

identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy
PUBLIC COPY

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



U.S. Citizenship
and Immigration
Services

[REDACTED]

H6

DATE: FEB 21 2012

Office: WASHINGTON, DC
(FAIRFAX, VA)

FILE: [REDACTED]

IN RE: [REDACTED]

APPLICATION: Application for Waiver of Grounds of Inadmissibility under Section
212(a)(9)(B)(v) of the Immigration and Nationality Act, 8 U.S.C. § 1182(a)(9)(B)(v)

ON BEHALF OF APPLICANT:

[REDACTED]

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 Form I-601, Application for Waiver of Grounds of Inadmissibility was denied by the Field Office Director, Washington, DC (Fairfax, Virginia), and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained.

The applicant is a native and citizen of Ethiopia. On August 4, 1997, the applicant was admitted into the United States with a visitor visa valid through February 3, 1998. The applicant remained in the United States until around June 1, 2004. She was paroled into the United States pursuant to a grant of advance parole on June 9, 2004. The applicant has remained in the United States since that time. The applicant was found to be inadmissible 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 for more than one year and seeking readmission within 10 years of her departure from the United States. The applicant is the adoptive daughter of a U.S. citizen and a lawful permanent resident, and she is the beneficiary of an approved Form I-130, Petition for Alien Relative (Form I-130). She 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) in order to live in the United States with her family.

In a decision dated September 29, 2010, the director concluded the applicant had failed to establish that a qualifying relative would experience extreme hardship if the applicant were denied admission into the United States. The waiver application was denied accordingly.

Through counsel, the applicant asserts on appeal that evidence establishes her U.S. citizen mother and lawful permanent resident father will experience extreme emotional and financial hardship if she is denied admission into the United States. To support these assertions counsel submits affidavits and financial evidence, as well as Ethiopia country conditions evidence, photos, and letters attesting to the applicant's good character. The entire record was reviewed and considered in rendering a decision on the appeal

Section 212(a)(9)(B) of the Act provides in pertinent part:

- (i) [A]ny 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.

(iii) Exceptions

(I) Minors.

No period of time in which an alien is under 18 years of age shall be taken into account in determining the period of unlawful presence in the United States under clause (i).

Counsel does not contest that the applicant is inadmissible under section 212(a)(9)(B)(i)(II) of the Act. Moreover, the record supports a finding of inadmissibility under section 212(a)(9)(B)(i)(II) of the Act. The record reflects that on August 4, 1997, at the age of fourteen, the applicant was admitted into the United States with a visitor visa valid through February 3, 1998. The applicant turned 18 on November 20, 2000. She remained in the United States until on or around June 1, 2004. The applicant was paroled into the United States for Form I-485 processing purposes on June 9, 2004, and she has remained in the country since that time.

Under section 212(a)(9)(B)(ii) of the Act, an alien who has been paroled into the United States does not accrue unlawful presence as long as the parole lasts. Accrual of unlawful presence stops on the date that an adjustment of status application is properly filed. The accrual of unlawful presence begins again after an adjustment of status application is denied. *See, USCIS Memorandum, Consolidation of Guidance Concerning Unlawful Presence for Purposes of Sections 212(a)(9)(B)(i) and 212(a)(9)(C)(i)(I) of the Act*, dated May 6, 2009. In the present case, the record reflects the applicant properly filed a Form I-485, adjustment of status application on August 12, 2003. The application was denied due to abandonment on July 18, 2006. She subsequently filed a new Form I-485 application on September 24, 2007. The applicant was thus unlawfully present in the United States for over a year between November 21, 2000 and August 12, 2003, and between July 19, 2006 and September 23, 2007.

Inadmissibility under section 212(a)(9)(B)(i)(II) of the Act, which is triggered upon departure, remains in force until the alien has been absent from the United States for ten years. The applicant has not been outside of the United States for ten years. She is therefore inadmissible under section 212(a)(9)(B)(i)(II) of the Act.

Section 212(a)(9)(B)(v) of the Act provides in pertinent part:

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.

The record reflects that the applicant was adopted on September 25, 1998, at the age of 15. The applicant's adoptive mother is a U.S. citizen (since July 24, 2003) and her adoptive father is a U.S. lawful permanent resident. Her mother and father are qualifying family members for section 212(a)(9)(B)(v) of the Act, waiver of inadmissibility purposes.

Section 212(a)(9)(B)(v) of the Act provides that a waiver of the bar to admission is dependent first upon a showing that the bar imposes an extreme hardship on a qualifying family member. Once extreme hardship is established, it is but one favorable factor to be considered in the determination of whether the Secretary should exercise discretion. *Matter of Mendez*, 21 I&N Dec. 296 (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*, 22 I&N Dec. 560, 565 (BIA 1999), the Board of Immigration Appeals (BIA) provided a list of factors it deemed relevant in determining whether an alien has established extreme hardship to a qualifying relative. 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 BIA 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 BIA 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).

Though hardships may not be extreme when considered abstractly or individually, the BIA 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.

Through counsel, the applicant asserts on appeal that her mother and father will experience extreme emotional and financial hardship if they remain in the United States., separated from the applicant, or if they relocate to Ethiopia to be with the applicant. Counsel refers to the applicant's personal and immigration history, as well as to statements made in the applicant's parents' affidavits and information contained in Ethiopia country conditions information. Counsel asserts that the combined hardships in the applicant's case rise above the hardship normally associated with removal or inadmissibility.

Affidavits written by the applicant's mother reflect that the applicant's biological father was her brother. The affidavits state that the applicant's biological mother disappeared in Ethiopia when the applicant was 3 years old, and she is believed to be deceased. The applicant's biological father was killed when the applicant was 13 years old. The affidavits indicate that the applicant has no biological siblings, and that she lived with her paternal grandmother in Ethiopia for a year after her father's death. The applicant's grandmother died in 2004. At the age of 14, the applicant began living with her adoptive mother's family in South Africa, and later in the United States. Statements and adoption records reflect the applicant was adopted on September 25, 1998, when she was 15 years old. Statements and immigration documentation additionally reflect the applicant's adoptive parents filed Form I-485, adjustment of status documents on the applicant's behalf in August 2003, after the applicant's adoptive mother became a U.S. citizen. The applicant's mother believes the applicant's adjustment of status application was denied due to their attorney's incompetence in failing to respond to a request for evidence. She also believes that attorney incompetence led to the applicant's inadmissibility, because they were not advised of immigration consequences when her daughter departed and was paroled back into the country in June 2004. The applicant's mother indicates that she and her husband tried to follow all immigration procedures and rules in order to ensure the applicant could reside in the United States legally. She states that the applicant is not at fault for her situation, and that she is emotionally

devastated by the immigration consequences of their attorney's actions. The applicant's mother indicates that she is proud of the applicant's resilience and her accomplishments, and the fact that the applicant has succeeded in obtaining a job in her area of expertise, accounting. The applicant's mother states further that she has three other U.S. citizen children, one of whom is still in high school, one who is adult-aged but still lives at home, and one who recently married. She indicates she could not leave her other children to move to Ethiopia with the applicant, and that it would be unfair and unrealistic to take her youngest daughter to Ethiopia, where she does not know the language or culture, and would be unable to go to school or have the opportunities she has in the United States. She indicates further that her husband is a British citizen and that he has no legal right to live in Ethiopia. The applicant's mother also worries that the applicant would be unable to adjust to life in Ethiopia. In addition to her personal and emotional history in Ethiopia, she worries the applicant would be unable to integrate culturally or professionally. She states that the applicant's child-level Amharic skills would not equip her for professional life in Ethiopia, and she states the applicant's professional accounting skills are not transferable to Ethiopia. She states further that the applicant has no family or friends in Ethiopia, and she believes the applicant would be very vulnerable. The applicant's mother also believes the applicant would remain financially dependent upon her parents due to an inability to obtain employment. The applicant's mother refers to country-conditions information stating that Ethiopia is a poor country with high unemployment as well as violence and societal discrimination against women. She indicates further that she has stopped working due to the stress of her family's life.

An affidavit from the applicant's adoptive father reiterates the statements made above. The applicant's father states further that he believes his wife is experiencing untreated depression. He indicates that in addition to the applicant's immigration problems, his wife is also experiencing stress due to her oldest daughter's recent marriage, conversion to Islam and subsequent disassociation from the family. He indicates his wife stopped working due to her emotional state, and that she will not seek psychological help due to her cultural beliefs. He also states that he is often away from home for lengthy periods of time due to the nature of his work, and he fears that if the applicant is not allowed to remain in the United States, his youngest daughter will need to go to boarding school due to his wife's emotional state and inability to care for her.

An affidavit from the applicant reflects that she and her adoptive mother are very close, that she visits her mother and family every weekend, and that her mother calls to check on her every day. An affidavit from the applicant's brother reflects that he and his younger sister live at home and are supported by their parents, that his family is very close, and that his mother has been sad, tearful and depressed due to the applicant's immigration situation.

Financial documents reflecting income and expense evidence for the applicant and her parents is also contained in the record. In addition, the record contains U.S. government (U.S. Department of State, CIA World Fact Book) and non-governmental organization (Human Rights Watch, World Health Organization and research groups) country conditions information reflecting that Ethiopia has a poverty-stricken economy and that rural agriculture dominates the economy. The information indicates that urban centers such as [REDACTED] have up to 40 per cent unemployment, that women have fewer employment opportunities than men in urban areas, and

that gender-based employment discrimination exists against women. The information additionally reflects that there are no national accounting standards in Ethiopia, and that the accounting system in the Ethiopian private sector may differ from other systems. The information reflects further that violence and societal discrimination against women exists, as does police corruption, sexual harassment and under-punished gender-based violence against women and girls. In addition, Addis Ababa and other areas have experienced bombings that have killed civilians.

Upon review, the AAO finds that the evidence in the record, when considered in the aggregate, establishes the applicant's parents would experience hardship that rises beyond the common results of removal or inadmissibility if the applicant were denied admission into the United States, and they remained either in the United States separated from the applicant, or joined the applicant in Ethiopia.

The record reflects that the applicant's parents have three other children, two of whom live at home, and one of whom is still in high school. The applicant's parents established they would experience emotional hardship if they were separated from their other children, and if they had to place their youngest child in boarding school because she is not Ethiopian, does not speak or write Amharic and would thus be unable to reside legally or complete her education in Ethiopia. The record indicates further that, although the applicant's adoptive mother is originally from Ethiopia, she no longer has family there whom she could look to for support. It is additionally noted that 2012 Department of State country conditions reflect Ethiopia does not recognize dual nationality once a former citizen has become a naturalized U.S citizen. The applicant's adoptive mother thus does not appear to have a legal basis to reside or work in Ethiopia. The applicant's father would also be unable to reside or work in Ethiopia, as he is a British citizen with no legal ties to Ethiopia. The cumulative evidence reflects that the applicant's parents would experience emotional and financial hardship beyond that normally experienced upon removal or inadmissibility, if they tried to relocate to Ethiopia in order to be with the applicant.

The cumulative evidence additionally establishes that the applicant's parents would experience emotional and financial hardship beyond that normally experienced upon removal or inadmissibility, if they remained in the United States, separated from the applicant. Although the applicant is originally from Ethiopia, and she has a professional background in accounting, country conditions evidence indicates that there are no national accounting standards in Ethiopia, and that the accounting system there differs from other systems. It is thus not clear that the applicant would be able to use her accounting skills in Ethiopia. The record reflects further that the applicant attended school in Ethiopia only until the age of 13. She has not lived in Ethiopia since that time, and the AAO finds the assertion that the applicant's verbal and written skills in Amharic are not at a professional level to be a reasonable assertion. Evidence in the record additionally reflects that urban centers such as Addis Ababa have high unemployment, and that gender-based employment discrimination exists against women. Based on the information in the record, the AAO finds that it is reasonable to expect the applicant will have difficulties finding employment in Ethiopia, and that she would thus become financially dependent upon her parents. Financial documentation contained in the record reflects that the applicant's parents earned approximately \$102,400 in 2007 (her father earned approximately \$76,000 and her mother

approximately \$30,900). In addition to utility and other bills, the couple pays approximately \$3800 in monthly mortgage payments. They also support a high school age daughter who lives at home, and are supporting and helping to finance an older son's educational expenses. They would additionally assume payments for the applicant's \$20,748 student loan if she were unable to pay. The record reflects that supporting two households would cause the applicant's parents to experience serious financial hardship. Moreover, the record reflects that the applicant's adoptive mother has assumed particular responsibility for the applicant's immigration status and her future life, in light of the applicant's past personal circumstances. The evidence indicates that the applicant's mother believes the applicant's current immigration problems could have been avoided, and she feels responsible and devastated by the consequences of her immigration-related actions and her attorney choices. In addition to the emotional hardship created by these factors, evidence reflects the applicant's adoptive mother feels stress due to Ethiopian country conditions reflecting sexual harassment, violence and societal discrimination against women, and her belief that the applicant will be alone and vulnerable in Ethiopia and would be unable to support herself financially. The AAO finds that these factors, when considered in the aggregate, establish that the hardship the applicant's parents would suffer if they remain in the United States separated from the applicant, go beyond the common results of inadmissibility, and rise to the level of extreme hardship.

The AAO additionally finds that the applicant merits a waiver of inadmissibility as a matter of discretion. In discretionary matters, the alien bears the burden of proving eligibility in terms of equities in the United States which are not outweighed by adverse factors. *See Matter of T-S-Y-*, 7 I&N Dec. 582 (BIA 1957). In evaluating whether section 212(a)(9)(B) of the Act relief is warranted in the exercise of discretion, the factors adverse to the alien include the nature and underlying circumstances of the inadmissibility 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 and seriousness, and the presence of other evidence indicative of the 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 alien began residency at a young age), evidence of hardship to the alien and his family if s/he is excluded and/or deported, service in this country's Armed Forces, a history of stable employment, the existence of property or business ties, evidence of value or service in 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). *See Matter of Mendez-Morales*, 21 I&N Dec. 296, 301 (BIA 1996). The AAO must:

[B]alance the adverse factors evidencing an alien's undesirability as a permanent resident with the social and humane considerations presented on the alien's behalf to determine whether the grant of relief in the exercise of discretion appears to be in the best interests of the country.

Id. at 300 (citations omitted).

The unfavorable factors in this matter are the applicant's accrual of unlawful presence in the United States. The favorable factors are the hardship the applicant's parents would face if the applicant is denied admission into the United States. Favorable factors additionally include submitted affidavits from friends, employers and family members attesting to the applicant's good moral character, and the applicant's lack of a criminal record.

The AAO finds that although the immigration violations committed by the applicant are serious in nature and cannot be condoned, taken together, the favorable factors in the present case outweigh the adverse factors, such that a favorable exercise of discretion is warranted.

Upon review of the totality of the evidence, the AAO finds that the applicant has established extreme hardship to her U.S. citizen mother and her lawful permanent resident father, as required under section 212(a)(9)(B)(v) of the Act. It has also been established that the applicant merits a favorable exercise of discretion. The applicant has therefore met her burden of proving eligibility for a waiver of her ground of inadmissibility pursuant to section 212(a)(9)(B)(v) of the Act. Accordingly, the Form I-601 appeal will be sustained.

ORDER: The appeal is sustained.