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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
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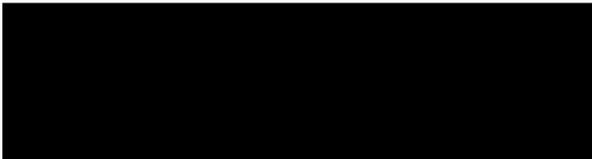
FILE # [REDACTED]

IN RE: JUL 13 2011

Applicant: [REDACTED]

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).

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 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 Officer in Charge (OIC), Vienna, Austria. 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 Romania. 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 married to a U.S. citizen and has two U.S. citizen children. 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 Officer in Charge 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 October 15, 2008.

On appeal, counsel for the applicant asserts that the Officer in Charge erred when he determined that the applicant had not established extreme hardship to a qualifying relative. *Form I-290B*, received on November 7, 2008.

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 as a K-2 beneficiary on April 29, 1998. The applicant's mother, upon whom her K-2 status was derived, subsequently divorced her husband and returned to the Romania while the applicant remained in the United States. The applicant turned 18 on January 12, 1999. The applicant was put into removal proceedings in May, 2007 and was granted voluntary departure. She departed the United States on or about February 20, 2008. As the applicant resided unlawfully in the United States for over a year, from the time she turned 18 until the time she was granted voluntary departure, 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, counsel's brief; a statement from the applicant's spouse; a statement from the applicant's mother; copies of invoices and bills for legal expenses related to the

applicant's immigration proceedings; a statement from [REDACTED], dated November 21, 2008; a psychiatric examination of the applicant's mother by [REDACTED] performed on November 7, 2008; a confidential psychological report on the applicant's spouse by [REDACTED] M.D., dated November 25, 2008; a copy of the CIA World Factbook section on Romania; a statement from the applicant's spouse's employer; and pictures of the applicant, her husband and their children.

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 an applicant or an applicant's children can be considered only insofar as it results in hardship to a qualifying relative. The applicant's spouse and mother are the only qualifying relatives 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 hardship upon relocation to Romania. *Brief in Support of I-290B*, dated November 20, 2008. Counsel explains that the applicant’s spouse’s immediate family resides in the United States, that he has close community ties to the United States, that he owns and operates his own restaurant and that he does not speak Romanian. Counsel refers to the country conditions in Romania and asserts that the applicant’s spouse would be unable to find employment, and asserts that the applicant’s spouse feels he experienced racism when he previously visited Romania.

The record includes statements from the applicant’s spouse’s family, however the record does not contain any documentation verifying that the applicant’s spouse owns a restaurant. Nonetheless, the AAO will give due consideration to the family ties the applicant’s spouse has in the United States and the lack of family ties he has in Romania.

The record contains a copy of the World Factbook section on Romania. This document provides general information on conditions in Romania including that the unemployment rate is 4.1% and that 47.1% of the labor force is in "services." This evidence is not sufficient to establish that the applicant's spouse would not be able to find employment in Romania. Further, this document does not provide information that supports the assertions that the applicant's spouse has or would experience racism due to his Chinese heritage. While the AAO acknowledges the applicant's spouse may not speak Romanian and is of Chinese descent, without evidence that conditions in Romania would specifically impact the applicant's spouse, it cannot be determined that he would experience any greater hardship than what is commonly experienced by the relatives of inadmissible aliens who relocate abroad or that persons of Chinese descent are subject to discrimination in Romania.

Even when the asserted hardships are considered in aggregate, they are insufficient to establish that the applicant's spouse would experience uncommon hardship rising to the level of extreme.

Counsel also asserts that the applicant's mother would experience extreme hardship if she were to relocate to Romania. Counsel explains that the applicant's mother no longer has any family in Romania, and that she has a spouse, a job and a life in the United States. *Brief in Support of I-290B*, dated November 20, 2008. The applicant's mother has submitted a statement asserting that her husband has recently suffered a heart attack and that it would be difficult for her to relocate to Romania. *Statement of the Applicant's Mother*, dated December 15, 2007.

The record does not include any documentation to support the applicant's mother's assertions. While the AAO can accept that the applicant's mother would prefer to reside in the United States, and that she may have a spouse, job and immediate family members in the U.S., there is no documentation which establishes any medical conditions of her spouse or that she would be unable to travel to see the applicant. The AAO would also note that the applicant's mother is from Romania, mitigating any impacts she might experience if she were to relocate to Romania with the applicant. Even in a light most favorable to the applicant's mother, if these assertions were supported by the record, when considered in aggregate they would not rise to a level of extreme.

The applicant has failed to establish that a qualifying relative would experience extreme hardship upon relocation.

Counsel for the applicant further asserts that the applicant's spouse would experience extreme hardship if the applicant were not allowed to return to the United States. Counsel explains that the applicant's spouse has been diagnosed with depression and is suffering financial hardship in that he must cover all family expenses as well as care for one of his sons.

The applicant's spouse has submitted a letter asserting that it would be extreme hardship to him and his children to be separated from the applicant. *Statement of the Applicant's Spouse*, dated December 15, 2007. He states that he would have to sell his successful restaurant in order to care for their children if the applicant were not allowed to return to the United States, and that because of this he would be unable to make mortgage payments.

As noted above, there is no evidence of property or business ownership in the record. There is no documentation of the applicant's spouse's income or expenses and thus the AAO cannot determine that he would be unable to meet his financial obligations due to separation from the applicant. Further, the AAO notes that the applicant has claimed that his family all reside in the United States, and it has not been explained why they cannot assist him to mitigate the impacts of separation from his spouse. Without evidence that the applicant's spouse would be unable to afford child care or be forced to sell his restaurant the record does not establish the applicant's spouse will experience any uncommon financial hardship.

The record contains a psychological examination of the applicant's spouse. The examination concludes that the applicant's spouse is experiencing emotional hardship due to separation from his spouse. Specifically, the evaluation states that the applicant's spouse "met the criteria for depression, severe range," and that the applicant's spouse is "devastated and nearly paralyzed by depression." *Confidential Psychological Report*, dated November 25, 2008. Although the input of any mental health professional is respected and valuable, the AAO notes that the submitted report is based on a single, two hour interview between the applicant's spouse and the psychologist. The record fails to reflect an ongoing relationship with the applicant's spouse or any history of treatment for the depression suffered by the applicant's spouse. The applicant's spouse did not submit any follow-up reports from the psychologist. Moreover, the conclusions reached in the submitted report, being based on a single visit, do not reflect the insight and elaboration commensurate with an established relationship with a psychologist, thereby rendering findings speculative and diminishing the report's value in determining extreme hardship. Further, it is noted that while the psychologist states that the applicant's spouse is "nearly paralyzed" by depression, the psychologist also notes that the applicant's spouse currently runs his own business. Without further documentation of the applicant's spouse's claimed emotional hardship, it cannot be concluded that the applicant's spouse's hardship is extreme.

The record contains statements from friends and family of the applicant's spouse which also testify to the emotional hardship due to separation. While the AAO acknowledges that the applicant's spouse may experience some emotional hardship due to separation from his spouse, the hardships asserted, even when considered in aggregate, do not rise above the common impacts of separation experienced by the relatives of inadmissible aliens who remain in the United States.

Counsel for the applicant asserts the applicant's mother is experiencing extreme emotional hardship due to depression related to separation from the applicant and her grandson. The record contains a letter from [REDACTED] and two Visitor and Patient Information documents which provide [REDACTED] evaluation of the applicant's mother. The Visitor and Patient Information document dated November 7, 2008 provides a diagnosis of "depression, major, single episode." Although the AAO notes this diagnosis, the information in the documents prepared by [REDACTED] do not establish that the emotional hardship that the applicant's mother is suffering goes beyond that which is normally experienced by relatives of inadmissible aliens. For example, with respect to the applicant's mother's employment, the report notes that she "was recently promoted despite symptoms being present." Further, the report notes that the applicant's mother "verbalized through the session

not sure why she is here” and characterizes her symptoms as “moderate.” *Visitor and Patient Information* dated November 7, 2008.

The applicant’s mother has also included a reference to the medical condition of her spouse in her statement; however, as noted above there is no documentation in the record to corroborate her assertions.

Even when the assertions of the applicant’s mother are considered in the aggregate, they fail to establish that she would experience uncommon hardship rising to the level of extreme hardship upon separation.

The record, reviewed in its entirety and in light of the *Cervantes-Gonzalez* factors cited above, does not support a finding that the applicant’s qualifying relatives face uncommon challenges rising to the level of extreme hardship, either upon relocation or separation. 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 therefore finds that the applicant has failed to establish extreme hardship to a qualifying relative as required 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 she merits a waiver as a matter of discretion.

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.