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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

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FILE: [Redacted] Office: MEXICO CITY (SANTA DOMINGO) Date: **SEP 13 2010**

IN RE: [Redacted]

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

ON BEHALF OF APPLICANT:

SELF-REPRESENTED

INSTRUCTIONS:

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,

*Michael Shumway*

for Perry Rhew  
Chief, Administrative Appeals Office

**ACTION COMPLETED  
APPROVED FOR FILING**  
Initials: JT Date: 6/22/11  
FCO/Unit COW

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

The applicant is a native and citizen of Trinidad and Tobago 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. The applicant is the spouse of a U.S. citizen. The applicant sought a waiver of inadmissibility pursuant to section 212(a)(9)(B)(v) of the Act, 8 U.S.C. § 1182(a)(9)(B)(v), so as to immigrate to the United States. The director concluded that the applicant had failed to establish that his bar to admission would impose extreme hardship on a qualifying relative, and determined that the applicant did not warrant a favorable exercise of discretion, and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) accordingly. The applicant filed a timely appeal.

On appeal, the applicant submits a letter and an affidavit from his spouse and letters from his spouse's doctor.

On April 4, 2001, the applicant was convicted of endangering the welfare of a child in violation of New York Penal Law § 260.10, a class A misdemeanor. He received a one-year conditional discharge, and an order of protection was entered for one year. New York Penal Law § 70.15 states that the maximum penalty possible for a Class A misdemeanor is one year in jail. We need not determine whether endangering the welfare of a child is a crime involving moral turpitude, which would render the applicant inadmissible under section 212(a)(2)(A)(i)(I) of the Act, because his conviction qualifies for the petty offense exception under section 212(a)(2)(A)(ii) of the Act.

The AAO will now address the director's finding of inadmissibility. Inadmissibility for unlawful presence is found under section 212(a)(9)(B) of the Act. That section provides, in part:

(B) Aliens Unlawfully Present

(i) In general. - Any alien (other than an alien lawfully admitted for permanent residence) who-

(I) was unlawfully present in the United States for a period of more than 180 days but less than 1 year, voluntarily departed the United States . . . and again seeks admission within 3 years of the date of such alien's departure or removal, or

(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.

U.S. Citizenship and Immigration Services (USCIS) records reflect that the applicant entered the United States without inspection on November 2, 1997. On May 30, 1997, the applicant's mother filed a Petition for Alien Relative (Form I-130) naming the applicant as beneficiary. The Form I-130 was approved on July 29, 1997. The applicant married [REDACTED] on March 7, 2000. On April 11, 2000 she filed a Form I-130 on his behalf, which was accompanied by the applicant's Application to Register Permanent Resident or Adjust Status (Form I-485). On May 3, 2002, a Notice to Appear was personally issued to the applicant. On May 8, 2002, the applicant pled guilty to endangering the welfare of a child in violation of New York Penal Law § 260.10. On August 3, 2002, the director denied the Form I-485 because he found that the applicant's conviction involved moral turpitude. On September 10, 2002, a Notice of Hearing in Removal Proceedings was personally issued to the applicant for a master hearing on November 4, 2003, and on March 5, 2004, he was issued another notice for a master hearing on May 7, 2004. On April 8, 2004, the Form I-130 was denied because the petitioner failed to provide sufficient proof of her prior divorce. It is not clear if an appeal was filed to the Board of Immigration Appeals (Board) on April 21, 2004.

On May 6, 2004, a Notice of Hearing in Removal Proceedings was personally issued to the applicant for a master hearing on June 4, 2004. On August 5, 2004, the immigration judge granted the applicant 60 days voluntary departure from the United States (through October 4, 2004), and ordered that if he failed to depart or post the voluntary departure bond, then the order granting voluntary departure would be automatically withdrawn and an order of removal to Trinidad and Tobago would become immediately effective. The immigration judge's decision was appealed by the U.S. Department of Homeland Security (USDHS) on August 5, 2004. On July 21, 2006, the applicant filed a Motion to Reopen removal proceedings, which was denied by the immigration judge on July 28, 2006. On July 29, 2005, the appeal with the Board was withdrawn by USDHS. On October 25, 2006, the applicant's spouse filed the second Form I-30 on his behalf, which was approved on February 8, 2007. On January 31, 2006, a Warrant of Removal was issued. On July 11, 2006, the applicant was arrested. He was removed from the United States on July 29, 2006.

Based on the record, the applicant began to accrue at least one year of unlawful presence from November 2, 1997, the date on which the unlawful presence provisions went into effect, until April 11, 2000 (when the Form I-485 was filed), and from August 3, 2002 (when the Form I-485 was denied) until August 5, 2004 (when the applicant was granted voluntary departure). The applicant's removal from the United States on July 29, 2006, triggered the ten-year bar, rendering him inadmissible under section 212(a)(9)(B)(i)(II) of the Act.

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 U.S. citizen 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).

As a qualifying relative is not required to depart the United States as a consequence of an applicant's inadmissibility, two distinct factual scenarios are possible 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 to be taken is difficult, and it 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 (the Board) 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*, 22 I&N Dec. 560, 565-66 (BIA 1999), the Board provided a list of factors it deemed relevant in determining whether an alien has established extreme hardship to a qualifying relative. 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).

*In rendering this decision, the AAO will consider all of the evidence in the record.*

With regard to remaining in the United States without the applicant, the applicant's spouse contends in her undated affidavit that she has a close relationship with her husband, who she has been married to since March 2000. She avers that the applicant supported her and her daughter ten years prior to their marriage. She conveys that he has been a father to her daughter, who is now 17 years old, since her daughter was seven months old. The applicant's spouse declares that she is unable to meet her

monthly expenses without financial support from her husband and that she borrowed \$20,000 from relatives and friends. She maintains that she had a stroke and bells palsy since her husband left the United States, and cannot afford medical care. [REDACTED] conveys in his letter dated May 29, 2008, that he has taken care of the applicant's spouse for more than eight years, and that she has major depression and has been depressed since her husband's deportation. [REDACTED] states in the letter dated July 17, 2010 that the applicant's spouse attempted suicide on two separate occasions and is a candidate for medication for depression. He avers that the applicant's step-daughter is also depressed, and has concern about her mother and is struggling with the absence of her father. He indicates that she dropped out of college because she cannot focus in school. The applicant's wife contends in her letter dated February 14, 2010, that she was unable to pay her daughter's college tuition, and is on the verge of losing her house because she cannot pay the mortgage without her husband's income.

Family separation 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 type of familial 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 otherwise 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 familial relationship involved, the hardship resulting from family separation is 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. Indeed, the specific facts of a case may dictate that even the separation of a spouse and

children from an applicant does not constitute extreme hardship. In *Matter of Ngai*, for instance, the Board did not find extreme hardship because the claims of hardship conflicted with evidence in the record and because the applicant and his spouse had been voluntarily separated from one another for 28 years. 19 I&N Dec. at 247. 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.

The hardship factors asserted in the instant case are the emotional and financial impact to the applicant's wife as a result of separation from her husband. The applicant's spouse conveys that she has been married to the applicant since March 2000, and has known him since 1990. She declares that she needs the emotional and financial support of her husband, and [REDACTED] indicates that the applicant's spouse had two suicide attempts and is experiencing major depression due to separation from the applicant. In view of the substantial weight that is given to this type of family separation in the hardship analysis, and in light of the significant impact that separation will have on the applicant's wife, we find the applicant has demonstrated that the hardship that his wife will experience as a result of separation is extreme.

However, there is no claim made of hardship to the applicant's spouse if she joined her husband to live in Trinidad and Tobago. The burden of proof in this proceeding lies with the applicant, and "while an analysis of a given application includes a review of all claims put forth in light of the facts and circumstances of a case, such analysis does not extend to discovery of undisclosed negative impacts." *Matter of Ngai*, 19 I&N Dec. at 247.

The applicant has demonstrated extreme hardship to his spouse if she remained in the United States without him, but he has not established extreme hardship if she joined him to live in Trinidad and Tobago. Because the applicant is statutorily ineligible for relief, no purpose is served in discussing whether he merits a waiver as a matter of discretion.

In proceedings for application for waiver of grounds of inadmissibility under section 212(h) of the Act, the burden of establishing that the application merits approval remains entirely with the applicant. See section 291 of the Act, 8 U.S.C. § 1361. The applicant has not met that burden.

Accordingly, the appeal will be dismissed.

**ORDER:** The appeal is dismissed. The waiver application is denied.