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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
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Washington, DC 20529-2090

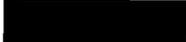


U.S. Citizenship
and Immigration
Services

H6



DATE: **APR 23 2012** Office: PROVIDENCE, RI

File: 

IN RE:

Applicant: 

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,

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, Providence, Rhode Island. 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 Bolivia. He 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 his last departure. He is married to a United States citizen and has two U.S. citizen children. He 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 Field Office Director concluded that the applicant had failed to establish that the bar to his admission would impose extreme hardship on a qualifying relative, his U.S. citizen spouse, and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) on October 23, 2009.

On appeal, counsel for the applicant asserts that the applicant's waiver should have been granted because the record establishes that the applicant's spouse will experience extreme hardship due to the applicant's inadmissibility. *Form I-290B*, received on November 17, 2009.

The record includes, but is not limited to: statements from the applicant's spouse, son, daughter and other family members; a Pediatric Cardiology Note, from [REDACTED] 2009; a statement from [REDACTED], dated November 9, 2009; copies of birth certificates for the applicant's children; and a copy of the applicant's I-94 card from his most recent entry into the United States.

The entire record was reviewed and all relevant evidence considered in rendering this decision.

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 was admitted to the United States as a B-2 visitor on May 8, 1993, and was authorized to remain until November 7, 1993. The applicant remained beyond his authorized period of stay and was unlawfully present from April 1, 1997, the effective date of the

unlawful presence provision of the Act, until May 26, 1998, the date he was granted voluntary departure. The applicant entered the United States on August 1, 1998, as a B-2 visitor, and was authorized to remain in the United States until January 31, 1999. The applicant remained beyond his authorized period of stay and has not departed the United States. The applicant filed an application for adjustment of status on June 12, 2009. Based on the foregoing, the AAO finds that the applicant is inadmissible under section 212(a)(9)(B)(i)(II) of the Act. The applicant does not contest his inadmissibility on appeal.

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 his 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.

Counsel asserts on appeal that the record establishes the applicant’s spouse will experience extreme hardship due to the applicant’s inadmissibility. *Form I-290B*, received on November 17, 2009. Counsel asserts the applicant’s spouse’s daughter will experience extreme hardship because she suffers from congenital heart disease.

The applicant’s spouse asserts that she will experience physical, emotional and financial hardship due to the applicant’s inadmissibility. *Statement of the Applicant’s Spouse*, November 12, 2009. She explains that her children will experience extreme hardship because they consider the applicant to be their father. She explains that her daughter has congenital heart disease and that the applicant often transports their daughter to the doctor, to school and on other errands, and that due to her condition

she cannot experience any sudden emotional upsets. She states that she will not be able to make payments on their house without the applicant's assistance, and that she would be unable to afford to travel to Bolivia for visitation or send him any money while he resides in Bolivia.

The AAO notes that children are not qualifying relatives in this proceeding. As such, any hardship to them is only relevant to the extent that it indirectly creates a hardship factor on the qualifying relative, in this case the applicant's spouse. The record contains two documents related to the medical condition of the applicant's daughter. The documents each confirm that the applicant's daughter suffers from congenital heart disease and must be carefully monitored due to her condition. However, the documents do not clearly establish what impact the daughter's condition has on her daily life, or that of the qualifying relative, beyond having to closely monitor the child's condition. The statement from [REDACTED] states "[the applicant's daughter] continues to do reasonably well clinically", and that he would allow the child to participate in age appropriate activities to her own limits. Based on the evidence in the record the AAO can determine that the applicant's daughter does have a medical condition which requires diligent monitoring, however, the presence of these conditions does not establish that she would experience an uncommon hardship factor which would indirectly result in extreme hardship to the applicant's spouse. Nonetheless, the AAO will give the medical condition of the applicant's daughter some consideration when aggregating the impacts on the applicant's spouse due to separation.

The record contains statements from the applicant's spouse, son, daughter and ex-wife. Each of these statements attest to the emotional impact the applicant's departure would have. Although the AAO can accept that relatives of the applicant may experience some degree of emotional impact, it does not find the record to distinguish the emotional impact on the applicant's spouse from that which is commonly experience by the relative of inadmissible aliens.

With regard to financial hardship, the applicant's spouse and former spouse each assert that they would suffer financially if the applicant were removed. The record does not contain evidence of the applicant's spouse's income. The record does not contain evidence of the applicant's income. The record does not contain any evidence regarding the financial obligations of the applicant or his spouse. Without evidence which documents the income of the applicant and his spouse, or their financial obligations, the AAO is unable to make an accurate determination of the degree or severity of any financial impact on the applicant's spouse.

Although the record establishes that the applicant's spouse will experience some physical impact due to having to care for her daughter without the assistance of the applicant, it fails to establish that this impact, when considered in the aggregate with other hardships, rises to the level of extreme hardship.

The applicant has not asserted what impacts, if any, his spouse would experience upon relocation. As such, the record fails to establish that the applicant's spouse will experience uncommon hardship rising the level of extreme hardship upon relocation.

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 spouse faces extreme hardship if he is refused admission. 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 his U.S. citizen spouse 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 he 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.