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



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



H6

DATE: MAR 28 2012 OFFICE: ROME, ITALY

FILE: [REDACTED]

IN RE: APPLICANT: [REDACTED]

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:

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.

Thank you,


Perry Shaw, Chief
Administrative Appeals Office

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

The applicant is a native and citizen of Portugal 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 10 years of his last departure from the United States. The applicant seeks a waiver of inadmissibility in order to reside in the United States with his U.S. Citizen spouse.

The Field Office Director concluded that there was insufficient evidence of extreme hardship to a qualifying relative and denied the application accordingly. *See Decision of Field Office Director* dated November 19, 2009.

On appeal, the applicant's spouse, appearing pro se, explains if she relocated to Portugal, she would have to leave behind her elderly parents and her daughter, who all have medical conditions and require her assistance. She indicates that she is on disability, and requires the applicant not only for financial and emotional reasons, but to help her take care of her family.

The record includes, but is not limited to, statements from the applicant's spouse, letters from family and friends, medical records and letters from physicians, financial documents, evidence of birth, marriage, divorce, residence and citizenship, evidence of entry and admission, and other applications and petitions filed on behalf of the applicant's spouse. The entire record was reviewed and considered in rendering a decision on the appeal.

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.

....

(v) 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. No court shall have jurisdiction to review a decision or action by the Attorney General regarding a waiver under this clause.

The record reflects that the applicant was admitted to the United States pursuant to the visa waiver program on May 16, 2006, with authorization to remain until August 15, 2006. The applicant stayed past the date of his authorized stay, and left the United States on May 9, 2008. As such he accrued more than one year of unlawful presence and is therefore inadmissible under section 212(a)(9)(B)(i)(II) of the Act. The applicant's qualifying relative for a waiver of this inadmissibility is his U.S. Citizen spouse.

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 applicant's spouse contends that she has health problems, she needs the applicant to help care for her, and she cannot afford to have a nurse assist her because her only income is from social security. Letters from physicians indicate the applicant's spouse has progressive right knee arthritis, which is not responding to oral medications or injections, and that she has fibromyalgia, osteoarthritis, depression, hypertension, and chronic pain. Medical records are also submitted in support of her assertions. In addition to her own medical problems, the spouse asserts that she has to help take care of her parents, who have health issues of her own, and that her daughter is unable to assist with this because she has thyroid cancer. Medical records for the spouse's mother show that she suffers from esophageal reflux, hyperlipidemia, anemia, and renal problems. A letter from the spouse's father's physician reveals that he was diagnosed 17 years ago with Parkinson's disease, he has a history of dementia, and because of his medical needs the applicant's spouse has stayed home to help care for him. The spouse explains that she cannot move to Portugal and leave her family, especially her parents, during this difficult time.

The applicant's spouse adds that although she was employed in 2007, she has since quit working and her income consists of her social security checks and disability payments. Evidence of social security income is included on appeal, as are some documentation of expenses.

The record does contain sufficient evidence of the applicant's spouse's financial difficulties. Although scant evidence on household expenses is present in the record, the applicant's spouse is currently unemployed and on disability. Furthermore, even when she was employed in 2007, her salary did not equal 125% of the minimum income requirement for a family of two as set forth on the USCIS Form I-864P, Poverty Guidelines. The record contains some evidence that the applicant was able to earn some income while in the United States as a musician and a landscaper, although the amount of that income is not evident.

Furthermore, the record contains sufficient evidence of medical hardship due to the spouse's own medical difficulties and her responsibilities with regard to her parents, in particular her father. Evidence of record substantiates the spouse's claim that her assistance is required with respect to her father's diagnosis of dementia and Parkinson's disease. The father's physician indicates that the applicant's spouse takes her father to medical appointments, translates for him, lives with him, takes care of him during the day, helps him wash and get ready in the mornings, sometimes helps him stand up and walk, and helps him go to the bathroom. Although the physician adds that a night nurse comes for 2 hours in the evening to assist the father with bedtime preparations, it is evident that the applicant's spouse has substantial responsibilities the remainder of the time, and that the applicant's presence would alleviate the overall emotional, physical, and financial challenges faced by his spouse.

As such, we find evidence of record to demonstrate that the applicant's spouse's hardship would rise above the distress normally created when families are separated as a result of inadmissibility or removal. In that the record provides sufficient evidence to establish the financial, medical, emotional and other impacts of separation on the applicant's spouse are cumulatively above and beyond the hardships commonly experienced, the AAO concludes that she would suffer extreme hardship if the waiver application is denied and the applicant remains in Portugal without his spouse.

Moreover, the AAO finds the applicant has established that his spouse would experience significant difficulties upon relocation to Portugal. It is noted that the applicant's spouse is a native of Portugal, knows Portuguese, has visited Portugal recently, and should therefore have less trouble adapting to life in the country. However, the spouse's medical difficulties, when combined with her duties with respect to her father who has dementia and Parkinson's disease, make relocating to Portugal a hardship which, in the aggregate, is above and beyond the distress normally experienced when families relocate as a result of inadmissibility. Therefore, the AAO concludes that the applicant's spouse would also experience extreme hardship in the scenario of relocation to Portugal.

Considered in the aggregate, the applicant has established that the applicant's spouse would face extreme hardship if the applicant's waiver request is denied.

Extreme hardship is a requirement for eligibility, but once established it is but one favorable discretionary factor to be considered. *Matter of Mendez-Morales*, 21 I&N Dec. 296, 301 (BIA 1996). For waivers of inadmissibility, the burden is on the applicant to establish that a grant of a waiver of inadmissibility is warranted in the exercise of discretion. *Id.* at 299. The adverse factors evidencing an alien's undesirability as a permanent resident must be balanced with the social and humane considerations presented on his behalf to determine whether the grant of relief in the exercise of discretion appears to be in the best interests of this country. *Id.* at 300.

The unfavorable factors include the applicant's unlawful presence as well as his unauthorized employment in the United States. Favorable factors include the extreme hardship to his U.S.

Citizen spouse, his lack of a criminal history, and evidence of good moral character as seen in letters from family and friends.

Although the applicant's violations of immigration law cannot be condoned, the positive factors in this case outweigh the negative factors. In these proceedings, the burden of establishing eligibility for the waiver rests entirely with the applicant. *See* section 291 of the Act, 8 U.S.C. § 1361. In this case, the applicant has met his burden and the appeal will be sustained.

ORDER: The appeal is sustained.