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



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



HG

DATE: APR 09 2012 OFFICE: MEXICO CITY, MEXICO

File: [REDACTED]

IN RE: Applicant: [REDACTED]

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.

Thank you,

A handwritten signature in black ink, appearing to read "Perry Rhew".

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Field Office Director, Mexico City, Mexico 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 Bahamas 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 U.S. citizen 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. See *Decision of the Field Office Director*, dated August 31, 2009.

On appeal, the applicant's spouse asserts that if the waiver is not granted, she would suffer extreme hardship of an emotional/psychological, physical/medical, familial and economic nature. See *Hardship Letter 2*, dated October 1, 2009.

The record contains but is not limited to: Form I-601 and denial letter; hardship letters; medical/psychological records and letters; financial records; employment letters; numerous letters of reference and concern; birth, divorce and marriage records; and Form I-130. 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 on a tourist visa on or about January 10, 1992 and remained until January 2009 when he voluntarily departed. The applicant accrued unlawful presence from April 1, 1997, the effective date of the unlawful presence provisions under the Act, to January 2009, a period in excess of one year. As the applicant is seeking admission within 10 years of departure, he is inadmissible pursuant to section 212(a)(9)(B)(i)(II) of the Act.

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 the applicant's children can be considered only insofar as it results in hardship to the 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 record reflects that the applicant’s spouse is a 51-year-old native of Ethiopia and citizen of the United States. She states that she lost both parents early in life, is very close to her surviving siblings and their children - all of whom are U.S. citizens, and after escaping Ethiopia as a teen has resided in the United States since 1980. The applicant’s spouse states that she still suffers the effects of her childhood, does not adapt well to change, is very dependent upon her husband emotionally, and suffers a number of chronic health issues and a history of depression since 1999 which have been exacerbated by their forced separation. Documentary evidence shows that the applicant’s spouse was diagnosed in October 1999 with depression related to the end of her then marriage, which [REDACTED] describes as a psychosocial stressor for her depression. [REDACTED] in a June 2009 letter that she has been treating the applicant’s spouse for depression and anxiety over multiple appointments. The applicant’s spouse states that since her husband’s departure she has been suffering loss of sleep, crying for days on end, and that increased medication dosages and therapy sessions have not helped. She states that separation has taken a toll at work where depression has forced her to leave early, take time off for physician and therapist appointments, and supplement her sick days with vacation days. Corroborating paystubs have been submitted and a letter from her employer demonstrates awareness that the applicant’s spouse has been experiencing considerable distress over her husband’s immigration issues which are overtly affecting her health. The applicant’s spouse states that she suffers severe eczema, cataracts in both eyes requiring surgery, and irritable bowel syndrome. [REDACTED] confirms that her medical conditions include perennial allergies, gastroesophageal reflux disease,

irritable bowel syndrome, depression, and migraine headaches, all expected to be lifelong. [REDACTED] states in a September 2009 letter that he has been treating the applicant's spouse for allergic rhinitis for 6-7 years, her allergic symptoms persist despite lifestyle changes and numerous medications, and she is now undergoing an intensive regimen of immunotherapy (allergy shots) necessitating a 3 to 5-year monthly commitment. [REDACTED] states that the applicant's spouse has suffered a skin rash on her hands, elbow and face since 1998 with which symptoms flare in spring and summer, and are exacerbated by anxiety and stress. Medical records demonstrate that she takes medications for numerous conditions including depression, anxiety, migraine headaches, eczema, and allergies.

The applicant's spouse states that she and her husband own their home but would lose it without her job. She states that she pays the mortgage and while the applicant cannot work lawfully in the U.S., he takes care of their home, does the shopping and household chores, and provides comfort, love and immeasurable emotional support. The applicant's spouse states that her husband has been unable to secure employment in the Bahamas, necessitating her support for both households. She states that in addition to this financial toll, the cost of communicating regularly by phone has been very high and her recent trip to the Bahamas to see her husband exorbitantly expensive for her. Supporting evidence has been submitted for the record.

The AAO has considered cumulatively all assertions of separation-related hardship including the emotional/psychological, medical/health-related, and economic implications to the applicant's spouse. Considered in the aggregate, the AAO finds that the evidence is sufficient to demonstrate that the applicant's U.S. citizen spouse would suffer extreme hardship due to continued separation from the applicant.

Addressing relocation-related hardship, the applicant's spouse states that she endured a traumatic childhood in Ethiopia which she escaped in 1980 by coming to the U.S. and residing here ever since. She states that the loss of both parents at a young age has resulted in an exceptionally close bond between herself and her siblings – all U.S. citizens from whom she cannot imagine being separated. The applicant's spouse states that not having borne children of her own, she shares a uniquely close bond with the children of her siblings and is also very close to the applicant's mother and siblings, all of whom are U.S. citizens and permanent residents. The applicant's spouse states that after approximately 30 years with the same employer, she would undoubtedly grieve the loss of her "work family" as well. A substantial number of letters have been submitted by family, friends, coworkers, and others describing the fine character of the applicant's spouse and stating their deep concern for her health and well-being in the event she relocates and even now in the absence of her husband. The applicant's spouse expresses fear of adapting at her age to a foreign culture with which she is unfamiliar, and great concern over the levels of poverty she witnessed in the Bahamas as well as her husband's living conditions, lack of transportation, and a frightening healthcare system. She states that when she saw the applicant he had lost 35 pounds in seven months, was profusely sweating, and his urine was badly discolored. But when they sought medical attention they were told to return in one week when "maybe they would have the medication" he needs.

Regarding her present employment, the applicant's spouse states that she has spent decades in the elder healthcare industry working her way up to her senior management position. She considers it extreme hardship to lose this position of responsibility in which she cares deeply for the residents and coworkers with whom she has built lasting relationships. The applicant's spouse states that she would also lose employment-related benefits including not only her salary and ability to maintain her home, but her excellent health-insurance on which she relies for her numerous chronic medical and psychological conditions. She states that as her health is already fragile she fears her depression and anxiety would incapacitate her upon relocation to the Bahamas. The applicant's spouse states that the heat and humidity would exacerbate her severe eczema which stress already worsens, that her allergies would be exacerbated by the same and she would have to forego her monthly allergy injection regimen. She explains that the Bahamas's tropical climate severely inflamed her eczema while she was there visiting her husband, she had to remain in an air-conditioned hotel room to cope, and he lives with an elderly aunt whose home has no air-conditioning. [REDACTED] confirms that the Bahamas' perennial summers with high heat and humidity could very well worsen the applicant's spouse's allergies and that uncontrolled nasalocular symptoms impair her ability to sleep – which would then leads to fatigue, depression, and irritability. The applicant's spouse states that after witnessing her husband's medical crisis in and being sent away without medication, she is extremely frightened to consider her own chronic health issues for which she requires regular medical attention and medication.

The AAO has considered cumulatively all assertions of relocation-related hardship including her more than 30 years residing in the United States; adjusting to an unfamiliar culture and country in which she has never lived; close family ties to her own siblings in the U.S. from Ethiopia and their children as well as the applicant's mother and siblings; close community, church, and "work family" ties; multiple chronic medical and psychological conditions requiring ongoing care, treatment, and medication; decades long U.S. employment and loss of this position and related benefits – particularly health insurance; homeownership in the U.S.; and her economic, climate, poverty, living conditions, and healthcare system concerns regarding the Bahamas.

Considered in the aggregate, the AAO finds that the evidence is sufficient to demonstrate that the applicant's U.S. citizen spouse would suffer extreme hardship if she were to relocate to the Bahamas to be with the applicant.

Extreme hardship is a requirement for eligibility, but once established it is but one favorable discretionary factor to be considered. *Matter of Mendez-Morales*, 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.

The AAO notes that *Matter of Marin*, 16 I & N Dec. 581 (BIA 1978), involving a section 212(c) waiver, is used in waiver cases as guidance for balancing favorable and unfavorable factors and this cross application of standards is supported by the Board of Immigration Appeals (BIA). In *Matter of*

Mendez-Moralez, the BIA, assessing the exercise of discretion under section 212(h) of the Act, stated:

We find this use of *Matter of Marin, supra*, as a general guide to be appropriate. For the most part, it is prudent to avoid cross application, as between different types of relief, of particular principles or standards for the exercise of discretion. *Id.* However, our reference to *Matter of Marin, supra*, is only for the purpose of the approach taken in that case regarding the balancing of favorable and unfavorable factors within the context of the relief being sought under section 212(h)(1)(B) of the Act. *See, e.g., Palmer v. INS*, 4 F.3d 482 (7th Cir.1993) (balancing of discretionary factors under section 212(h)). We find this guidance to be helpful and applicable, given that both forms of relief address the question of whether aliens with criminal records should be admitted to the United States and allowed to reside in this country permanently.

Matter of Mendez-Moralez 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 section 212(h)(1)(B) 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 the present case include extreme hardship to the applicant's U.S. citizen spouse as a result of the applicant's inadmissibility; the applicant's significant family ties both to his own mother and siblings and to his spouse's siblings, nieces and nephews – several of whom have written letters on his behalf; the significant number of attestations by others to his good moral character and essential presence in the community; and his lack of criminal history. The unfavorable factors are the applicant's lengthy period of unlawful presence in the United States.

Although the applicant's violations of immigration law are significant and cannot be condoned, the positive factors in this case outweigh the negative factors. Therefore, 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 application is approved.