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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



H6

DATE: Office: OAKLAND PARK, FL

File:

IN RE: **FEB 07 2012** 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,

Perry Rhew  
Chief, Administrative Appeals Office

**DISCUSSION:** The waiver application was denied by the Field Office Director, Oakland Park, Florida. 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 Peru. 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 the son of a U.S. citizen. 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 father, and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) on September 9, 2009.

On appeal, counsel for the applicant asserts that the applicant's father will experience extreme hardship if the applicant is removed from the United States because the applicant is the only family member who is able to care for him, and refers to letters submitted by members of the applicant's family. *Form I-290B*, received on October 8, 2009.

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 on August 11, 1985, as a non-immigrant visitor with authorization to remain in the U.S. until February 10, 1986. The applicant filed Form I-485, Application to Register Permanent Resident or Adjust Status and Form I-131, Application for Travel Document, in May 2001. The applicant was issued an advance parole (Form I-572) document on May 10, 2001 and departed the U.S. sometime thereafter. He returned to the United States on September 15, 2002. The applicant was unlawfully present in the United States for over a year from April 1, 1997, the effective date of the unlawful presence provision of the Act, until May 2001, when he filed his Form I-485, and is now seeking admission within ten years of his last departure from the United States. Accordingly, the applicant is inadmissible to the United States under section 212(a)(9)(B)(i)(II) of the Act. The applicant does not contest this finding.

The record includes, but is not limited to, counsel's brief; a statement from the applicant's father; statements from family members of the applicant; a statement from [REDACTED] dated August 12, 2009; a prescription printout of medications pertaining to the applicant's father; police records searches and court documents related to an arrest of the Applicant; two Form I-864 filed on behalf of the applicant; and documents filed in relation to a previous waiver application.

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

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 can be considered only insofar as it results in hardship to a qualifying relative. The applicant's father 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.

On appeal, counsel for the applicant asserts that the applicant has been residing in the United States for twenty three years, and that the applicant’s father, who is elderly and has several medical issues, is completely dependent on the applicant for care. *Brief in Support of Form I-601*, received September 9, 2009. Counsel explains that the applicant’s father suffers from Diabetes, Parkinson’s, Prostate Cancer, Arthritis and high cholesterol, and that the applicant must prepare all of his meals, is responsible for the administration of his medications and must transport and attend doctor’s appointments with his father.

The AAO notes that the record contains a prior waiver application by the applicant in which he made the same assertions, that his father depended on him for his medical needs and caretaking, and which was denied on May 16, 2006, because the record contained evidence that the applicant’s father was

not actually residing with the applicant and instead was residing with the applicant's sister. The instant application was filed on August 7, 2009, and counsel once again asserts that the applicant's father resides with him and is completely dependent on him. Counsel refers to letters submitted by the applicant's family members. These letters submitted by the applicant's brothers and sisters all state that they are unable to care for their father for various reasons and that the applicant is best situated to care for their father. In a statement dated September 24, 2009, the applicant's sister states that the applicant's father can no longer reside with them in Virginia, and that the applicant is better situated to care for him.

The record contains a statement from [REDACTED], dated August 12, 2009, asserting that the applicant's father suffers from Parkinson's, Ataxia, Phlebitis of the lower extremities, CAD and Hypertension. He further asserts that the applicant's father needs to be attended by a family member or friend, and notes that the applicant's father suggested that the applicant should take care of him. The applicant's father has submitted a statement asserting that he is more comfortable at the applicant's house because he has his own room and bathroom, and that the applicant is strong enough to help him when he falls and take care of his transportation and medical needs.

Based on the evidence in the record the AAO can determine that the applicant's father has several serious medical conditions and that he requires daily caretaking and physical support. While [REDACTED] letter does not indicate that it must be the applicant that cares for him, and fails to specify the type of daily support the applicant's father might need, the letters from each of the applicant's brothers and sisters assert that they are not able to care for him. The record, however, does not contain sufficient evidence that the applicant has been, is capable of, or will be the one taking care of his father. While the applicant's brothers and sisters assert that the applicant must care for their father, the evidence in the record does not support that he is doing so or that he would be capable of doing so. As noted above, previously the applicant asserted that he was caring for his father when in fact his father was residing with his sister. It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the applicant submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). In light of previous inconsistencies and the lack of documentary evidence establishing the inability of the applicant's siblings to care for their father, the AAO does not find the record to contain sufficient objective evidence that the applicant has been or will be providing physical care for his father.

Without additional evidence which is probative of the burden born by the applicant the AAO cannot conclude that the applicant's father will experience uncommon physical or financial hardship rising to the level of extreme due to separation from the applicant.

The AAO notes that the applicant has not articulated what impacts, if any, the applicant's father would experience upon relocation. The AAO observes, however, that the applicant's father elderly, has several serious medical conditions and would experience an uncommon physical impact from having to sever community ties and relocate to Peru. The AAO can also determine from the record that the applicant's father has resided in the United States for an extensive period of time and has

numerous immediate family members residing in the United States. While the AAO cannot construct assertions or presume facts on behalf of an applicant, it can determine from the evidence in the record that the applicant's father would likely experience uncommon hardships rising to the level of extreme upon relocation.

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 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 the qualifying relative in this case.

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.