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U. S. Department of Homeland Security
U. S. Citizenship and Immigration Services
Office of Administrative Appeals (AAO)
20 Massachusetts Ave., N.W., MS2090
Washington, DC 20529-2090



**U.S. Citizenship
and Immigration
Services**

H6

DATE: **JUN 21 2011** Office: PHILADELPHIA, PA

FILE: [REDACTED]

IN RE: Applicant: [REDACTED]

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

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.

Thank you,


Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Field Office Director, Philadelphia, Pennsylvania and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained.

The applicant is a native and citizen of the Cote d'Ivoire 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 and seeking readmission within ten years of his last departure from the United States and under section 212(a)(9)(C)(i)(I) of the Act for having been unlawfully present in the United States for an aggregate period of more than 1 year and reentering the United States without being admitted. The applicant is married to a United States citizen. He seeks a waiver of inadmissibility in order to reside in the United States with his spouse, child and stepchildren.

The Field Office Director found that, based on the evidence in the record, the applicant had failed to establish extreme hardship to his qualifying relative. The Field Office Director also found the applicant to be inadmissible under section 212(a)(9)(C)(i)(I) of the Act and that no waiver is available for this ground of inadmissibility. The application was denied accordingly. *Decision of the Field Office Director*, dated December 18, 2008.

On appeal, counsel asserts that the applicant is not inadmissible under section 212(a)(9)(C)(i)(I) of the Act because he was paroled into the United States after his departures and therefore reentered with admission. Counsel further asserts that the applicant's spouse would suffer extreme hardship should the waiver application be denied. *Form I-290B, Notice of Appeal or Motion; Attorney's brief.*

In support of these assertions, counsel submits two briefs. The record also includes, but is not limited to, a statement from the applicant; a statement from the applicant's spouse; tax returns, bank statements and other financial documentation; medical records for the child of the applicant's spouse; publications on health conditions; published country conditions reports; an apartment lease; car insurance statements; criminal records for the applicant; an employment letter for the applicant. The entire record was reviewed and considered in rendering a decision on the appeal.

Section 212(a)(9)(B) 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.

Section 212(a)(9)(C)(i) of the Act states, in pertinent part:

(C) Aliens unlawfully present after previous immigration violations.-

(i) In general.-Any alien who-

(I) has been unlawfully present in the United States for an aggregate period of more than 1 year, or

(II) has been ordered removed under section 235(b)(1), section 240, or any other provision of law,

and who enters or attempts to reenter the United States without being admitted is inadmissible.

(ii) Exception.—Clause (i) shall not apply to an alien seeking admission more than 10 years after the date of the alien's last departure from the United States if . . . the Attorney General [now the Secretary of Homeland Security] has consented to the alien's reapplying for admission....

Prior to addressing whether the applicant qualifies for a waiver, the AAO finds it necessary to address the issues surrounding inadmissibility. In the present case, the record indicates that the applicant gained admission to the United States with a B-2 visa at New York, New York on July 5, 1995 with authorization to remain until January 4, 1996. *Form I-94, Departure Card*. The applicant remained in the United States and submitted an application for adjustment of status in 1999. On June 13, 1999 the applicant returned to the Cote d'Ivoire and on October 4, 1999 he reentered the United States at New York, New York with advance parole. *Form I-512, Authorization for Parole of an Alien into the United States*. On January 9, 2000 the applicant again traveled to the Cote d'Ivoire and on February 14, 2000 he reentered the United States with advance parole. *Form I-512, Authorization for Parole of an Alien into the United States*. His application for adjustment of status was denied in 2001 and he reapplied for adjustment of status on March 4, 2005. The applicant accrued unlawful presence from April 1, 1997, the effective date of the unlawful presence provisions under the Act, until he applied for adjustment of status in 1999. The applicant is, therefore, 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 more than one year. As the applicant entered the United States with an authorization for parole and did not reenter the United States without inspection after his departures, the AAO finds that he is not inadmissible under section 212(a)(9)(C)(i)(I) of the Act.

The AAO notes that on August 12, 1997 the applicant pled ██████████ to the offenses of Leaving the Scene of an Accident, Driving without a License, Failure to Yield Right of Way, and Improper and Unsafe Lane Usage. *Final Disposition, State Court of Gwinnett County, Georgia*, dated August 12, 1997. The applicant received a misdemeanor sentence of confinement for 12 months in which the entire sentence of confinement may be served on probation. *Id.* The field office director did not address whether or not this conviction is a crime involving moral turpitude rendering the applicant inadmissible under section 212(a)(2)(A)(i)(I) of the Act. Nevertheless,

because the applicant is inadmissible under section 212(a)(9)(B)(i)(II) of the Act and demonstrating eligibility for a waiver under section 212(a)(9)(B)(v) of the Act also satisfies the requirements for a waiver of criminal grounds of inadmissibility under section 212(h), the AAO will not determine whether the applicant is inadmissible under section 212(a)(2)(A)(i)(I).

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

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.

The applicant’s spouse was born in the United States, her mother resides in the United States, and she does not know where her father resides. *Form G-325A, Biographic Information sheet, for the applicant’s spouse*. Counsel notes that the applicant’s spouse has no relatives or ties to the Cote d’Ivoire. *Attorney’s brief*, dated May 31, 2007. The applicant’s spouse has two children from previous relationships. *Birth certificates*. One of her children has been diagnosed with hemoglobin SS disease (sickle cell anemia) and daytime and nighttime hypoxemia and is receiving treatment and has been hospitalized at least twice for pain and respiratory problems associated with his sickle cell anemia. *Statement from [REDACTED]*, dated March 16, 2007 and *Discharge Instructions from [REDACTED]* dated February 14, 2008. The applicant’s spouse believes her child would not be able to receive effective treatment in [REDACTED]. *Statement from the applicant’s spouse*, dated May 11, 2007. She asserts that her child might need a blood transfusion and is concerned that as a result, her child would contract AIDS. *Id.* Counsel further states that the economic and social conditions in [REDACTED] are poor. *Attorney’s brief*, dated May 31, 2007. The AAO notes that the United States Department of State has issued a travel warning to U.S. citizens against traveling to the Cote d’Ivoire. *Travel Warning, United States Department of State*, dated June 16, 2011. When looking at the aforementioned factors, particularly the applicant’s spouse’s lack of familial and cultural ties to the [REDACTED], the documented health conditions of her child and consistent care her child has received in the United States, the documentation regarding healthcare in the [REDACTED], and in light of the potential risk to the safety of United States citizens

traveling to the [REDACTED], the AAO finds that the applicant has demonstrated extreme hardship to his spouse if she were to reside in the Cote d'Ivoire.

As noted above, the record indicates that the applicant's spouse has two children from previous relationships and one of her children has been diagnosed with sickle cell anemia and daytime and nighttime hypoxemia. *Statement from [REDACTED]*, dated March 15, 1998. He has been hospitalized and has received treatment in the United States. *Id.* The applicant's spouse notes that she never graduated from high school and that without the applicant, she would not be able to financially support their children and herself. *Statement from the applicant's spouse*, dated May 11, 2007. She is a housewife and does not work outside of the home. *Form G-325A, Biographic Information sheet, for the applicant's spouse.* The record includes documentation of the various expenses of the applicant's spouse such as an apartment lease, a car insurance statement, and cable bills. The record also includes tax returns and W-2 forms for the applicant and his spouse indicating an income ranging from 22,000 to \$29,690 between 2005 and 2007. In addition to the documented financial difficulties, the AAO notes that the United States Department of State has issued a travel warning to U.S. citizens against traveling to the Cote d'Ivoire. *Travel Warning, United States Department of State*, dated June 16, 2011. As such, the AAO acknowledges the limitations the applicant's spouse would have in visiting the applicant. When looking at the aforementioned factors, particularly the difficulties of being a single parent of a child with a significant medical condition, the documented financial difficulties of the applicant's spouse, and the limitations the applicant's spouse would have in visiting the applicant in the [REDACTED] due to current country conditions, the AAO finds that the applicant has demonstrated extreme hardship to his spouse if she were to remain in the United States.

The AAO additionally finds that the applicant merits a waiver of inadmissibility as a matter of discretion. In discretionary matters, the alien bears the burden of proving eligibility in terms of equities in the United States which are not outweighed by adverse factors. *See Matter of T-S-Y-*, 7 I&N Dec. 582 (BIA 1957).

The adverse factors in the present case are the applicant's unlawful presence for which he now seeks a waiver, periods of unlawful employment, and a criminal conviction for leaving the scene of an accident. The favorable and mitigating factors are his United States citizen spouse, the extreme hardship to his spouse and children if he were refused admission, his supportive relationship with his spouse as documented in the record, and his lack of a criminal record since 1997.

The AAO finds that, although the immigration violations committed by the applicant are 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.

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. *See* section 291 of the Act, 8 U.S.C. § 1361. Here, the applicant has met that burden. Accordingly, the appeal will be sustained.

ORDER: The appeal is sustained.