

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 (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090
U.S. Citizenship
and Immigration
Services

[REDACTED]

H6

Date: Office: PORTLAND, MAINE FILE: [REDACTED]

FEB 28 2012

IN RE: Applicant: [REDACTED]

APPLICATION: Application for Waiver of Grounds of Inadmissibility under Sections 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.

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 must be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

for Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Director, Portland, Maine, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native and citizen of England who 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 for one year or more and seeking readmission within 10 years of her last departure. She seeks a waiver of inadmissibility in order to reside in the United States with her U.S. citizen husband.

The director denied the Form I-601 application for a waiver, finding that the applicant failed to establish extreme hardship to her husband. *Decision of the Director*, dated September 12, 2009.

On appeal, counsel for the applicant asserts that the director did not provide sufficient analysis of the facts of the present matter. Counsel contends that the applicant warrants a favorable exercise of discretion. *Statement from Counsel on Form I-290B*, dated October 3, 2009.

The record contains, but is not limited to: a brief from counsel; psychological evaluations for the applicant's husband; statements from the applicant's husband, mother, stepchild, and friends; documentation associated with the applicant's husband's child support obligations; documentation in connection with the applicant's husband's employment and taxes; evidence related to the applicant's families expenses; and documentation in connection with the applicant's husband's criminal activities. The entire record was reviewed and considered in rendering this decision.

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

(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.

The record shows that the applicant entered the United States pursuant to the visa waiver program on September 5, 2006, with authorization to remain for 90 days. She did not depart the United States until July 23, 2008. Accordingly, she accrued over one year of unlawful presence. She reentered the United States as a parolee on August 3, 2008. She now seeks admission as an immigrant pursuant to her Form I-485 application to adjust her status to lawful permanent resident based on her marriage to a U.S. citizen. She was deemed inadmissible to the United States under section 212(a)(9)(B)(i)(II)

of the Act for having been unlawfully present for more than one year and seeking readmission within 10 years of her last departure. The applicant does not contest her 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 her stepchildren can be considered only insofar as it results in hardship to a qualifying relative. The applicant's husband 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-Moralez*, 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 deportation, 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. at 631-32; *Matter of Ige*, 20 I&N Dec.

at 883; *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.*

We observe that 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., *In re 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).

The applicant’s husband asserts that he will suffer hardship should the applicant reside outside the United States. He contends that the U.S. government will not permit him to depart the United States due to his child support obligations which are in arrears. He notes that he resided and worked in Ireland and England from approximately 2000 to 2006, and that he had a visa to work and reside in England. He explains that he and the applicant traveled to the United States with the intention of remaining for three months to visit his son and get married, and then returned to the United Kingdom to open a restaurant and pub. However, due to arrest warrants for his violation of restraining orders and his nonpayment of more than \$122,000 in back child support, U.S. authorities informed him that he would not be permitted to depart the United States again until the matters were settled. He explains that his child support obligations were reduced to \$68,000 if paid in full, yet he is unable to repay this amount or borrow funds. He provides that \$187.50 is deducted from his weekly paycheck in satisfaction of his child support obligations, and it will take more than 12 years to repay the balance. He asserts that he requires the applicant's assistance to help meet his needs.

The applicant’s husband explained that his primary hardship is his inability to join the applicant abroad, not any challenges his son would face. The applicant's husband contends that he can earn significantly more income in England. He provides that he suffered past child abuse, and has endured emotional difficulty as a result. He states that he has a close relationship with the applicant, and the prospect of being separated from the applicant has exacerbated his psychological hardship.

In a letter dated November 2, 2009, a licensed psychologist, [REDACTED] describes the applicant's husband's family history and challenges. [REDACTED] indicates that the applicant's husband was previously diagnosed with posttraumatic stress disorder (PTSD), and he agrees with the diagnosis. He states that the applicant’s life has been full of loss, rejection, betrayal, and abandonment which has resulted in him being depressed, anxious, and at times, violent. [REDACTED] indicates that he recommended relaxation techniques and a consultation with a medical doctor

regarding anti-anxiety medication. He indicates that the applicant's husband will face increased psychological difficulty should the applicant depart the United States.

Upon review, the applicant has not shown that her husband will suffer extreme hardship should the present waiver application be denied. The statements from counsel and the applicant's husband on appeal clearly show that the applicant's husband wishes to reside in London, England with the applicant, and that their intention has been to continue their business activities there and operate a pub. The applicant has not asserted that her husband would face hardship should he reside in England with her, and the record does not show that he would suffer extreme hardship should he relocate abroad. In fact, much of his hardship is centered on his inability to depart the United States and return to England due to his unpaid child support obligations in the United States. Therefore, the focus of the analysis of whether the applicant's husband will endure extreme hardship is on the circumstances he would endure should he remain in the United States without her.

Applicant's husband asserts that he requires the applicant's assistance to meet his financial needs due to his significant child support obligations. However, the applicant has not provided a clear account of her husband's economic needs in the United States. Documentation relating to his obligation to pay back child support reflects that \$187.50 is to be deducted from his weekly pay. *Order/Notice to Withhold Income for Child Support*, dated June 11, 2008. The same documentation notifies an employer that "[i]f you cannot withhold the full amount of support . . . withhold up to 65% of disposable income . . ." *Id.* at 1. The applicant provided a letter from an employer of her husband, a golf and yacht club, that indicates that he earned a salary of \$900 per week as of August 7, 2008. A letter from another employer of the applicant's husband, Via Lago Café and Catering, is undated but was submitted at the same time, and reports that he earns a salary of \$962 per week. These letters support that the applicant's husband earns a combined income of \$1,532 per week, and that a \$187.50 deduction for his child support obligation leaves him with substantial resources. The applicant's husband's assertion that the applicant's absence will jeopardize his ability to afford housing or other needs is not persuasive.

The AAO acknowledges that the applicant's husband shares a close relationship with the applicant, and he wishes to continue to reside with her and receive her emotional support. We have carefully examined the report from [REDACTED] and value the opinion of a mental health professional. It is noted that [REDACTED] report was generated after a single meeting on October 15, 2009, and the record does not show that he has a history or ongoing patient-doctor relationship with the applicant's husband. [REDACTED] references a prior diagnosis of PTSD for the applicant's husband, yet he does not indicate that he examined any medical records, and his assertion appears to be based solely on representations made by the applicant's husband. While [REDACTED] recommended that the applicant's husband consult with his medical doctor regarding anti-anxiety medication, the applicant has not asserted or shown that her husband sought such medical care. The AAO acknowledges a letter from counsel, dated October 5, 2009, addressed to an attorney at a Department of Youth Services in an effort to obtain records of the applicant's services from a facility in approximately 1980 to 1983. However, the applicant has not indicated whether there was a response to this request, and the request itself is not evidence of the applicant's past treatment or diagnosis. The report from [REDACTED] is helpful in providing a professional interpretation of the applicant's description of his history and present challenges. Due weight is given to the opinion of [REDACTED] yet without further supporting

documentation, the record does not establish that the applicant's husband faces mental health challenges that rise to an extreme level.

The applicant has provided information regarding his adult son with whom he has renewed his relationship. The applicant has not shown that her husband would face additional hardship in the United States due to circumstances regarding his son.

The AAO appreciates the difficulty faced by the applicant's husband. However, the applicant has not provided sufficient evidence to support a finding that denial of the present waiver application "would result in extreme hardship" to her husband, as required for a waiver under section 212(a)(9)(B)(v) of the Act. Counsel asserts that the director failed to adequately balance positive and negative factors in determining whether the applicant warrants a favorable exercise of discretion. Yet, we do not reach discretionary balancing, as the applicant has not met the statutory requirement of showing that her husband will suffer extreme hardship.

In proceedings regarding a waiver of grounds of inadmissibility under section 212(a)(9)(B)(v) of the Act, 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.