable care for her mental health condition in the Czech Republic.

The applicant's spouse is also the only person who is authorized to make medical decisions for her 79-year-old mother, who suffers from dementia and who also has multiple chronic illnesses. The applicant's spouse's mother cannot relocate to the Czech Republic because of the serious nature of her medical conditions and her reliance on oxygen. Separation from her mother would cause both the applicant's spouse and her mother great stress.

The applicant and his wife's children were both born "tongue tied," which may require speech therapy. Counsel has submitted country conditions information that indicates that they may not receive the same level of care for this condition in the Czech Republic as they would in the United States, which could lead to long-term speech conditions for both children.

The applicant's spouse has also worked for her current employer for more than 20 years and has earned awards and accrued benefits accordingly. Because she does not speak Czech, because unemployment is high in the Czech Republic, and because she is in her late 40's, the record establishes that applicant's spouse would not be able to find a similar employment situation if she were to relocate to the Czech Republic. Similarly, if the applicant were to move and his spouse were to remain behind, the record establishes that she would not be able to maintain her level of commitment to her workplace, her mother and her children without his help.

When considered in aggregate, the factors of hardship to the applicant's wife, should she relocate to the Czech Republic, or should she remain in the United States separated from the applicant constitute extreme hardship. This finding is largely based on the fact that the applicant's wife's mental health is tenuous, and separation from either her mother or the applicant would cause significant stress and exacerbate her condition, possibly causing suicidal ideation.

Based on the forgoing, the AAO finds that the applicant's wife will face extreme hardship if the applicant's waiver application is denied. Thus, the applicant has shown that a qualifying relative would suffer extreme hardship if he is required to depart the United States.

In Matter of Mendez-Morales, 21 I&N Dec. 296 (BIA 1996), the BIA held that establishing extreme hardship and eligibility for section 212(h)(1)(B) relief 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 overstayed his authorized period of stay in the United States when he entered the United States with a B-2 visa that authorized him to remain for six months from his October 1996 entry date but remained in the United States for more than one year past that date before he left in December 1999. Therefore, he had a period of unlawful presence that exceeded one year.

The positive factors in this case include:

The applicant has significant family ties to the United States, including his wife, two sons, mother-in-law, sisters and brothers-in-law; the applicant's wife would suffer extreme hardship if he is compelled to depart the United States or if she remains in the United States separated from the applicant; the applicant submitted an affidavit in which he fully explained the circumstances under which he overstayed his authorized period of stay in the United States, and he expressed remorse regarding his violation of U.S. immigration laws; the applicant assists in caring for his mother-in-law, a United States citizen and his two sons, both also United States citizens; the applicant has a record of working and paying his taxes in the United States; the applicant is involved in his community via a religious organization and his participation in Czech-American television; and the applicant has not been convicted of any crimes.

Although the applicant's immigration violations 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(i) 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. In this case, the applicant has met his burden that he merits approval of his application.

ORDER: The appeal is sustained. Because the Form I-485 was denied on the basis of the denial of the Form I-601, the District Director shall reopen the applicant's Form I-485 for reconsideration in accordance with this decision.