

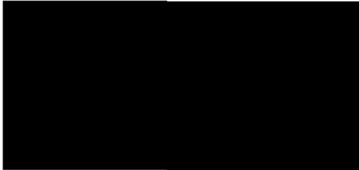
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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services

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DATE: **JAN 10 2012**

OFFICE: VIENNA, AUSTRIA

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, 8 U.S.C. § 1182(a)(9)(B)(v)

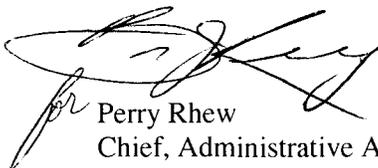
ON BEHALF OF APPLICANT: SELF-REPRESENTED

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,



Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Officer in Charge, Vienna, Austria, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The record reflects that the applicant is a native of the former Czechoslovakia and citizen of the Slovak Republic who was found to be inadmissible to the United States 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 in the United States for more than one year and seeking readmission within ten years of his last departure from the United States. The applicant is married to a United States citizen and is the beneficiary of an approved Petition for Alien Relative (Form I-130). The applicant 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 reside in the United States.

The Officer in Charge found that the applicant had failed to establish that extreme hardship would be imposed on a qualifying relative and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) accordingly. *Decision of the Officer in Charge*, dated August 11, 2009.

On appeal, the applicant asserts that his qualifying relative would experience extreme hardship if the waiver application is denied. The applicant submits a statement. *See Notice of Appeal or Motion (Form I-290) and attachment.*

The record includes, but is not limited to, statements from the applicant and his spouse describing the hardship claim; employment records pertaining to the applicant's spouse; an employment verification letter for the applicant; and records pertaining to the applicant's spouse's education. The entire record was reviewed and considered in arriving at a decision on the appeal.

Section 212(a)(9)(B) 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.

In the present application, the record indicates that the applicant entered into the United States on January 14, 2005, with a B-1/B-2 nonimmigrant visa, with authorization to stay until July 13, 2005. He did not apply for an extension of stay but remained in the United States until November 2007 when he voluntarily departed for Slovakia.

The applicant accrued unlawful presence from July 14, 2006, the day after his authorized stay expired, until November 2007, when he departed the United States. The applicant is seeking admission into the United States within ten years of his 2007 departure. The applicant is, therefore,

inadmissible under section 212(a)(9)(B)(i)(II) of the Act for being unlawfully present in the United States for a period of more than one year.

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 an applicant or other family members 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-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 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, the applicant asserts that his spouse would suffer hardship were she to relocate to Slovakia. He states that his spouse is pursuing her bachelor’s degree in management which she will complete in a year and for which she has a full tuition waiver. He contends that she will be deprived of the opportunity for educational and career advancement if she relocates to Slovakia and will have few employment opportunities in Slovakia as there is no Slovakian market for her degree.

The applicant also states that if his spouse moves to Slovakia, she would have to leave her employment and the lifestyle she knows and would be separated from her family. He states that his spouse has a house in the United States but that he lives in an apartment with his parents and would not be able to afford an apartment in Slovakia. The applicant also contends that his spouse would have difficulty adjusting to Slovakia because the social factor in post-Communist countries is very different from that in the United States and she does not speak the language.

In a separate statement, the applicant’s spouse asserts that she does not speak Slovak and that she would not be able to adapt to life in Slovakia. The applicant’s spouse also states that she has a close knit family, including a sister whose husband is in Iraq and needs her support, but that the applicant does not have siblings, nor nephews or nieces.

The applicant’s spouse also contends that relocation would cause her financial hardship. She states that she is attending college full-time, on a 100 percent tuition waiver, which is worth over \$20,000 per year, and that she is employed in her field of study. She states that relocation would deprive her of completing her education which, she states, is the foundation for her future life with the applicant.

She states that upon receiving her degree, she will be promoted by her employer but that she would not have the opportunity for career advancement in Slovakia.

The record includes documentation indicating that the applicant's spouse is employed full-time at the University of Phoenix, that she is enrolled in one of the school's degree programs and that she earns approximately \$39,500 annually, plus benefits that include approximately \$16,560 for tuition. It also contains a letter of employment from ASAP-translation.com, s.r.o (Ltd.) indicating that the applicant has been employed as a freelance translator for three years.

We note the difficulty the applicant's spouse would experience in relocating to Slovakia as she does not speak the language, the post-Communist culture is very different from that in the United States, the economy is poor and few jobs are available and there is no market there for the type of work she does. We also note the impact on the applicant's spouse's education as she would not be able to complete her education and the impact on her career as she would lose the opportunity for advancement that she has in the United States at her current job. Also, the applicant's spouse would be separated from her family in the United States and she does not have family in Slovakia. We further note that the applicant and his spouse would have to live with his parents because they would not be able to afford an apartment on their own.

We find that these hardships when added to the usual hardships that result from relocating to another country would be extreme. Therefore, the applicant has established that his spouse would experience extreme hardship if she joins him in Slovakia.

In her statement, the applicant's spouse asserts that she has found it difficult to be separated from the applicant and that the possibility of creating and having a family has become dim as a result of their separation. The record does not include any other claim of hardship as a result of separation.

While the AAO notes the applicant's spouse's statement regarding the difficulty of being separated from the applicant, we do not find the record to include documentary evidence that would distinguish her hardship from that normally created when a spouse is excluded or removed. The AAO finds, therefore, that the applicant has failed to establish that his spouse would suffer extreme hardship due to separation.

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 the qualifying relative(s) in this case.

As the record fails to establish that a qualifying relative would experience extreme hardship due to the applicant's inadmissibility, the applicant is statutorily ineligible for a waiver of inadmissibility 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 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.