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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
and Immigration
Services

[REDACTED]

H6

Date: OCT 25 2011

Office: DENVER, COLORADO

FILE: [REDACTED]

IN RE: Applicant: [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:

[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.

Thank you,

f-1

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the District Director, Denver, Colorado. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained and the waiver application will be approved.

The applicant is a native and citizen of the United Kingdom 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 again seeking admission within ten years of his last departure from the United States. The applicant is the spouse of a United States citizen. He seeks a waiver of inadmissibility in order to reside in the United States with his wife.

In a decision dated August 19, 2008, the District Director found that the applicant failed to establish that his qualifying relative would experience extreme hardship as a consequence of his inadmissibility. The application was denied accordingly. See *Decision of the District Director* dated August 19, 2008.

On appeal, the applicant's attorney submitted a brief in support of the applicant's waiver application. In the brief, the applicant's attorney asserts that the qualifying spouse will suffer emotional, psychological and other health-related issues if she remains in the United States without the applicant or relocates to the United Kingdom with the applicant. Further, the applicant's attorney indicates that the qualifying spouse would also face financial hardships upon relocation because the qualifying spouse is expected to take over her mother's restaurant. The applicant's attorney also contends that the applicant has stated that he would be either unable to find employment or to sufficiently financially support the qualifying spouse in the United Kingdom.

The record contains an Application for Waiver of Grounds of Inadmissibility (Form I-601), a Notice of Appeal (Form I-290B), briefs written on behalf of the applicant, birth certificates for the applicant and the qualifying spouse, a marriage license, affidavits from the applicant and qualifying spouse, affidavits and letters from family members and friends, a psychological evaluation, letters and medical records regarding the qualifying spouse and her mother, country condition documentation regarding the United Kingdom and materials regarding conditions in Aspen, Colorado, financial documentation and other documentation submitted with the Application to Adjust Status (Form I-485).

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)(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. 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-Moralez*, 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 qualifying relative in this case is his wife, who is a United States citizen. The record indicates that the applicant entered the United States on July 23, 2003 through the visa waiver program with authorization to remain in the United States until October 22, 2003. The applicant remained in the United States until October 2006 when he voluntarily departed. The applicant accrued unlawful presence from October 22, 2003 until October 2006, a period in excess of one year. In applying for an immigrant visa, the applicant is seeking admission within ten years of his departure from the United States. The applicant has not disputed her inadmissibility. Therefore, the applicant is inadmissible to the United States under section 212(a)(9)(B)(i)(II) of the Act for having been unlawfully present in the United States for a period of more than one year.

The documentation submitted relating to the potential hardships facing the applicant’s spouse includes Form I-601, Form I-290B, briefs written on behalf of the applicant, affidavits from the applicant and qualifying spouse, affidavits and letters from family members and friends, a psychological evaluation, letters and medical records regarding the qualifying spouse and her mother, country condition documentation, financial documentation and other documentation submitted with Form I-485.

As previously stated, the applicant’s attorney asserts that the qualifying spouse will suffer emotional, psychological and other health-related issues if she remains in the United States without the

applicant or relocates to the United Kingdom with the applicant. Further, the applicant's attorney indicates that the qualifying spouse would also face financial hardships upon relocation because the qualifying spouse is expected to take over her mother's restaurant. The applicant's attorney also contends that the applicant has stated that he would be either unable to find employment or to sufficiently financially support the qualifying spouse in the United Kingdom.

The applicant must first establish that his qualifying spouse would suffer extreme hardship were she to remain in the United States while he resides in the United Kingdom due to his inadmissibility. With respect to this criterion, the applicant's attorney asserts that the qualifying spouse would suffer emotional, psychological and other health-related issues if she lives in the United States without the applicant. The record contains a psychological evaluation, medical records, and letters from the qualifying spouse's doctors, friends and family. This evidence confirms that the qualifying spouse has been seeing medical professionals regarding her mental health issues since age eight. She began to have mental health problems when her parents divorced, and was diagnosed with chronic childhood Separation Anxiety Disorder. The qualifying spouse's psychological evaluation also notes that she is experiencing similar separation issues currently as a result of the applicant's immigration problems. In addition, she has also been diagnosed with Major Depressive Disorder. Family and friends of the qualifying spouse confirm that her emotional health is fragile and that she has suffered anxiety issues her whole life. Further, the qualifying spouse has also suffered from head injuries due to multiple concussions, which resulted in Mild Traumatic Brain Injury. Her neurotherapist indicated that her symptoms from such injuries include "severe mental stress and anxiety, Post Traumatic Stress Disorder (PTSD), cognitive dysfunction in reasoning.... and physical issues including headaches, neck and back pain." The neurotherapist also believes that the qualifying spouse's separation from the applicant would cause "undue duress" to the qualifying spouse resulting in further "mental stress, anxiety, and PTSD and compromise her ability to function optimally." The record contains the several records for the qualifying spouse's treatment for her injuries. When considered in the aggregate, the documentation provided regarding the qualifying spouse's emotional, psychological and medical hardships demonstrate that the qualifying spouse would suffer extreme hardship if she were to remain in the United States without the applicant.

The applicant also demonstrated that his qualifying relative would suffer extreme hardship in the event that she relocated to the United Kingdom with the applicant. The qualifying spouse has lived in the United States her entire life and has close family ties to the United States, including her parents, siblings and friends. The record contains several letters indicating the closeness of the qualifying spouse's relationships with her friends and family and the importance of her relationships, in light of the mental and medical issues that she suffers. As previously stated, the evidence also confirms that the qualifying spouse has suffered emotional, psychological and medical issues and that she has been in treatment in the United States for years for her various issues. The applicant's attorney contends that if the qualifying spouse relocated to the United Kingdom she would have "no access to the professionals she has worked with for years," and we agree that this would pose a hardship in the qualifying spouse's case. In fact, the record contains documentation indicating that the qualifying spouse suffered digestive and emotional issues after only a few months of attempting to relocate to New Zealand with the applicant. The applicant's attorney further asserts that the qualifying spouse would suffer financial hardships because she is expected to take over her mother's

restaurant. The record reveals that the qualifying spouse has worked for years at her mother's restaurant. The AAO therefore concludes that, were the applicant's spouse to relocate to the United Kingdom with the applicant, she would suffer extreme hardship due to her length of residence in the United States, her close family and community ties to the United States, her psychological and medical hardships and the other effects of relocation to the United Kingdom.

Considered in the aggregate, the applicant has established that his wife would face extreme hardship if the applicant's waiver request is denied.

Extreme hardship is a requirement for eligibility, but once established it is but one favorable discretionary factor to be considered. *Matter of Mendez-Moralez*, 21 I&N Dec. 296, 301 (BIA 1996). For waivers of inadmissibility, the burden is on the applicant to establish that a grant of a waiver of inadmissibility is warranted in the exercise of discretion. *Id.* at 299. The adverse factors evidencing an alien's undesirability as a permanent resident must be balanced with the social and humane considerations presented on his behalf to determine whether the grant of relief in the exercise of discretion appears to be in the best interests of this country. *Id.* at 300.

In *Matter of Mendez-Moralez*, in evaluating whether section 212(h)(1)(B) relief is warranted in the exercise of discretion, the BIA stated that:

The factors adverse to the applicant include the nature and underlying circumstances of the exclusion ground at issue, the presence of additional significant violations of this country's immigration laws, the existence of a criminal record and, if so, its nature, recency and seriousness, and the presence of other evidence indicative of an alien's bad character or undesirability as a permanent resident of this country. . . . The favorable considerations include family ties in the United States, residence of long duration in this country (particularly where the alien began his residency at a young age), evidence of hardship to the alien and his family if he is excluded and deported, service in this country's Armed Forces, a history of stable employment, the existence of property or business ties, evidence of value and service to the community, evidence of genuine rehabilitation if a criminal record exists, and other evidence attesting to the alien's good character (e.g., affidavits from family, friends, and responsible community representatives). . . .

Id. at 301.

The BIA further states that upon review of the record as a whole, a balancing of the equities and adverse matters must be made to determine whether discretion should be favorably exercised. The equities that the applicant for relief must bring forward to establish that he merits a favorable exercise of administrative discretion will depend in each case on the nature and circumstances of the ground of exclusion sought to be waived and on the presence of any additional adverse matters, and as the negative factors grow more serious, it becomes incumbent upon the applicant to introduce additional offsetting favorable evidence. *Id.* at 301.

The favorable factors in this matter are the hardships the applicant's United States citizen spouse and children would face if the applicant is not granted this waiver, the applicant's support from the qualifying spouse, friends and the community and his apparent lack of a criminal record. The unfavorable factors in this matter are the applicant's accrual of unlawful presence in the United States.

Although the applicant's violations of the immigration laws cannot be condoned, the positive factors in this case outweigh the negative factors. Given the passage of time since the applicant's violations of immigration law, the AAO finds that a favorable exercise of discretion is warranted. In these proceedings, the burden of establishing eligibility for the waiver rests entirely with the applicant. See section 291 of the Act, 8 U.S.C. § 1361. In this case, the applicant has met his burden and the appeal will be sustained.

ORDER: The appeal is sustained. The waiver application is approved. The field office director shall reopen the denial of the Form I-485 application on motion and continue to process the application for adjustment of status.