

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

[REDACTED]

H6

DATE: **OCT 15 2012**

Office: PORTLAND, ME

FILE: [REDACTED]

IN RE: [REDACTED]

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

ON BEHALF OF APPLICANT:

[REDACTED]

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 AAO inappropriately applied the law in reaching its decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen in accordance with the instructions on Form I-290B, Notice of Appeal or Motion, with a fee of \$630. The specific requirements for filing such a motion can be found at 8 C.F.R. § 103.5. Do not file any motion directly with the AAO. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires any motion to be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

For

Perry Rhew
Chief, Administrative Appeals Office

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

The record reflects that the applicant, a native of Haiti and citizen of Canada, claims to have entered the United States from Canada in 2000. The applicant alleges she then made several subsequent brief departures from that time until 2009, reentering through the Vermont border or through Miami claiming to be a visitor when she was in fact residing and working without authorization in the United States. The applicant was thus found to be inadmissible to the United States pursuant to section 212(a)(9)(B)(i)(II) of 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. The applicant seeks a waiver of inadmissibility under section 212(a)(9)(B)(v) of the Act, 8 U.S.C. § 1182(a)(9)(B)(v), to reside in the United States with her U.S. citizen spouse.

The acting 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 Ground of Excludability (Form I-601) accordingly. *Decision of the Acting Director*, dated March 30, 2011.

Counsel for the applicant asserts that the USCIS decision was arbitrary, against the weight of evidence, erroneous in fact and law, and an abuse of discretion.

On appeal the applicant submits a brief from counsel; a deed for property owned by applicant's spouse; a report on the Canadian health care system; affidavits from the applicant and her spouse; a letter from a physician treating the applicant's spouse for diabetes; and letters from the applicant's pastor and the applicant's sister noting the closeness of the family.

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

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

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 [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. Hardship to the applicant can be considered only insofar as it results in hardship to a qualifying relative. The applicant's U.S. citizen 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.

The applicant’s U.S. citizen spouse contends that he will suffer emotional and financial hardship if he remains in the United States while the applicant resides abroad due to her inadmissibility. Counsel points out that the applicant’s spouse relies on the applicant’s care for his chronic medical condition through her cooking and nursing skills. Counsel also points out that the applicant is employed full time and that her income helps pay bills and support the family. Counsel further notes that the applicant has two children, one still attending school, and they would be uprooted at a vulnerable age or compelled to live without her mother.

In his statement the applicant’s spouse states that the applicant prepares healthy meals for him to control his diabetes, that she and her children are central to his life, and that he would be devastated if they leave. In her statement the applicant also notes that she prepares her spouse’s meals to control his diabetes and he would be distraught if she and the children leave.

The applicant’s U.S. citizen spouse contends that he will suffer emotional and financial hardship if he remains in the United States while the applicant resides abroad due to his inadmissibility. Other than the spouse’s statement that the applicant prepares meals for him and that she is central to his life, the record provides little detail and contains no supporting evidence concerning the emotional hardship the applicant’s spouse states he would experience due to long-term separation from his spouse. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)).

Further, it has not been established that the applicant's spouse would be unable to travel to Canada on a regular basis to visit the applicant.

In her statement the applicant contends that her spouse depends on her to prepare meals and on her nursing skills to control his diabetes, but she has not shown that her spouse would be unable to control his dietary habits or gain medical care without the applicant. Other than a letter from a physician that the applicant's spouse has diabetes mellitus, the record contains no documentation or explanation of the spouse's medical condition and treatment.

Counsel contends the applicant's full-time employment income is needed to help pay bills and support the family, however other than a quitclaim deed and income statements submitted with the Form I-485, Application to Register Permanent Residence or Adjust Status, the applicant has not submitted any documentation establishing her spouse's current assets, liabilities or his overall financial situation to establish that without the applicant's physical presence in the United States the applicant's spouse will experience financial hardship. Courts considering the impact of financial detriment on a finding of extreme hardship have repeatedly held that, while it must be considered in the overall determination, "[e]conomic disadvantage alone does not constitute "extreme hardship." *Ramirez-Durazo v. INS*, 794 F.2d 491, 497 (9th Cir. 1986).

The AAO recognizes that the applicant's spouse will endure hardship as a result of separation from the applicant. However, his situation if he remains in the United States is typical to individuals separated as a result of removal and does not rise to the level of extreme hardship based on the record.

The applicant also claims her qualifying spouse would suffer extreme hardship if he were to relocate to Canada to reside with the applicant. She states that if her spouse goes to Canada he would have no place to live and be forced to leave a job he has had for many years and enjoys. The applicant's spouse states that he has two jobs that give him security and if goes to Canada he would have no job.

Counsel asserts that the applicant's spouse has no legal right or ability to relocate to Canada, so he would not be able to work or gain access to the health care system, thus being forced to get private insurance or pay out of pocket. Pointing to a report about administrative delays in health care in Canada, counsel contends that even if the applicant's spouse could immigrate he may wait for months or years for health insurance. Counsel also states that for the applicant's spouse to start over in Canada would take time and expense, which would cause diminution in the quality of his health, employment, the children's education, and family life. Counsel contends the standard of living of the applicant's spouse would be reduced as he now holds two jobs and owns property for which, if sold, he would still owe the bank because of the property's decreased value. Counsel further points out that the applicant's mother is a United States resident and that her extended family also lives in the United States. Counsel goes on to note that the applicant's spouse has no ties outside the United States, including none in Canada.

It has not been established that the applicant, a Canadian citizen, and her spouse would be unable to find employment in Canada. Further, courts considering the impact of financial detriment on a

finding of extreme hardship have repeatedly held that, while it must be considered in the overall determination, "[e]conomic disadvantage alone does not constitute "extreme hardship." *Ramirez-Durazo v. INS*, 794 F.2d 491, 497 (9th Cir. 1986). Although the applicant claims her spouse has no ties outside the United States, it has not been established that relocation to Canada would cause the applicant's spouse to be unable to adjust culturally or be isolated from family in the United States.

Counsel submits a report on health care in Canada, to which counsel contends the applicant would have no access. However, it is not established that the applicant's spouse would be unable to attain residence status in Canada as the spouse of a Canadian citizen, or that the applicant's spouse would otherwise have no access to health care.

The record, reviewed in its entirety and in light of the *Cervantes-Gonzalez* factors, cited above, does not support a finding that the applicant's U.S. citizen spouse will face extreme hardship if the applicant is unable to reside in the United States. Rather, the record demonstrates that she will face no greater hardship than the unfortunate, but expected disruptions, inconveniences, and difficulties arising whenever a spouse is removed from the United States and/or refused admission. Although the AAO is not insensitive to the applicant's spouse's situation, the record does not establish that the hardship she would face rises to the level of "extreme" as contemplated by statute and case law.

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.

In proceedings for application for waiver of grounds of inadmissibility, 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. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed. The waiver application is denied.