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



U.S. Citizenship  
and Immigration  
Services

**PUBLIC COPY**

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[Redacted]

FILE:

[Redacted]

Office: NEW YORK

Date: **SEP 03 2010**

IN RE:

Applicant:

[Redacted]

APPLICATION:

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

ON BEHALF OF APPLICANT:

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[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.

If you believe the law was inappropriately applied by us in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$585. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion must 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 District Director, New York, New York. 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 Georgia 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 for more than one year and seeking readmission within 10 years of his last departure. The applicant seeks a waiver of inadmissibility in order to reside in the United States with his U.S. citizen wife.

The district director found that the applicant failed to establish extreme hardship to his wife and denied the Form I-601 application for a waiver accordingly. *Decision of the District Director*, dated July 31, 2007.

On appeal, counsel for the applicant asserts that the applicant's wife will endure extreme hardship should the present waiver application be denied. *Brief from Counsel*, dated August 27, 2007.

The record contains, in pertinent part, a brief from counsel; statements from the applicant, the applicant's wife, and the applicant's mother-in-law; tax, financial, and employment records for the applicant and his wife; a psychological evaluation of the applicant's wife; a copy of the applicant's mother-in-law's permanent resident card; copies of birth records for the applicant, the applicant's children, and the applicant's wife; a copy of the applicant's marriage certificate, and; a copy of the applicant's wife's naturalization certificate. The entire record was reviewed and considered in rendering a decision on the appeal.

Section 212(a)(9) 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.

The record shows that the applicant entered the United States on February 24, 1999 as a B-2 nonimmigrant visitor for pleasure, with authorization to remain until August 23, 1999. On or about January 27, 2004, he filed a Form I-485, Application to Register Permanent Residence or Adjust Status, based on a concurrently-filed Form I-130, Petition for Alien Relative, filed on his behalf by

his U.S. citizen wife. Accordingly, he accrued unlawful presence from August 24, 1999 until January 27, 2004, the date he filed a bona fide Form I-485 application. This period totals over four years. He subsequently departed and was paroled into the United States on June 30, 2004 and April 10, 2005. He was deemed inadmissible to the United States under section 212(a)(9)(B)(i)(II) of the Act for having been unlawfully present for more than one year and seeking readmission within 10 years of his last departure. The applicant does not contest his inadmissibility on appeal.

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 or his children can be considered only insofar as it results in hardship to a qualifying relative. The applicant's wife 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 the present matter, counsel asserts that the applicant’s wife will endure extreme hardship should the present waiver application be denied. *Brief from Counsel* at 2-3. Counsel states that the applicant’s wife had an unhappy marriage for 19 years prior to meeting the applicant, yet she is now happy with the applicant. *Id.* at 2. Counsel provides that the applicant supports his wife financially, including taking a loan to finance his stepson’s drug treatment program. *Id.* Counsel contends that the applicant provides moral support for his wife. *Id.*

Counsel states that the applicant and his wife have permanent jobs in the United States and that the applicant's wife has an opportunity to improve her career. *Id.* Counsel provides that the applicant completed a training program to become a certified home health aid. *Id.*

Counsel notes that a psychiatrist found that the applicant's wife suffers from depressed mood, low self-esteem, and pessimism due to the prospect that the applicant will be compelled to reside outside the United States. *Id.* at 2-3. Counsel adds that the psychiatrist noted that the applicant's wife needs medication to address her mental condition. *Id.* at 3.

Counsel provides that the applicant's wife's relatives reside in the United States, and that her elderly mother resides with her and the applicant. *Id.* Counsel contends that the applicant and his wife provide financial support for the applicant's mother-in-law. *Id.* Counsel indicates that the applicant's wife would have to sever close ties with her children and mother should she join the applicant in Georgia, including her son who is under medical treatment for drug addiction. *Id.*

Counsel notes that the applicant and his wife have medical insurance in the United States, but that they would be denied medical coverage in Georgia due to the poor condition of their medical system. *Id.*

Counsel asserts that economic conditions in Georgia are poor, and that unemployment is almost at 50 percent. *Id.*

Counsel asserts that the applicant's wife's emotional hardship is increased due to the applicant's psychological difficulty regarding his possible separation from his U.S. citizen daughter from a prior relationship. *Id.*

The applicant's wife states that she was born in Georgia, and that women's rights are not respected there. *Statement from the Applicant's Wife*, dated August 27, 2007. She describes her prior marriage to the father of her two children which involved abuse. *Id.* at 1. She explains that she came to the United States in 1995 and began to live more independently from her former husband. *Id.* at 1-2. She states that one of her sons began using drugs and that she sought help for him. *Id.* at 2. She provides that she met the applicant in 2002, and her family and home life improved significantly. *Id.* She notes that the applicant works long hours to support her and allow her to care for her sons. *Id.* at 2-3. She states that the applicant took a loan to pay for her son's drug treatment program in Oklahoma, and that her son would lack such treatment in Georgia. *Id.* at 3.

The applicant's wife states that the applicant's mother resides in Georgia and she has health problems. *Id.* She explains that the applicant traveled to Georgia to visit his mother, and he was unaware that he would be inadmissible for departing the United States. *Id.* at 3-4.

The applicant's wife asserts that she cannot return to Georgia at the present time due to her son's treatment program and the fact that she cannot leave her lawful permanent resident mother alone in

the United States. *Id.* at 4. She indicates that she cannot take her mother back to Georgia, as her mother had difficult experiences there as a divorced woman. *Id.*

The applicant's wife provides that she and her family members have health insurance through the applicant's employment, and that they will lose it due to his ineligibility to work. *Id.* She notes that she has health problems that require treatment from a gynecologist. *Id.* at 5.

The applicant's wife adds that the applicant's six-year-old daughter from a prior relationship will face emotional hardship should the applicant depart the United States. *Id.*

The applicant states that his daughter will not relocate to Georgia with him should he depart the United States. *Statement from the Applicant*, dated August 27, 2007. He adds that he cares for his two stepsons as his own, and that he does his best to be a good parent. *Id.* at 1. He notes that, should he return to Georgia where unemployment is high, he will be unable to repay a loan he took to pay for his stepson's drug treatment program. *Id.* at 2.

The applicant's mother-in-law describes her difficult experiences in Georgia, including social oppression and a lack of employment and health care. *Statement from the Applicant's Mother-in-Law*, dated August 28, 2007. She states that she does not wish to return to Georgia, and she will be left alone in the United States should the applicant and the applicant's wife depart. *Id.* at 2. She further describes the support that the applicant has offered to his wife and his daughter. *Id.*

The applicant provides a report from a Psychiatrist, [REDACTED] who concludes that the applicant's wife is suffering from adjustment disorder with anxiety. *Report from* [REDACTED] dated August 28, 2007. [REDACTED] indicates that the applicant's wife's neurosis is based on her fear of losing the applicant and his emotional support and care. *Id.* at 2. [REDACTED] states that the applicant's wife does not need psychiatric treatment, but that she could benefit from periodic use of a mild tranquilizer. *Id.*

Upon review, the applicant has not shown that his wife will endure extreme hardship should the present waiver application be denied. The applicant has not established that his wife will endure extreme hardship should she remain in the United States for the duration of his inadmissibility under section 212(a)(9)(B)(i)(II) of the Act. Counsel provides that the applicant supports his wife financially, and the applicant's wife indicates that the applicant works long hours to support his family. However, the most recent documentation in the record does not show that the applicant's wife depends on the applicant financially. The applicant's and his wife's 2006 federal tax and income documents indicate that the applicant's wife earned a total of \$36,275 with two separate employers for the year, while their total income was \$45,356. The applicant has not provided an account of all of his wife's expenses, thus the AAO is unable to fully assess her financial circumstances.

The record shows that the applicant's wife's older son was enrolled in an addiction treatment program as of July 2007, and that a payment of \$7,650 was made, with an outstanding balance of \$7,350. Counsel asserts that the applicant took a loan to finance his stepson's drug treatment

program. However, all of the documentation relating to the treatment program is addressed to the applicant's wife, and the applicant is not referenced. The applicant has not presented any evidence to support that he took a loan. Thus, the applicant has not shown that he has responsibility for fees for his stepson's treatment program, or that his unavailability to contribute to such fees would create a burden for his wife.

Accordingly, the applicant has not shown by a preponderance of the evidence that his wife would endure significant economic hardship should he depart the United States and she remain.

The applicant wife indicates that she has health problems and that she requires care from a gynecologist. Although she asserts that she and her family have health coverage in connection with the applicant's employment, the copies of health insurance cards in the record do not indicate that the coverage is tied to the applicant's employer. The applicant has not shown that his wife is unable to obtain health coverage through her employer. Nor has the applicant submitted any medical documentation for his wife that shows that she has health conditions that require ongoing care.

The AAO acknowledges that the applicant has served as a positive role model for his two stepsons, and that the applicant's wife has derived emotional benefits from his presence in their household. Yet, the applicant's stepsons are approximately ages 21 and 26. The applicant has not shown that his 21-year-old stepson requires financial or other assistance such that the applicant's absence would result in additional burden for his wife due to parenting responsibilities. The applicant's 26-year-old stepson was enrolled in an addiction treatment program in 2007. While the record does not show the results of this program, it is evident that he would benefit from parental support. The AAO gives due consideration to the impact the applicant's absence would have on his wife should he be unavailable to participate in supporting his stepson with addiction challenges.

The record contains references to hardships the applicant's young daughter from a prior relationship would endure should she become separated from the applicant. The AAO examines this hardship to determine the impact it may have on the applicant's wife. The applicant has not indicated whether his wife has a relationship with his daughter, thus the record does not show that she would directly share in his daughter's emotional difficulty. The applicant's wife expresses concern for the applicant's psychological difficulty should he be separated from his daughter. It is evident that becoming separated from a young child often involves significant emotional hardship for a parent, and that the applicant's suffering in this regard impacts his wife.

The AAO has carefully examined the statements from the applicant, the applicant's wife, the applicant's mother-in-law, and [REDACTED] to assess the degree of emotional hardship his wife will endure should she be separated from the applicant. It is evident that the applicant's wife's prior experience in an abusive relationship contributes to her desire to have the applicant in the United States in a healthy household. However, the applicant has not sufficiently distinguished his wife's psychological difficulty from that which is often experienced when spouses reside apart due to inadmissibility. It is noted that [REDACTED] indicates that, although the applicant's wife is suffering from adjustment disorder with anxiety, she does not need psychiatric treatment. The record does not

show by a preponderance of the evidence that the applicant's wife's emotional difficulty rises to an extreme level.

All elements of hardship to the applicant's wife, should she remain in the United States, have been considered in aggregate. Based on the foregoing, the applicant has not shown that his wife will suffer extreme hardship should she reside in the United States for the duration of his inadmissibility under section 212(a)(9)(B)(i)(II) of the Act.

The applicant has shown that his wife will endure extreme hardship should she join him in Georgia. The applicant's wife and mother-in-law each explain that they endured abusive relationships in Georgia. The applicant's mother-in-law provides that she experienced negative social consequences in Georgia due to divorcing her abusive husband, and that she would endure hardship should she now return. The applicant's mother-in-law's description of her experience in Georgia supports that the applicant's wife may also endure social difficulty there due to her status as a previously-divorced woman. It is evident that the applicant's wife would face emotional challenges in Georgia after having left poor circumstances there and successfully building a life in the United States including becoming a U.S. citizen.

The record shows that the applicant's stepson has been involved in an addiction treatment program, and that the applicant's wife plays a role in securing his treatment. The AAO acknowledges that the applicant's wife would be seriously limited in her ability to support her son and his treatment in the United States should she return to Georgia. This circumstance is an unusual factor not ordinarily faced when an individual relocates abroad due to the inadmissibility of a spouse.

The record further shows that the applicant's mother-in-law is listed as a dependent on the applicant's and his wife's federal income tax, and the applicant's wife would suffer emotional difficulty should she depart the United States and leave her mother.

The AAO considers other elements of hardship to the applicant's wife, including separation from her younger son, leaving her employment, the financial burden of relocating, and the challenges of establishing new employment in Georgia. While the applicant has not shown that any one of these factors is more severe than the common circumstances faced when a spouse relocates abroad, all elements of hardship are considered in aggregate.

Based on the foregoing, the applicant has shown by a preponderance of the evidence that his wife will suffer extreme hardship should she return to Georgia.

However, as noted above, an applicant must establish extreme hardship to his or her qualifying relative should the qualifying relative choose to join the applicant abroad, and should the qualifying relative choose to remain in the United States and be separated from the applicant. As the applicant has not shown that his wife will endure extreme hardship should she remain in the United States, he has not established that denial of the present waiver application "will result in extreme hardship" to his wife, as required for a waiver under section 212(a)(9)(B)(v) of the Act.

Having found the applicant statutorily ineligible for relief, no purpose would be served in discussing whether he merits a waiver as a matter of discretion.

In proceedings regarding a waiver of grounds of inadmissibility under section 212(a)(9)(B) of the Act, the burden of proving eligibility remains entirely 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.