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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

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**U.S. Citizenship
and Immigration
Services**



H6

Date: **JAN 26 2012** Office: CLEVELAND (COLUMBUS) 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:



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 District Director, Cleveland, Ohio. A subsequent appeal was dismissed by the Administrative Appeals Office (AAO). The matter is now before the AAO on a motion to reopen and reconsider. The motion to reopen and reconsider will be granted and the waiver application will be denied.

The record reflects that the applicant, a native and citizen of Hungary, initially entered the United States as a visitor in March 1998 with permission to remain for six months. The applicant remained in the United States beyond his period of authorized stay and departed the United States in February 2000. He reentered the United States in 2002 and departed in December 2002 and last entered the United States in January 2003 as a B2 visitor. The applicant 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.¹ The applicant seeks a waiver of inadmissibility in order to remain in the United States with his U.S. citizen spouse.

The district director concluded 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 Excludability (Form I-601) accordingly. *Decision of the District Director*, dated January 11, 2007.

On appeal, the AAO concurred with the district director that extreme hardship to a qualifying relative had not been established, as required by section 212(a)(9)(B)(v) of the Act. Consequently, the appeal was dismissed. *Decision of the AAO*, dated April 22, 2009.

In support of the instant motion, counsel for the applicant submits a brief, dated May 20, 2009, and referenced exhibits. The entire record was reviewed and considered in rendering this decision.

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

....

¹ The applicant does not contest the district director's finding of inadmissibility. Rather, he is seeking a waiver of inadmissibility.

(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....

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. The applicant's wife 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.

The AAO, in its decision dated April 22, 2009, concluded that the applicant’s U.S. citizen spouse would face extreme hardship if she were to relocate to Hungary with the applicant based on the concerns by the applicant’s spouse with respect to her mother’s daily care, the applicant’s spouse’s close relationship and unique bond with her disabled mother, long-term disruption of her career, complete unfamiliarity with the country and its culture, language and customs, financial hardship and discrimination based on her ethnicity and gender.

However, the AAO, in its decision dated April 22, 2009, found that the applicant had failed to establish that the applicant’s U.S. citizen spouse would suffer extreme hardship were she to remain in the United States while the applicant relocated to the Hungary due to his inadmissibility. Specifically, the AAO noted that the qualifying spouse was gainfully employed and could live on her own without the assistance of the applicant. The AAO also indicated that the record failed to document that the applicant would be unable to find gainful employment in Hungary. No evidence was provided either regarding the applicant’s business and its potential for being sold and/or managed by a third party. The AAO also stated that the applicant failed to establish the severity of the qualifying spouse’s emotional and psychological issues and addressed the applicant’s desire to have children, essentially indicating that the separation of family is an ordinary and expected consequence of removal.

On motion, counsel addresses some of the concerns raised by the AAO. To begin, the applicant’s counsel indicates that the qualifying spouse has been laid off from her gainful employment and provided tax returns, an updated affidavit from the qualifying spouse, a memorandum from an economist regarding the economic situation in Ohio and the auto industry and articles regarding the high unemployment rate in Ohio. However, there was no specific information submitted regarding

the applicant's spouse's loss of her job or regarding any attempts to find new employment or the receipt of any unemployment benefits. The applicant's counsel also asserted that the qualifying spouse cannot assign the duties of the applicant's business to a third person and/or cannot sell the business. The AAO notes, however, that the 2008 joint income tax return for the applicant and his spouse reports a net profit of \$320 for the applicant's roofing business and a net profit of about \$9800 for an insurance sales business owned by the applicant's spouse. It therefore appears that the applicant's spouse is not dependent on income generated from the roofing business operated by the applicant.

The applicant also submitted country condition information regarding the economic climate in Hungary, which indicated the country's high unemployment rate. However, there was no specific information regarding possible employment opportunities for the applicant as a roofer or in another position utilizing his skills and experience. The limited information provided failed to demonstrate that the applicant would be unable to find employment in Hungary. The applicant's counsel provided a letter from an economist on motion to support these assertions made by counsel. However, there is no information regarding the qualifications of the economist to reach conclusions regarding employment conditions in Hungary and the roofing industry there.

On motion, the applicant's attorney again contends that the qualifying spouse will suffer hardships regarding her ability to have a family including medical risks due to pregnancies later in life, if she decides to wait until the applicant can reside in the United States, or single parenting, if she chooses to have children with her husband living in Hungary. The record contains two articles, one regarding the negative impact of a single parent family and the other regarding late-life pregnancies. While raising children as a single parent raises specific challenges as addressed in the submitted article, and medical risks can occur with pregnancies later in life, we find that these issues are usual and ordinary consequences of removal, and that families who are faced with the threat of separation often have to make choices concerning these issues. The applicant, on motion, did not address the potential psychological hardships to the applicant's spouse upon separation from the applicant or submit additional evidence concerning these hardships.

The AAO recognizes that the applicant's spouse will experience hardship as a result of separation from the applicant. However, the applicant has failed to provide sufficient evidence to demonstrate that any financial, family or emotional hardships the qualifying spouse would experience would constitute hardship beyond the common results of removal or inadmissibility.

In this case, the record does not contain sufficient evidence to show that the hardships faced by the qualifying relative, considered in the aggregate, rise beyond the common results of removal or inadmissibility to the level of extreme hardship. The AAO therefore finds that the applicant has failed to establish extreme hardship to her qualifying spouse as required under the Act. As the applicant has not established extreme hardship to a qualifying family member, no purpose would be served in determining whether the applicant merits a waiver as a matter of discretion.

Furthermore, motions for the reopening of immigration proceedings are disfavored for the same reasons as are petitions for rehearing and motions for a new trial on the basis of newly discovered evidence.

INS v. Doherty, 502 U.S. 314, 323 (1992)(citing *INS v. Abudu*, 485 U.S. 94 (1988)). A party seeking to reopen a proceeding bears a “heavy burden.” *INS v. Abudu*, 485 U.S. at 110. With the current motion, the petitioner has not met that burden.

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. Section 291 of the Act, 8 U.S.C. § 1361. Here, the applicant has not met that burden.

ORDER: The motion will be granted, the previous decision affirmed and the waiver application denied.