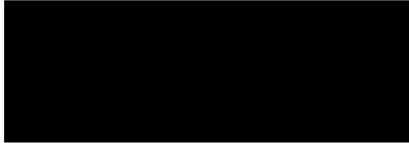


U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services



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Date: NOV 29 2012

Office: ACCRA, GHANA

FILE: 

IN RE: 

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,

A handwritten signature in black ink that reads "Ron Rosenberg".

Ron Rosenberg
Acting Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Field Office Director, Accra, Ghana. 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 Togo 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 has a U.S. citizen spouse and a U.S. citizen daughter. He seeks a waiver of inadmissibility in order to reside in the United States.

In a decision, dated March 15, 2011, the field office director found that the applicant had established that his wife would suffer extreme hardship as a result of relocation, but failed to establish extreme hardship to his U.S. citizen spouse as a result of separation. The application was denied accordingly.

In a Notice of Appeal to the AAO, dated April 12, 2011, counsel states that the field office director erred when he found that the applicant had not shown extreme hardship to his spouse as a result of separation.

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.

The record indicates that the applicant entered the United States on or about March 14, 1993 and then applied for asylum. On August 31, 1995, an immigration judge denied the applicant's asylum claim and ordered him removed from the United States. The applicant failed to comply with his removal order. On May 7, 2008, the applicant was detained by immigration officials and on September 30, 2008 he was removed from the United States. Therefore, the applicant accrued unlawful presence from April 1, 1997, the date the unlawful presence provisions were enacted until September 30, 2008. In applying for an immigrant visa, the applicant is seeking admission within ten years of his September 30, 2008 departure. Therefore, the applicant is

inadmissible to the United States under section 212(a)(9)(B)(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 the applicant or his child 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 v. I.N.S.*, 138 F.3d 1292 (9th Cir. 1998) (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 record of hardship includes: a statement from the applicant’s spouse; medical documentations; psychological evaluations for the applicant’s spouse, stepson, and daughter; letters from family members; financial documentation; evidence of familial ties to the United States; and country conditions information for Togo.

Because the field office director previously found that the applicant’s spouse would suffer extreme hardship as a result of relocating to Togo, we will affirm this part of the field office director’s decision, and focus our review on whether the applicant has established extreme hardship to his U.S. citizen spouse as a result of separation.

The record indicates that the applicant’s spouse is suffering emotionally and physically as a result of separation and that she is currently raising her nineteen year old son from a previous relationship and her eight year old daughter with the applicant as a single parent. The

psychological evaluations in the record indicate that the applicant's stepson began having problems with substance abuse and delinquent behavior after the applicant was removed and that the applicant's daughter is having feelings of anxiety as a result of the removal, which are both affecting the emotional state of their mother. The record indicates that the applicant's stepson has a history of serious behavioral problems and meets the criteria for having a Severe Emotional Disturbance. The psychological evaluation performed on the applicant's stepson was completed in 2009 as part of a treatment plan after he was arrested for disorderly conduct. This evaluation recommends additional therapy for the applicant. The psychological evaluation pertaining to the applicant's daughter was written in December 2008 after she received two months of weekly therapy sessions to address the emotional disturbances she was exhibiting as a result of the separation from her father. This evaluation supports the applicant's spouse's claims that her daughter is suffering emotionally from the absence of her father. The applicant's spouse states that as a result of being a single parent, seeing her children suffer, and experiencing the pressures, emotional distress, and guilt that come with their situation she has gained 25-30 pounds, cannot sleep at night, and feels depressed. The applicant's spouse indicates that although she has not sought out mental health services for her emotional state, she was prescribed Prozac by her primary care physician. She also states that she does not speak to family members often about her condition because she does not want to be a bother. The record includes letters from family and friends also attesting to the supportive role the applicant played in raising his daughter and the emotional distress his wife and daughter are experiencing as a result of his absence.

The record indicates that the applicant's spouse is experiencing financial hardship as a result of losing the applicant's income. The record shows that the applicant and his spouse own a home in the United States, that the applicant's spouse is employed with a bank, and that she earns almost 70% of the household income, with the applicant having contributed almost \$40,000 per year through his employment. The applicant's spouse states that without the applicant, she struggles to pay their mortgage payment even after obtaining a loan modification and that she was forced to take a \$14,000 pay decrease so she could be at home more for her children.

We find that the applicant has shown that his U.S. citizen spouse is suffering extreme hardship as a result of being separated from the applicant and having to raise two children who suffer from emotional difficulties on her own without the emotional and financial support of the applicant. Thus, the applicant has now shown that his wife is suffering extreme hardship as a result of his inadmissibility.

Considered in the aggregate, the applicant has established that (qualifying relative) 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 adverse factor in the present case is the applicant's long illegal residence in the United States, his unlawful presence in the United States, his failure to comply with his removal order, his actual removal, and his unauthorized employment in the United States.

The favorable factors in the present case are the extreme hardship to the applicant's spouse and daughter if he is not granted a waiver of inadmissibility; the applicant's lack of a criminal record; and numerous letters in the record, indicating that the applicant is an asset to his community, volunteers with his church and with Habitat for Humanity, and is a devoted husband and father.

The AAO finds that the immigration violations committed by the applicant are serious in nature and cannot be condoned. Nevertheless, the AAO finds that taken together, the favorable factors in the present case outweigh the adverse factors, such that a favorable exercise of discretion is warranted. Accordingly, the appeal will be sustained.

The AAO notes that the record includes an unadjudicated Application for Permission to Reapply for Admission (Form I-212), which must now be adjudicated to resolve the applicant's September 30, 2008 removal.

ORDER: The appeal is sustained.