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



U.S. Citizenship  
and Immigration  
Services

**PUBLIC COPY**

[Redacted]

H16

FILE: [Redacted] Office: CHICAGO, IL Date: **NOV 16 2010**

IN RE: Applicant: [Redacted]

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

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,

Perry Rhew  
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.

The record reflects that the applicant is a native and citizen of Ukraine who 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 more than one year. The applicant is married to a U.S. citizen and 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), in order to reside with her husband in the United States.

The district director found that the applicant failed to establish extreme hardship to a qualifying relative and denied the application accordingly. *Decision of the District Director*, dated February 11, 2008.

The record contains, *inter alia*: a copy of the marriage certificate of the applicant and her husband, [REDACTED], indicating they were married on March 17, 2006; two medical reports from [REDACTED] physician; a letter from [REDACTED] physician; letters of support; a copy of the U.S. Department of State's Country Reports on Human Rights Practices for Ukraine and other background materials; tax and other financial documents; a psychosocial assessment of the applicant and her husband; and an approved Petition for Alien Relative (Form I-130). The entire record was reviewed and considered in rendering this decision on the appeal.

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.

....

(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 this case, the record shows, and the applicant does not contest, that she entered the United States using a B2 visitor's visa on September 1, 1997, with authorization to stay for six months. The applicant remained beyond her period of authorized stay until July 13, 2001. The applicant reentered the United States using a B2 visitor's visa on April 24, 2004. The applicant did not depart the United States and continues to reside in the United States. The applicant accrued unlawful presence from March 1998 until July 2001, a period of over one year. Her April 2004 reentry was within ten years of July 2001 departure. Accordingly, she is inadmissible to the United States under section 212(a)(9)(B)(i)(II) of the Act for being unlawfully present in the United States for a period of one year or more and seeking admission to the United States within ten years of her last departure.

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 or her children can be considered only insofar as it results in hardship to a qualifying relative. The applicant's husband 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).

As a qualifying relative is not required to depart the United States as a consequence of an applicant's inadmissibility, two distinct factual scenarios exist should a waiver application be denied: either the qualifying relative will join the applicant to reside abroad or the qualifying relative will remain in the United States. Ascertaining the actual course of action that will be taken is complicated by the fact that an applicant may easily assert a plan for the qualifying relative to relocate abroad or to remain in the United States depending on which scenario presents the greatest prospective hardship, even though no intention exists to carry out the alleged plan in reality. *Cf. Matter of Ige*, 20 I&N Dec. 880, 885 (BIA 1994) (addressing separation of minor child from both parents applying for suspension of deportation). Thus, we interpret the statutory language of the various waiver provisions in section 212 of the Act to require an applicant to establish extreme hardship to his or her qualifying relative(s) under both possible scenarios. To endure the hardship of separation when extreme hardship could be avoided by joining the applicant abroad, or to endure the hardship of relocation when extreme hardship could be avoided by remaining in the United States, is a matter of choice and not the result of removal or inadmissibility. As the Board of Immigration Appeals stated in *Matter of Ige*:

[W]e consider the critical issue . . . to be whether a child would suffer extreme hardship if he accompanied his parent abroad. If, as in this case, no hardship would ensue, then the fact that the child might face hardship if left in the United States would be the result of parental choice, not the parent's deportation.

*Id.* See also *Matter of Pilch*, 21 I&N Dec. 627, 632-33 (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 deportation, 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. at 631-32; *Matter of Ige*, 20 I&N Dec. at 883; *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.*

We observe that 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., *In re 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).

Family separation, for instance, has been found to be a common result of inadmissibility or removal in some cases. *See Matter of Shaughnessy*, 12 I&N Dec. at 813. Nevertheless, family ties are to be considered in analyzing hardship. *See Matter of Cervantes-Gonzalez*, 22 I&N Dec. at 565-66. The question of whether family separation is the ordinary result of inadmissibility or removal may depend on the nature of family relationship considered. For example, in *Matter of Shaughnessy*, the Board considered the scenario of parents being separated from their soon-to-be adult son, finding that this separation would not result in extreme hardship to the parents. *Id.* at 811-12; *see also U.S. v. Arrieta*, 224 F.3d 1076, 1082 (9th Cir. 2000) (“Mr. Arrieta was not a spouse, but a son and brother. It was evident from the record that the effect of the deportation order would be separation rather than relocation.”). In *Matter of Cervantes-Gonzalez*, the Board considered the scenario of the respondent’s spouse accompanying him to Mexico, finding that she would not experience extreme hardship from losing “physical proximity to her family” in the United States. 22 I&N Dec. at 566-67.

The decision in *Cervantes-Gonzalez* reflects the norm that spouses reside with one another and establish a life together such that separating from one another is likely to result in substantial hardship. It is common for both spouses to relocate abroad if one of them is not allowed to stay in the United States, which typically results in separation from other family members living in the United States. Other decisions reflect the expectation that minor children will remain with their parents, upon whom they usually depend for financial and emotional support. *See, e.g., Matter of Ige*, 20 I&N Dec. at 886 (“[I]t is generally preferable for children to be brought up by their parents.”). Therefore, the most important single hardship factor may be separation, particularly where spouses and minor children are concerned. *Salcido-Salcido*, 138 F.3d at 1293 (quoting *Contreras-Buenfil v. INS*, 712 F.2d 401, 403 (9th Cir. 1983)); *Cerrillo-Perez*, 809 F.2d at 1422.

Regardless of the type of family relationship involved, the hardship resulting from family separation is determined based on the actual impact of separation on an applicant, and all hardships must be considered in determining whether the combination of hardships takes the case beyond the consequences ordinarily associated with removal or inadmissibility. *Matter of O-J-O-*, 21 I&N Dec. at 383. Nevertheless, though we require an applicant to show that a qualifying relative would experience extreme hardship both in the event of relocation and in the event of separation, in analyzing the latter scenario, we give considerable, if not predominant, weight to the hardship of separation itself, particularly in cases involving the separation of spouses from one another and/or minor children from a parent. *Salcido-Salcido*, 138 F.3d at 1293.

In this case, a medical report from the applicant’s husband’s physician states that the applicant’s husband, [REDACTED], has been diagnosed with type 2 diabetes, hypertension, and chronic renal insufficiency. According to the physician, these conditions are controlled by a strict diet, exercise, and prescription medication. The physician states that the applicant has played an important role in maintaining [REDACTED] diet and keeping him healthy. *Letter from [REDACTED]* dated October 31, 2007.

A medical report by another physician states that [REDACTED] diabetes is complicated by his hypertension, cardiac problems, and severe depression. The medical report contends that an antidepressant, Paxil, did not work for [REDACTED] and that his diabetes continues to deteriorate. According to this physician, depressed diabetic patients do not comply properly with psychotherapy and glycemic control. The physician also states that [REDACTED] has experienced weight loss, kidney loss, arthritis, panic attacks, and insomnia, and has a history of colon and kidney cancer. The physician contends that "type 2 diabetes mellitus coupled with depression can increase the risk of death from heart disease, especially in older adults, such as [REDACTED]. There is a definite link between depression, type 2 diabetes, aging and chronic diseases." The physician states that without his wife, [REDACTED] will become more depressed, be less likely to follow his diet and exercise, and be less likely to check his blood glucose level. *Medical Reports* by [REDACTED] dated March 6, 2008, and January 15, 2008; *see also Psychosocial Assessment* by [REDACTED] dated November 22, 2007 (diagnosing [REDACTED] with depression).

Upon a complete review of the record evidence, the AAO finds that [REDACTED] will suffer extreme hardship if the applicant's waiver application were denied. The record shows that [REDACTED] is currently seventy-four years old and has been diagnosed with diabetes, depression, and other health conditions. According to [REDACTED] physician, [REDACTED] diabetes has deteriorated due to depression, and antidepressants have not worked for him. As the physician contends, and as several articles the applicant submitted into evidence corroborate, individuals who have diabetes coupled with depression face a unique and dangerous risk. *See, e.g., The New York Times, Depression More Deadly for Diabetics*, dated December 5, 2007; *Science Daily, Diabetes and Depression Can Be a Fatal Mix*, dated October 27, 2005. Considering [REDACTED] age and his numerous health problems, the AAO finds that the effect of separation from the applicant on [REDACTED] goes above and beyond the experience that is typical to individuals separated as a result of inadmissibility and rises to the level of extreme hardship.

Moreover, moving to Ukraine to avoid separation would be an extreme hardship for [REDACTED]. The AAO recognizes that [REDACTED] was born in the United States, has several serious health conditions, and is African American. Relocating to Ukraine would disrupt the continuity of his medical care and he would need to readjust to a life in Ukraine, a difficult situation made even more complicated given his advanced age and his race. As the U.S. Department of State has recognized:

[T]here has been an increase in the number of hate crimes directed at ethnic and religious minorities over the past few years. Many of these incidents are perpetrated by "skinheads" or neo-Nazis in Kyiv, but similar crimes have also been reported throughout the country. In Kyiv, these incidents have occurred without provocation in prominent downtown areas commonly frequented by tourists. The majority of people targeted have been of Asian, African, or other non-European descent. Racial minorities may also be subject to various types of harassment, such as being stopped on the street by both civilians and law enforcement officials. . . .

[In addition, t]he Embassy recommends that ill or infirm persons not travel to Ukraine. Elderly travelers and those with existing health problems may be at risk due to inadequate medical facilities. The U.S. Embassy maintains a list of hospitals and clinics with some English-speaking staff. Many facilities have only limited English speakers, and some have none at all. No hospitals in Ukraine accept American health insurance plans for payment, and the level of medical care is not equal to that found in American hospitals.

*U.S. Department of State, Country Specific Information, Ukraine*, dated April 08, 2010; *see also Letter from* [REDACTED] dated February 28, 2008 (letter from a physician in Ukraine stating that diabetics in Ukraine receive very poor quality insulin and the equipment in Ukraine for measuring blood sugar level is in scarce supply, of very poor quality, and extremely expensive); *Affidavit from* [REDACTED] dated November 30, 2007 (providing an expert opinion on racism in Ukraine and quoting a 2006 U.S. Department of State publication that “[v]iolence against black people became the growing problem in Ukraine.”).

Considering all these factors cumulatively, the AAO finds that the hardship [REDACTED] would experience if he had to move to Ukraine is extreme, going well beyond those hardships ordinarily associated with deportation. The AAO therefore finds that the evidence of hardship, considered in the aggregate and in light of the *Cervantes-Gonzalez* factors cited above, supports a finding that [REDACTED] faces extreme hardship if the applicant is refused admission.

The AAO also finds that the applicant merits a waiver of inadmissibility as a matter of discretion.

In discretionary matters, the alien bears the burden of proving that positive factors are not outweighed by adverse factors. *See Matter of T-S-Y-*, 7 I&N Dec. 582 (BIA 1957). The adverse factor in the present case is the applicant’s unlawful presence in the United States. The favorable and mitigating factors in the present case include: the extreme hardship to the applicant’s husband if she were refused admission; family ties in the United States including her U.S. citizen husband; and the fact that the applicant has not had any arrests or convictions in the United States.

The AAO finds that, although the applicant’s immigration violation is serious and cannot be condoned, when taken together, the favorable factors in the present case outweigh the adverse factors, such that a favorable exercise of discretion is warranted. Accordingly, the appeal will be sustained.

**ORDER:** The appeal is sustained.