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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: MAY 03 2012 Office: PHILADELPHIA, PA

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 (the Act), 8 U.S.C. section 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.

Thank you,

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Field Office Director, Philadelphia, Pennsylvania. 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 the United Kingdom. He was found to be inadmissible to the United States pursuant to section 212(a)(9)(B)(i)(I) of the Act, 8 U.S.C. § 1182(a)(9)(B)(i)(I), for having been unlawfully present in the United States for more than 180 days and seeking admission within ten years of his last departure. He is married to a United States citizen. He 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).

The Field Office Director concluded that the applicant had failed to establish that the bar to his admission would impose extreme hardship on a qualifying relative, his U.S. citizen spouse, and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) on November 23, 2009.

On appeal, counsel for the applicant states that evidence in the record establishes that the applicant's spouse will experience extreme hardship due to separation from the applicant. *Additional Evidence in Support of Appeal*, received on December 28, 2009.

The record includes, but is not limited to: statements from the applicant, the applicant's spouse, the applicant's spouse's [REDACTED] and friends of the applicant's spouse; a Psychological [REDACTED] dated July 7, 2010; a handwritten note on a prescription slip from [REDACTED] dated December 12, 2009; a statement from [REDACTED] dated August 2, 2010; documentation of a filled prescription, dated July 29, 2010; a printed email discussing the release of the applicant's spouse's medical counseling records; a breakdown of financial obligations for the applicant's spouse; a statement of pension benefits for the applicant; a school transcript for the applicant's spouse; and a photograph of the applicant and his spouse.

The entire record was reviewed and all relevant evidence considered in rendering this decision.

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

(i) In general. - Any alien (other than an alien lawfully admitted for permanent residence) who-

....

(I) was unlawfully present in the United States for a period of more than 180 days but less than 1 year, voluntarily departed the United States (whether or not pursuant to section 1254a(e) of this title) prior to the commencement of proceedings under section

1225(b)(1) or section 1229(a) of this title, and again seeks admission within 3 years of the date of such alien's departure or removal, or

....

The record indicates that the applicant entered the United States without inspection as a visitor for pleasure on May 5, 2008, and was authorized to remain until August 3, 2008. The applicant remained beyond his authorized period of stay, departing voluntarily on April 24, 2009. As the applicant resided unlawfully in the United States for more than one year and is now seeking admission within ten years of his last departure from the United States, he is inadmissible under section 212(a)(9)(B)(i)(I) of the Act.

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 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-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.

On appeal, counsel for the applicant's spouse asserts that she will experience extreme emotional hardship if the applicant is removed. *Additional Evidence in Support of Appeal*, received September 16, 2010.

The applicant's spouse has submitted a statement asserting that she would experience extreme emotional hardship if the applicant were removed. *Statement of the Applicant's Spouse*, dated December 19, 2009. She explains that she suffers from extreme anxiety, details the history of

emotional hardships in her life, and states that she is mentally, emotionally and physically dependent on the applicant due to her condition. She states that if the applicant were removed to the United Kingdom, he would not be able to find employment to support himself and that, knowing this, she would not be able to live with her conscience because she feels the applicant's situation is her fault. She states she would have no reason to live if the applicant is removed and that he has been her moral support through the death of her mother and other emotional hardships in her life. She states that he is her caregiver, cooking and cleaning, reminding her to eat, take her medication and do her homework; and that he manages their finances and ensures their bills are paid. The applicant's spouse also asserts that she would be unable to meet her financial obligations without the applicant's pension. She states that she works part-time, has accrued significant educational debts and is currently attending school.

The applicant has submitted several statements explaining that his spouse, due to her mental health conditions, is dependent on him mentally and emotionally, and that he provides physical support for his spouse by cooking, cleaning and paying the bills. He explains that without his help, his spouse would be unable to manage her finances or maintain her educational and employment obligations, and would fall into depression.

The record contains a psychological evaluation of the applicant's spouse prepared by [REDACTED]. [REDACTED] narrates the background of the applicant's spouse and distinguishes the mental and emotional impacts she would experience as a result of her separation from the applicant from those commonly experienced by the relatives of inadmissible aliens. He concludes that the applicant's spouse suffers from Adjustment Disorder with Mixed Anxiety and Depressed Mood, Social Phobia, Learning Disorder, Avoidant Personality Disorder, Dependent Personality Disorder and Grave's Disease. The record does not corroborate the applicant's spouse has been diagnosed with Graves' Disease.

The record also contains statements from [REDACTED] who has been the applicant's spouse's doctor for 35 years, which indicate that she has a history of mild depression, but that her depressive symptoms are now severe as a result of the applicant's immigration problems. The record further provides documentation supporting the fact that the applicant's spouse takes medication to help control her condition, statements from the applicant's spouse's supervisor acknowledging the stabilizing and supportive presence of the applicant, and statements from the applicant's spouse's friends corroborating her difficult emotional history.

Having reviewed the record, the AAO concludes that when the emotional hardship that would be experienced by the applicant's spouse as a result of her separation from the applicant and the hardships normally created by the separation of spouses are considered in the aggregate, the applicant has established that his spouse would suffer extreme hardship if the waiver application is denied and she remains in the United States.

With regard to hardship upon relocation, the applicant asserts that if the waiver application is denied, he would have no home to return to and would not be able to offer his spouse a life in the United

Kingdom. In his psychological evaluation of the applicant's spouse, ██████████ notes that living in the United Kingdom would be problematic for the applicant's spouse. He states that because the applicant's spouse suffers from "learning and mental disorders characterized by social deficits, chronic anxiety, and severe dependency and functioning difficulties," she has a reduced capacity to cope with stress and would find it "extraordinarily difficult" to adapt to living in England. He further notes that the applicant's spouse's emotional and learning problems make her less resilient and flexible than the average person.

The AAO acknowledges the applicant's spouse's numerous behavioral and emotional problems and ██████████ conclusions regarding the impact they would have on her ability to successfully adapt to a new life in the United Kingdom. Accordingly, we have concluded that when the applicant's spouse's mental health problems and her limited capacity to adapt to change are added to the common disruptions and difficulties that result from moving to another country, the applicant has established that relocation would result in extreme hardship for his spouse.

Although the applicant has established that a qualifying relative will experience extreme hardship upon both relocation and separation, it must still be determined that the applicant's spouse warrants a waiver as a matter of discretion.

In discretionary matters, the alien bears the burden of proving eligibility in terms of equities in the United States which are not outweighed by adverse factors. *See Matter of T-S-Y*, 7 I&N Dec. 582 (BIA 1957).

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).

See Matter of Mendez-Moralez, 21 I&N Dec. 296, 301 (BIA 1996). The AAO must then "balance 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 AAO finds that the unfavorable factor in this case is the applicant’s unlawful presence. The favorable factors include his U.S. citizen spouse, the extreme hardship his spouse would experience due to his inadmissibility, and the absence of a criminal record during his residence in the United States. Although the applicant’s unlawful presence is a serious matter, the favorable factors in this case outweigh the negative factors. Therefore, favorable discretion will be exercised.

Section 291 of the Act, 8 U.S.C. § 1361, provides that the burden of proof is upon the applicant to establish that he is eligible for the benefit sought. *See* section 291 of the Act, 8 U.S.C. § 1361. Here, the applicant has met that burden. Accordingly, the appeal will be sustained.

ORDER: The appeal is sustained.