

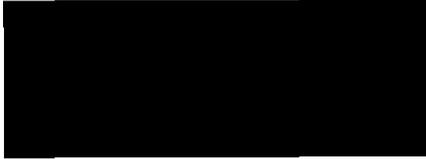
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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services



H4

DATE: JUL 17 2012

Office: NAIROBI, KENYA

File: 

IN RE: Applicant: 

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)(v), and Application for Permission to Reapply for Admission into the United States after Deportation or Removal under Section 212(a)(9)(A) of the Act, 8 U.S.C. § 1182(a)(9)(A).

ON BEHALF OF APPLICANT:



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.

If you believe the AAO inappropriately applied the law in reaching its decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen in accordance with the instructions on Form I-290B, Notice of Appeal or Motion, with a fee of \$630. The specific requirements for filing such a motion can be found at 8 C.F.R. § 103.5. **Do not file any motion directly with the AAO.** Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires any motion to be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,


Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Field Office Director, Nairobi, Kenya. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native and citizen of Ethiopia. She was found to be inadmissible to the United States pursuant to section 212(a)(9)(B)(i)(II) of the Act, 8 U.S.C. § 1182(a)(9)(B)(i)(II), for having been unlawfully present in the United States for one year or more and seeking admission within ten years of her last departure. She is also inadmissible under section 212(a)(9)(A)(ii) of the Act as an alien having been removed within ten years of seeking admission. She is married to a United States citizen. She seeks a waiver of inadmissibility pursuant to section 212(a)(9)(B)(v) of the Act, 8 U.S.C. § 1182(a)(9)(B)(v).

The Field Office Director concluded that the applicant had failed to establish that the bar to her admission would impose extreme hardship on a qualifying relative, her U.S. citizen spouse, and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) on May 11, 2011.

On appeal, counsel for the applicant asserts the Field Officer Director's conclusions were in error and submits additional evidence in support of the waiver application. *Form I-290B*, received on July 13, 2011.

Section 212(a)(9)(B) of the Act provides, in pertinent part:

(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.

The record indicates that the applicant entered the United States in a Transit Without Visa status on or about October 4, 2000, and applied for asylum. The applicant's asylum application and subsequent appeals were denied by the Board of Immigration Appeals (BIA) as of February 9, 2004. The applicant filed a motion to reopen proceedings before the BIA on June 29, 2005, and the motion was denied. The applicant filed a second motion to reopen on February 8, 2007 which was also denied. The applicant was removed on June 25, 2007. Among her periods of unlawful presence, the applicant accrued unlawful presence from February 9, 2004 until she filed her motion to reopen on June 29, 2005, a period over one year. As the applicant has resided unlawfully in the United States for over a year and is now seeking admission within ten years of her last departure from the United States, she is inadmissible under section 212(a)(9)(B)(i)(II) of the Act.

The record includes, but is not limited to, a statement from counsel for the applicant; a statement from the applicant and her spouse; statements from family members; photographs of the applicant and her spouse; a psychological evaluation of the applicant's spouse; and copies of money transfer receipts from the applicant's spouse to the applicant.

The entire record was reviewed and all relevant evidence considered in rendering this decision.

Section 212(a)(9)(B)(v) of the Act provides for a waiver of section 212(a)(9)(B)(i) inadmissibility as follows:

The Attorney General [now Secretary of Homeland Security] 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 . . . 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, which includes the U.S. citizen or lawfully resident spouse or parent of the applicant. Hardship to the applicant can be considered only insofar as it results in hardship to a qualifying relative. The applicant's spouse is the only qualifying relative in this case. If extreme hardship to a qualifying relative is established, the applicant is statutorily eligible for a waiver, and 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 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*, 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.

On appeal, counsel for the applicant asserts that the applicant’s spouse would experience extreme financial and emotional hardship upon relocation. *Initial Brief in Support of I-290B*, received July 13, 2011. He explains that the applicant’s spouse has resided in the United States for 17 years after having received political asylum due to persecution in Ethiopia, and that the applicant’s spouse greatly fears having to relocate there with the applicant. He also states that the applicant’s spouse no longer has any family ties to Ethiopia, and that he would lose his business and residential property in the United States if he had to relocate.

Although the applicant’s spouse’s assertion that he would fear returning to Ethiopia based on previous persecution in that country would carry significant weight in these proceedings, the AAO notes that there is no evidence to support that the applicant’s spouse did, in fact, receive asylum. While the AAO recognizes that the applicant’s spouse no longer has any family ties in Ethiopia and

has resided in the United States for a lengthy period of time and has family and business ties to the United States, these are common impacts of relocation. Without evidence to substantiate the applicant's spouse's assertion of previous persecution in Ethiopia, and evidence which is probative of the country conditions and their impacts on the applicant's spouse, the AAO cannot determine that the impacts asserted upon relocation, even when considered in the aggregate, constitute extreme hardship.

The applicant has submitted a statement on appeal asserting that she is suffering from depression, tuberculosis and a general decline in health due to separation from her spouse. *Statement of the Applicant*, received November 2, 2011. She states that she is psychologically and emotionally disturbed and has lost weight due to stress and her medical conditions.

As discussed above, hardship to an applicant is only considered to the extent that it results in hardship to a qualifying relative. In this case, the applicant has not submitted any documentation to support her assertions. As such, the AAO does not find any basis to conclude that the applicant's spouse, residing in the United States, will experience any indirect hardship arising from impacts on the applicant.

Counsel for the applicant asserts the applicant's spouse will experience financial and emotional hardship due to separation from the applicant. *Initial Brief in Support of I-290B*, received July 13, 2011. He states that the applicant's spouse is having to support two households, which is causing financial hardship, and that the applicant's spouse is experiencing an emotional impact due to their separation.

The applicant's spouse asserts that he is struggling to run his business and that he needs the applicant to help him manage its operations. *Statement of the Applicant's Spouse*, dated February 13, 2010. An examination of the record reveals no documentation to support this assertion. Although the applicant's spouse asserts he could not afford to hire an employee, there is nothing which corroborates this assertion such as a list of business profits or losses, taxes, or other documents.

The record contains copies of money transfer receipts from the applicant's spouse to the applicant, as well as a General Warranty Deed for residential property in the applicant's spouse's name. This evidence is insufficient to distinguish any financial impact on the applicant's spouse from that which is commonly experienced due to separation. While there is a copy of the business registration for the applicant's spouse's company, there is no evidence of the profits or losses generated by the company, the revenue earned by the applicant's spouse, the applicant's spouse's financial obligations or any evidence of accumulated debt. The AAO notes that the residential property deed in the applicant's spouse's name does not indicate that he has a mortgage on the property or what monthly bills and utilities for the property may be. Based on these observations the AAO does not find the record to establish that the applicant's spouse will experience any uncommon financial impact due to separation.

The record contains a Psychological Report on the applicant's spouse by [REDACTED] dated June 22, 2011. In the report, [REDACTED] narrates the emotional impacts on the applicant's spouse as relayed to him by the applicant's spouse and concludes that the applicant's spouse is suffering from Adjustment Disorder with Mixed Feelings of Depression and Anxiety, as well as Post Traumatic Stress Disorder. The AAO will give [REDACTED] report due consideration when aggregating the impacts on the applicant's spouse due to separation.

Although the AAO recognizes the applicant's spouse may experience some emotional impact due to separation, when the impacts asserted upon separation are examined in the aggregate, the AAO does not find the record to establish that they will rise above the common impacts of separation to a degree of extreme hardship.

The AAO acknowledges that the applicant's spouse will experience emotional hardship if he remains in the United States without the applicant, but the applicant has failed to demonstrate that this hardship, even when combined with other hardship factors, will be extreme. The AAO recognizes the significance of family separation as a hardship factor, but concludes that the hardship articulated in this case, based on the evidence in this record, does not rise above the common results of removal or inadmissibility and thus does not constitute extreme hardship. U.S. court decisions have repeatedly held that the common results of removal or inadmissibility are insufficient to prove extreme hardship. *See Hassan v. INS*, 927 F.2d 465, 468 (9th Cir. 1991). In addition, *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 AAO notes that the field office director denied the applicant's Form I-212 Application for Permission to Reapply for Admission into the United States After Deportation or Removal (Form I-212) in the same decision. *Matter of Martinez-Torres*, 10 I&N Dec. 776 (reg. Comm. 1964), held that an application for permission to reapply for admission is denied, in the exercise of discretion, to an alien who is mandatorily inadmissible to the United States under another section of the Act, and no purpose would be served in granting the application. As the applicant is inadmissible under section 212(a)(9)(B)(v) of the Act no purpose would be served in granting the applicant's Form I-212 application.

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 rests with the applicant. *See* section 291 of the Act, 8 U.S.C. § 1361. Here, the applicant has not met that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.