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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



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DATE: APR 20 2012 OFFICE: VIENNA, AUSTRIA



IN RE:



APPLICATION: Application for Waiver of Grounds of Inadmissibility under 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,

A handwritten signature in black ink that reads "Perry Rhew".

Perry Rhew, Chief  
Administrative Appeals Office

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

The applicant is a native and citizen of Montenegro 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 her last departure from the United States. The applicant seeks a waiver of inadmissibility in order to reside in the United States with her U.S. Citizen mother.

The Field Office Director concluded that the applicant was inadmissible under section 208(d)(6) of the Act for filing a frivolous asylum application, failed to establish extreme hardship to a qualifying relative, and did not merit a favorable exercise of discretion in any event and denied the application accordingly. *See Decision of Field Office Director* dated January 8, 2010.

On appeal, former counsel for the applicant asserts that the applicant is not inadmissible under section 208(d)(6) of the Act, because she was not given proper notice, the Immigration Judge's oral decision does not reflect a 208(d)(6) finding, and the record does not support such a finding pursuant to the requirements in 8 C.F.R. § 1208.20. Counsel further contends that the applicant has shown that her U.S. Citizen mother, who suffers from dementia and Alzheimer's disease, among other medical conditions, would suffer extreme hardship in the scenarios of relocation to Montenegro and given the present separation.

The record includes, but is not limited to, documentation of removal proceedings, letters from family, friends, community members, and employers, financial records, medical records, articles on medical care and country conditions in Montenegro, articles on dementia and Alzheimer's disease, evidence of birth, residence, and citizenship, other applications and petitions filed on behalf of the applicant, psychological evaluations, and photographs. The entire record was reviewed and considered in rendering a decision on the appeal.

Section 208(d)(6) of the Act states:

Frivolous applications – If the Attorney General determines that an alien has knowingly made a frivolous application for asylum and the alien has received the notice under paragraph (4)(a), the alien shall be permanently ineligible for any benefits under this Act, effective as of the date of a final determination of such application.

The applicant received the requisite notice pursuant to submission of her renewed asylum application to the immigration judge. *Transcript*, p. 13, May 24, 2000. However, former counsel correctly asserts that the immigration judge did not find that the applicant knowingly made a frivolous application for asylum under section 208(d)(6) of the Act. The summary of the oral decision of the immigration judge contains a check mark indicating that the applicant knowingly

filed a frivolous asylum application after proper notice. *Order of the Immigration Judge*, May 20, 2002. However, that Order also states: "This is a summary of the oral decision entered on May 20, 2002. This memorandum is solely for the convenience of the parties. If the proceedings should be appealed or reopened, the oral decision will become the official opinion in the case." *Id.* The oral decision denying the applicant's asylum application does not indicate that the immigration judge specifically found the applicant knowingly made a frivolous asylum application as required by 8 C.F.R. §1208.20. *Oral decision of Immigration Judge*, May 20, 2002. The Board of Immigration Appeals' (BIA) decision also does not contain such a finding, as the BIA affirmed without opinion. *Order, BIA*, October 30, 2003. Without a specific finding as required by 8 C.F.R. §1208.20, the AAO finds there is insufficient documentation of record to show that the applicant is ineligible for benefits under section 208(d)(6) of the Act.

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.

(ii) Construction of unlawful presence.- For purposes of this paragraph, an alien is deemed to be unlawfully present in the United States if the alien is present in the United States after the expiration of the period of stay authorized by the Attorney General or is present in the United States without being admitted or paroled.

....

(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 applicant entered pursuant to a non-immigrant visa in 1989, and remained past her date of authorized stay. She filed an application for asylum on April 1, 1998, which was referred to an immigration judge. The immigration judge denied the application for asylum on May 20 2002, and the BIA affirmed that decision without an opinion on October 20, 2003. The Sixth Circuit Court of Appeals denied her petition for a rehearing in 2005, and the applicant departed the United States on August 6, 2008. Inadmissibility is not contested on appeal. The applicant has therefore accrued more than one year of unlawful presence, and is inadmissible under section 202(a)(9)(B)(i)(II) of the Act. The applicant's qualifying relative in this case is her U.S. Citizen mother.

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 mother's medical records, which include letters from her physicians and psychological evaluations, indicate that she suffers from dementia, Alzheimer's disease, and hypothyroidism, and that she takes Exelon and Namenda to help treat her conditions. Letters from friends and family discuss how the applicant's brother, who previously lived with the mother, is unwilling to take on the responsibility of caring for the mother, especially given that he has a family of his own. Furthermore, the applicant contends that without her, her mother has inconsistent care from a niece. That niece asserts that because she has a spouse, four children, and a part-time job, she does not have time to provide the level of care the applicant's mother requires. She explains that the mother needs assistance with daily living, from making sure she takes her medication every day, helping her with personal hygiene, and taking her to buy groceries. Other letters reflect that the applicant's mother has a difficult time remaining safe while in the kitchen and bathroom, and that she cannot perform basic tasks such as cleaning up after going to the bathroom and brushing her teeth. A psychological evaluation indicates that the mother does not know basic facts about herself, such as her birthday, phone number, and address, and that she is completely illiterate in any language. The applicant explains that before she left for Montenegro, she lived with her mother and took care of all of her needs.

Former counsel contends that although it is conceivable that the applicant's mother could move to Montenegro, taking the mother away from her church, her friends, other family, her physicians, and her routine would constitute an extreme hardship. Counsel adds that Montenegro has insufficient facilities to treat the mother's condition. Articles on medical care and country conditions are submitted in support.

The applicant has provided sufficient evidence to show that her mother, who is over 70 years of age, suffers from cognitive difficulties due to her dementia and Alzheimer's disease. Evidence of record shows that the applicant's mother is unable to perform daily tasks for herself, including tasks necessary for personal hygiene, feeding herself adequately, and taking medications.

Although the Field Office Director finds that the mother has extended family which is close and caring, the record reflects that the mother's niece is the only person who consistently provides care, and that the applicant's brother is not willing to take on such responsibilities. It is evident that the applicant was responsible for her mother's care before she left, and without the applicant present to provide day to day care the mother has faced difficulties.

As such, the AAO finds there is sufficient evidence of record to demonstrate that the mother's hardship rises above the distress normally created when families are separated as a result of inadmissibility or removal. In that the record contains sufficient evidence to establish the medical, psychological, or other impacts of separation on the applicant's mother are cumulatively above and beyond the hardships commonly experienced, the AAO concludes that she would suffer extreme hardship if the waiver application is denied and the applicant remains in Montenegro without her mother.

The record also reflects that the applicant's mother has significant ties in the United States, including her family, her church, and friends. Furthermore, the applicant's mother is being treated for several medical and psychological conditions in the United States, and the U.S. Department of State indicates that medical facilities in Montenegro are not equipped or maintained to western standards. *Montenegro country specific information, U.S. Department of State, January 30, 2012.* It is evident that the applicant's mother requires consistent medical care, and that she receives specialized care for her medical conditions in the United States. Therefore, given the specific evidence of record with respect to the mother's medical conditions, medical care in Montenegro, and the mother's ties to the United States, the AAO also finds the applicant has shown her mother would experience extreme hardship upon relocation to Montenegro.

Considered in the aggregate, the applicant has established that the applicant's mother 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.

The unfavorable factors include the applicant's unlawful presence and her inadmissibility under section 212(a)(9)(A) of the Act. The favorable factors include the extreme hardship to her U.S. Citizen mother, her good moral character as shown in police certificates and letters from family and friends, her lack of a criminal record, existence of family and property ties, and residence of long duration in the United States.

Although the applicant's violations of immigration law cannot be condoned, the positive factors in this case outweigh the negative factors. 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 her burden and the appeal will be sustained.

**ORDER:** The appeal is sustained.