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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**



H 6

DATE: JUN 01 2012

Office: ROME, ITALY  
(MOSCOW, RUSSIA)

FILE:



IN RE:

Applicant:



APPLICATION:

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

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.

Thank you,

Perry Rhew  
Chief, Administrative Appeals Office

**DISCUSSION:** The waiver application was denied by the District Director, Rome, Italy (Moscow, Russia). The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained.

The applicant is a native and citizen of Russia 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 her last departure from the United States. The applicant's spouse and child are U.S. citizens and she seeks a waiver of inadmissibility in order to reside in the United States.

The district director found that the applicant had established that her spouse would suffer significant hardship if he remained in Russia, but had failed to demonstrate that residing in the United States would cause him hardship beyond that normally experienced as a result of separation. The application was denied accordingly. *Decision of the District Director*, dated October 30, 2009.

On appeal, counsel asserts that the applicant's spouse would experience extreme hardship if he returned to the United States. *Form I-290B*, dated November 24, 2009.

The record includes, but is not limited to, counsel's brief, medical records, medical articles, statements from the applicant's spouse and his parents, and country conditions information. The entire record was reviewed and considered in rendering a decision on the appeal.

The record reflects that the applicant entered the United States with a B-1/B-2 visa in May 2000, she turned 18 years old on [REDACTED] 2002 and she departed in January 2007. The applicant accrued unlawful presence from [REDACTED] 2002, the date she turned 18, until January 2007, when she departed the United States. The applicant is inadmissible to the United States under section 212(a)(9)(B)(i)(II) of the Act for being unlawfully present for a period of more than one year and seeking readmission within ten years of her January 2007 departure from the United States.<sup>1</sup>

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-

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<sup>111</sup> The record includes information indicating that at her immigrant visa interview, the applicant admitted to having previously used heroin on one occasion. However, the record does not establish that she is inadmissible under section 212(a)(2)(A)(I)(ii) of the Act for admitting to the essential elements of a controlled substance violation. The AAO finds no evidence that establishes the consular officer who interviewed the applicant followed the process for obtaining an admission set forth in 9 FAM 40.21(a) N5.1, as instructed by 9 FAM 40.21(b) N1.

(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.

....

(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 [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 section 212(a)(9)(B)(v) waiver of the bar to admission resulting from section 212(a)(9)(B)(i)(II) of the Act is dependent first upon a showing that the bar imposes an extreme hardship to the U.S. citizen or lawfully resident spouse or parent of the applicant. Hardship to the applicant or her child is not considered in section 212(a)(9)(B)(v) waiver proceedings unless it causes hardship to a qualifying relative, in this case the applicant's spouse. Once extreme hardship is established, it is but one favorable factor to be considered in the determination of whether the Secretary should exercise discretion. *See 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*, 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-I-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 notes that the district director previously found that the applicant had established that the hardship experienced by her spouse in Russia was beyond that normally experienced by spouses upon relocation. Having reviewed the record on appeal, the AAO concurs with the district director’s finding that the applicant has established that remaining in Russia would result in extreme hardship for her spouse.

To establish that the applicant’s spouse would also suffer significant hardship if he returned to the United States, counsel states that the applicant’s spouse would have to find full-time employment and would not be able to attend to his son around-the-clock or be available if there was a sudden emergency; his parents have jobs and lives of their own and would not be able to care for their grandson; it would be cost prohibitive to hire a full-time babysitter; and he would not be able to bear that the applicant who suffers from epilepsy would have to manage her epilepsy alone.

The applicant's spouse states that the applicant has a history of seizures and was diagnosed with epilepsy in 2007; the condition is largely controlled by medicine but seizures occur; it is not an option to leave their son with her; they have specific procedures in place should she have a seizure while caring for their son; he reminds her to take her pills in the morning and at night; she relies on him to keep her disease under control; he could not leave the applicant knowing that she could not drive around and care for herself; he wants their son to be raised in an environment of love and support and surrounded by both parents; his family reads together and they go on walks and outings; and he wants to make a better life for his family, which requires increased responsibilities and the applicant's help in taking care of their son. The record includes a medical letter reflecting that the applicant has idiopathic epilepsy-generalized form.

The applicant's spouse states that the thought of nobody assisting the applicant causes him extreme agony and would affect his ability to live any semblance of a life in the United States; he would not be able to perform his job at a high level, which would affect his ability to care for their son; his son has been diagnosed with kidney problems; his son would be severely affected by being away from his mother; and he does not want his son to think the applicant has abandoned him. The applicant's son's medical records reflect that he was diagnosed with sinistral hydronephrosis.

The AAO notes that if the applicant returns to the United States to live, he would no longer be available to assist the applicant in managing her epilepsy. Although the applicant's epilepsy is currently under control, the AAO acknowledges that she has previously suffered seizures and that her condition would be a source of concern for her spouse if he returned to the United States. We also observe that in light of the applicant's medical condition, the applicant would return to the United States with his four-year-old son who has been diagnosed with kidney problems. When the AAO considers the applicant's spouse's concerns regarding the applicant's health and her ability to care for herself in the event that her condition again worsens, the responsibilities he would face as a single parent for a young child with medical problems, and the hardships normally created by separation, we conclude that the applicant has established that her spouse would suffer extreme hardship if the waiver application is denied and he returns to the United States.

In *Matter of Mendez-Morales*, 21 I&N Dec. 296, 301 (BIA 1996), the Board stated that once eligibility for a waiver is established, it is one of the favorable factors to be considered in determining whether the Secretary should exercise discretion in favor of the waiver. Furthermore, the Board stated that:

In evaluating whether section 212(h)(1)(B) relief is warranted in the exercise of discretion, the factors adverse to the alien include the nature and underlying circumstances of the exclusion 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 he is excluded and 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).

*Id.* at 301.

The AAO must then, “[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 adverse factors are the applicant's failure to comply with the terms of her visitor's visa, her unlawful presence, her disorderly conduct conviction and her admission to prior drug use. The favorable factors are the applicant's U.S. citizen spouse and child, the extreme hardship to her spouse if the waiver application is denied, her son's health problems, and her youth at the time of her immigration violations, conviction for disorderly conduct and one-time drug use.

The AAO does not condone the applicant's immigration violations or prior actions. Nevertheless, when taken together, we find the favorable factors in the present case to outweigh the adverse factors, such that a favorable exercise of discretion is warranted.

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. Here, the applicant has met that burden. Accordingly, the appeal will be sustained and the waiver application will be approved.

**ORDER:** The appeal is sustained. The application is approved.