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



U.S. Citizenship
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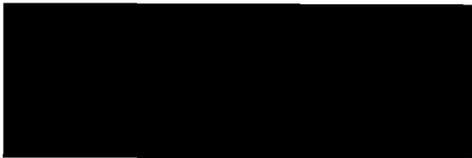
DATE: OFFICE: KENDALL, FLORIDA
DEC 07 2011

File:

IN RE: Applicant:

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

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 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 \$630. 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 Kendall Field Office Director, Kendall, Florida and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native and citizen of Argentina 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 seeks a waiver of inadmissibility in order to reside in the United States with his lawful permanent resident spouse.

The Field Office Director concluded that the applicant failed to establish that extreme hardship would be imposed on a qualifying relative and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) accordingly. *Decision of the Field Office Director*, dated July 30, 2009.

On appeal, counsel asserts that the applicant's spouse would suffer extreme hardship of an economic and familial nature if the applicant's waiver is denied. See *Counsel's Brief*, received August 27, 2009.

The record contains but is not limited to: Form I-290B; counsel's brief; applicant's wife's hardship letter; applicant's letter; Forms I-601, I-485, and denials for each; advance parole documents; birth and marriage records; tax, income, and employment records; bank account, insurance, and billing statements; and a school record and child care application for the applicant's stepson. The entire record was reviewed and considered in rendering a decision on the appeal.

Section 212(a)(9) of the Act provides:

(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 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 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. No court shall have jurisdiction to review a decision or action by the Attorney General regarding a waiver under this clause.

The record reflects that the applicant entered the United States as a B2 nonimmigrant visitor for pleasure on June 10, 2001, with authorization to remain in the U.S. until September 7, 2001. The applicant overstayed his visa authorization. The applicant filed Form I-485, Application to Register Permanent Residence or Adjust Status, on May 7, 2007. The applicant filed a second Form I-485 on February 5, 2008. The applicant also filed Form I-131, Application for Travel Document, at that time. The Form I-131 was approved and an advance parole document was issued to the applicant on April 4, 2008. The applicant departed the United States sometime thereafter, triggering inadmissibility under the unlawful presence provisions under the Act. The applicant re-entered the United States on March 9, 2009. The applicant accrued unlawful presence from September 8, 2001 until May 7, 2007, and again from December 2007 to February 5, 2008, the date he filed Form I-485.¹ The applicant has thus accumulated more than 365 days of unlawful presence and is seeking admission within ten years of his last departure from the United States. Therefore, the applicant is inadmissible under section 212(a)(9)(B)(i)(II) of the Act, 8 USC § 1182(a)(9)(B)(i)(II). The applicant does not contest the finding of inadmissibility on appeal.

A waiver of inadmissibility under section 212(9)(B)(v) of the Act is dependent on a showing that the bar to admission would impose 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 the 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).

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

¹ The Field Office Director found that the applicant accrued unlawful presence from March 8, 2002 to February 5, 2008. In either event, the applicant has accumulated more than 365 days of unlawful presence and is inadmissible under section 212(a)(9)(B)(i)(II) of the Act, 8 USC § 1182(a)(9)(B)(i)(II).

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.

In this case, the record reflects that the applicant's wife is a [REDACTED] native and citizen of Cuba and lawful permanent resident of the United States. With regard to separation, she states that her husband's removal would result in "a very strong" economic hardship due to her current

unemployment and difficulty finding work “in this bad economy.” See *Hardship Affidavit*, dated July 17, 2009. The applicant’s wife states that separation would also “totally break our fine relationship and create problem for my son and I.” *Id.* She explains that the three have built a strong loving relationship and that raising a child alone in the U.S. “is by itself a hardship on me and my son.” *Id.* The applicant asserts similar hardships to his loved ones, adding that his wife has been unemployed “for about a year” and that she and her son “would probably become a burden” to the U.S. government in his absence. See *Applicant’s Letter*, undated. On appeal, counsel asserts that the applicant’s wife has custody of her son, [REDACTED] and that the applicant plays a major role in his care. See *Counsel’s Brief*, received August 27, 2009. Counsel asserts that the applicant’s wife “works as a promotional consultant,” that “her work hours vary,” that when she is sometimes unable to take [REDACTED] to school or pick him up due to work the applicant does so, and when she “finds that she is needed at work during the evenings or at night,” the applicant makes sure [REDACTED] does his homework, feeds him dinner, and puts him to bed. *Id.* The AAO notes that counsel’s brief is dated August 25, 2009, approximately five weeks after the applicant’s wife’s letter (dated July 17, 2009), in which she states that she is unemployed. No explanation has been offered or evidence submitted with regard to this inconsistency.

The applicant asserts that he has been outside of Argentina for many years and that to “find any work” would be difficult. See *Applicant’s Letter*, undated. No documentary evidence was submitted in this regard. Going on record without supporting documentation is not sufficient to meet the applicant’s burden of proof in this proceeding. See *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)). Counsel asserts that if the applicant “was not there to assist his wife, she would not be able to work and take care of her son.” See *Counsel’s Brief*, received August 27, 2009. Counsel asserts that the applicant’s wife, unlike “some other people” does not have a large family “where she would be able to count on her mother or siblings to assist her in the caring of her child.” *Id.* While the record contains a 2008 tax return and letter of employment concerning the applicant, it contains no wage and earnings documents or information concerning the applicant’s spouse. With regard to the economic impact of separation, the AAO recognizes that the applicant’s wife’s household income would be reduced in the absence of her husband. However, the evidence in the record is insufficient to show that the applicant’s wife would be unable to support herself and her son. Nor has it been established that the applicant’s spouse would be unable to find suitable childcare for their son. Concerning the impact of separation on the relationship between the applicant, his wife, and stepson as well as raising a child alone in the U.S., the difficulties described do not take this case beyond those hardships ordinarily associated with the inadmissibility of a family member.

The AAO acknowledges that separation from the applicant may cause various difficulties for the applicant’s spouse. However, it finds the evidence in the record insufficient to demonstrate that the challenges encountered by the qualifying relative, when considered cumulatively, meet the extreme hardship standard.

With regard to relocation, counsel asserts that the applicant’s wife has no family or friends in Argentina, and that she has ties to the U.S. and the community in which she lives. See *Counsel’s*

Brief, received August 27, 2009. Counsel also asserts that she has no family but the applicant in the United States. *Id.* Counsel asserts that the applicant's wife "does not know if it would be allowable for her son to leave the United States and move to Argentina." *Id.* No explanation was offered or evidence submitted concerning such permissibility. While counsel asserted that the applicant's wife has custody of Yohan, no evidence has been submitted with regard to any custody arrangements that may exist. The AAO will not speculate in this regard.

While the AAO acknowledges that the applicant's spouse may experience some difficulties as a result of relocation to Argentina, the applicant has failed to establish that such difficulties, even when considered cumulatively, would be uncommon or extreme.

The applicant has, therefore, failed to demonstrate the challenges his spouse faces are unusual or beyond the common results of removal or inadmissibility to the level of extreme hardship. Accordingly, the AAO finds that the applicant has failed to demonstrate extreme hardship to a qualifying relative.

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 remains entirely with the applicant. Section 291 of the Act, 8 U.S.C. § 1361. Here, the applicant has not met that burden. As the applicant has not established extreme hardship to a qualifying family member no purpose would be served in determining whether the applicant merits a waiver as a matter of discretion. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.