

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



H6

Date: DEC 05 2012

Office: MOSCOW, RUSSIA

FILE:

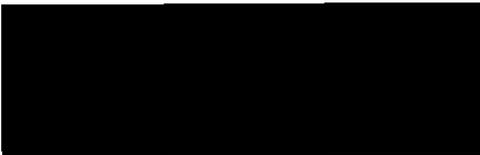


IN RE: Applicant:



APPLICATION: Application for Waiver of Grounds of Inadmissibility pursuant to section 212(a)(9)(B)(v) of the Immigration and Nationality Act (the 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.

If you believe the AAO inappropriately applied the law in reaching its decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen in accordance with the instructions on Form I-290B, Notice of Appeal or Motion, with a fee of \$630. The specific requirements for filing such a motion can be found at 8 C.F.R. § 103.5. **Do not file any motion directly with the AAO.** Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires any motion to be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

A handwritten signature in black ink that reads "Ron Rosenberg".

Ron Rosenberg

Acting Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Field Office Director, Moscow, Russia. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The record reflects that the applicant is a citizen of Ukraine who was found to be inadmissible to the United States pursuant to section 212(a)(9)(B)(i)(II) of the Act for having been unlawfully present in the United States for more than one year, and section 212(a)(9)(A) of the Act as an alien previously removed from the United States. The applicant is married to a U.S. citizen and seeks a waiver of inadmissibility pursuant to section 212(a)(9)(B)(v) of the Act and permission to reenter the United States in order to reside with his wife and stepdaughter in the United States.

The field office director found that the applicant established that his wife could not join him in Ukraine, but failed to establish extreme hardship if the waiver application were denied. The field office director denied the application accordingly.

On appeal, counsel contends the denial of the waiver application was in blatant error and that the totality of circumstances was not considered. Counsel contends the applicant established extreme hardship to his wife, particularly considering her physical and mental health problems.

The record contains, *inter alia*: a copy of the marriage certificate of the applicant and his wife, [REDACTED] indicating they were married on September 29, 2002; an affidavit and a letter from [REDACTED] letters from [REDACTED] daughter; an affidavit from [REDACTED] daughter's biological father; affidavits from [REDACTED] brother and sister; a letter from a mental health counselor; numerous letters of support; copies of medical documents; a letter from the applicant's former employer; letters offering the applicant employment upon his return to the United States; a copy of the U.S. Department of State's Human Rights Report for Ukraine and other background materials; copies of tax returns, bills, and other financial documents; copies of photographs of the applicant and his family; and an approved Petition for Alien Relative (Form I-130). The entire record was reviewed and considered in rendering this decision on the appeal.

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.

....

(v) Waiver. – The Attorney General [now the Secretary of Homeland Security (Secretary)] 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 [Secretary] 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.

Section 212(a)(9) of the Act provides:

(A) *Certain aliens previously removed.*

- (i) *Arriving aliens.* Any alien who has been ordered removed under section [235(b)(1) of the Act] . . . and who again seeks admission within 5 years of the date of such removal (or within 20 years in the case of a second or subsequent removal or at any time in the case of an alien convicted of an aggravated felony) is inadmissible.
- (ii) *Other aliens.* Any alien not described in clause (i) who-
 - (I) has been ordered removed under section 240 or any other provision of law, or
 - (II) departed the United States while an order of removal was outstanding, and who seeks admission within 10 years of the date of such alien's departure or removal (or within 20 years of such date in the case of a second or subsequent removal or at any time in the case of an alien convicted of an aggravated felony) is inadmissible.
- (iii) *Exception.* – Clauses (i) and (ii) shall not apply to an alien seeking admission within a period if, prior to the date of the alien's reembarkation at a place outside the United States or attempt to be admitted from foreign contiguous territory, the Attorney General has consented to the alien's reapplying for admission.

In this case, the record shows, and the applicant does not contest, that he was unlawfully present in the United States from November 2005, when the Court of Appeals for the Eleventh Circuit affirmed the Board of Immigration Appeals' decision upholding the immigration judge's order that the applicant be removed, until the applicant's removal in November 2009. Accordingly, he is 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 one year or more and section 212(a)(9)(A)(ii) as an alien who has been ordered removed and who was removed while an order of removal was outstanding.

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.

In this case, the applicant's wife [REDACTED] states that when she first met the applicant, she was a broken woman. According to [REDACTED], she was raised in a home with drugs and abuse, and was in an abusive marriage. She states that she had surgery due to the abuse from her ex-husband and that the applicant stayed with her in the hospital. [REDACTED] states that the applicant rescued her and gave her back her life and spirit. She states she is a recovering alcoholic and has been sober for the past four years, but that since her husband's departure, she had two lapses in a two week time period. In addition, [REDACTED] states that she is borderline diabetic, has bulimic tendencies, has attention deficit disorder, and takes Celebrex for carpal tunnel syndrome. She also contends that she and the applicant tried to have a child together, was on fertility drugs for two years, and had a miscarriage. She also contends she underwent brain surgery when she was two years old and again when she was twenty-five years old due to a brain aneurysm, and that she found two lumps in her breast. According to [REDACTED] since her husband's departure, she has had to give up her office job in order to work two jobs as a housekeeper and at Subway. She contends she cannot afford to see a counselor or psychologist right now, finds it hard to cope every day without her husband, and on some days, she does not want to live. She also contends that her daughter is suffering as well. Furthermore, [REDACTED] states she cannot move to Ukraine to be with her husband because her daughter's biological father will not permit their daughter to leave the United States. [REDACTED] states she has no connections in Ukraine, has only been there once for a two week visit, and does not speak the language. She also states she is close with her three brothers and that they are even closer since their mother passed away. [REDACTED] also states that she is a registered medical assistant and would be unable to find employment in Ukraine because she cannot even read the medical labels there.

After a careful review of the record, the AAO finds that if [REDACTED] relocated to Ukraine to avoid the hardship of separation, she would experience extreme hardship. The record contains a letter from [REDACTED] daughter's biological father stating that he will not agree to let their daughter move overseas for any length of time. The record also shows that [REDACTED] was born in the United States and she contends she has only visited Ukraine once for two weeks. According to [REDACTED] she does not speak Ukrainian and is unfamiliar with Ukrainian culture. Moreover, relocating to Ukraine would separate [REDACTED] from her entire family. Furthermore, the AAO notes that the U.S. Department of State describes that U.S. citizens often stand out in Ukraine and are more likely to be targeted for crime. *U.S. Department of State, Country Specific Information, Ukraine*, dated June 6, 2012. Considering these unique circumstances cumulatively, the AAO finds that the hardship [REDACTED] would experience if she relocated to Ukraine to be with her husband is extreme, going beyond those hardships ordinarily associated with inadmissibility.

Nonetheless, [REDACTED] has the option of remaining in the United States and the record does not show that she will experience extreme hardship if she remains in the United States without her husband.

Although the AAO is sympathetic to the couple's circumstances, the record does not show that the applicant's situation is unique or atypical compared to other individuals in similar circumstances. See *Perez v. INS*, 96 F.3d 390 (9th Cir. 1996) (holding that the common results of deportation are insufficient to prove extreme hardship and defining extreme hardship as hardship that was unusual or beyond that which would normally be expected). Regarding [REDACTED] medical problems, although the record contains copies of [REDACTED]'s medical records, there is no letter in plain language from any medical professional addressing the prognosis, treatment, or severity of any of [REDACTED] medical problems. The AAO further notes that the most recent document in the record addressing [REDACTED] health status is a copy of her prescription for Celebrex, dated May 18, 2010. The applicant did not submit any more recent medical documentation with the appeal. Without more recent and detailed information, the AAO is not in the position to reach conclusions regarding the severity of any medical condition or the treatment and assistance needed. With respect to psychological hardship, the record contains a letter from a mental health counselor describing [REDACTED] severe anxiety and severe depression, and the symptoms she is experiencing including: sadness, grief and loss, concern and worry for her daughter, and problems sleeping. Although the AAO is sympathetic to the family's circumstances, the evaluation does not show that [REDACTED] situation, or the symptoms she is experiencing as a result of being separated from her husband, are unique or atypical compared to others in similar circumstances. Regarding financial hardship, copies of tax returns confirm that [REDACTED] worked two jobs in 2009. Nonetheless, the record also contains documentation that the couple started their own company, Serge Construction, Inc. The record indicates that the applicant is the Owner, President, and majority stockholder of the company and that [REDACTED] is the Administrative Assistant. However, neither the applicant nor his wife addresses the current financial situation of their company. As such, there is insufficient information addressing the overall financial situation of [REDACTED] and insufficient information to address the extent of her hardship. Even considering all of the factors in the case cumulatively, there is insufficient evidence showing that the hardship [REDACTED] will experience amounts to hardship that is extreme, unique, or atypical.

We can find extreme hardship warranting a waiver of inadmissibility only where an applicant has demonstrated extreme hardship to a qualifying relative in the scenario of separation and the scenario of relocation. A claim that a qualifying relative will relocate and thereby suffer extreme hardship can easily be made for purposes of the waiver even where there is no actual intention to relocate. Cf. *Matter of Ige*, 20 I&N Dec. 880, 886 (BIA 1994). Furthermore, to relocate and suffer extreme hardship, where remaining in the United States and being separated from the applicant would not result in extreme hardship, is a matter of choice and not the result of inadmissibility. *Id.*, also cf. *Matter of Pilch*, 21 I&N Dec. 627, 632-33 (BIA 1996). As the applicant has not demonstrated extreme hardship from separation, we cannot find that refusal of admission would result in extreme hardship to Ms. Gudym, the qualifying relative in this case.

A review of the documentation in the record fails to establish the existence of extreme hardship to the applicant's wife caused by the applicant's inadmissibility to the United States. 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, 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 not met that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.