



U.S. Citizenship
and Immigration
Services



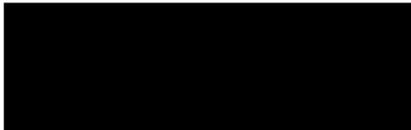
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DATE: OCT 17 2012 OFFICE: PANAMA CITY, PANAMA FILE: [REDACTED]

IN RE: [REDACTED]

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

A handwritten signature in cursive script that reads "Perry Rhew".

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The Form I-601, Application for Waiver of Grounds of Inadmissibility, was denied by the Field Office Director, Panama City, Panama, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained.

The applicant is a native and citizen of Guyana who was found to be inadmissible to the United States under 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 country for more than one year and seeking admission within ten years of her departure from the United States. The applicant is married to a U.S. citizen, and she is the beneficiary of an approved Form I-130, Petition for Alien Relative (Form I-130). She 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), in order to reside in the United States with her husband and children.

In a decision dated February 24, 2011, the director concluded the applicant had failed to establish that her husband would experience extreme hardship if she were denied admission into the United States. The waiver application was denied accordingly.

Through counsel, the applicant asserts on appeal that her husband will experience extreme emotional, financial and physical hardship if she is denied admission into the United States. To support these assertions counsel submits affidavits, country-conditions reports about Guyana, financial evidence, medical documents and a psychological evaluation of the applicant's husband.

The entire record was reviewed and considered in rendering a decision on the appeal.

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

(i) [A]ny 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.

Inadmissibility under section 212(a)(9)(B)(i)(II) of the Act, which is triggered upon departure from the United States, remains in force until the alien has been absent from the United States for ten years. In the present matter, the record reflects the applicant was unlawfully present in the United States for over one year from September 2001 until December 2009, when she returned to Guyana. She has remained outside of the United States for less than ten years. She is therefore inadmissible under section 212(a)(9)(B)(i)(II) of the Act. Counsel does not contest the applicant's inadmissibility under section 212(a)(9)(B)(i)(II) of the Act.

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

Waiver.-The Attorney General [now Secretary, Department 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.

Section 212(a)(9)(B)(v) of the Act provides that a waiver of the bar to admission is dependent first upon a showing that the bar imposes an extreme hardship on a qualifying family member. Once extreme hardship is established, it is but one favorable factor to be considered in the determination of whether the Secretary should exercise discretion. *Matter of Mendez-Moralez*, 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*, 22 I&N Dec. 560, 565 (BIA 1999), the Board of Immigration Appeals (Board) provided a list of factors it deemed relevant in determining whether an alien has established extreme hardship to a qualifying relative. 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).

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 is her qualifying relative under section 212(a)(9)(B)(v) of the Act. The applicant refers to hardship their U.S. lawful permanent resident children would experience if the waiver application is denied. Congress did not include hardship to an alien’s child as a factor to be considered in assessing extreme hardship under section 212(a)(9)(B)(v) of the Act. Hardship to the applicant’s children will therefore not be considered, except as it may affect the applicant’s qualifying family member.

The applicant’s husband states in affidavits that he and the applicant were married in 2006, they lived together until her departure in 2009, and the thought of being separated from her scares him “horribly.” The applicant is unable to find employment in Guyana, and he supports her financially. In addition, the applicant’s 18 and 20 year-old children immigrated to the United States in 2010. They live with him and attend school, and he financially provides for them and himself. He is “financially overwhelmed” and was almost evicted from their home. He also has post-traumatic stress disorder, is suffering from symptoms of depression, and needs counseling. He has been employed as a handyman since 2000, and he recently had a disciplinary problem at work due to the stress in his life. He has also suffered from knee problems in the past; has hypertension and high cholesterol that require treatment; is at risk for a heart attack or stroke due to a strong family history of coronary artery disease; and must report annually for medical evaluation to ensure he has no illness related to work he did near the World Trade Center after the September 11, 2001 attack. He was born and raised in the United States, his family and cultural ties are in this country, and the thought of living in Guyana depresses him. He worries that that it is unsafe in Guyana and that health care is both inadequate and expensive there. He also believes that he would be unable to find work there due to the poor economy and because he is middle-aged.

Financial evidence corroborates claims that the applicant's husband was placed into eviction proceedings for nonpayment of rent, and it also reflects that he received overdue-account and turn-off notices from utility companies. Money-transfer receipts reflect that the applicant regularly sends money to the applicant in Guyana. The record also contains phone cards, flight receipts for the applicant's husband's travel to Guyana, and evidence of their children's enrollment in educational programs, with proof of related financial aid and loan obligations.

Medical evidence reflects the applicant's husband is under treatment for hypertension and high cholesterol; it corroborates his claims that he is at risk for heart attack or a stroke and that he had a knee operation in 2007. A licensed mental health counselor diagnoses the applicant's husband with post-traumatic stress disorder "marked by chronic worry, nightmares, anxiety, isolation from friends and family, poor impulse control at work, increased medical complications, and clinical depression." The counselor recommends the applicant's husband attend counseling and support groups and meet with his doctor "for a medication evaluation."

Employment documents corroborate that the applicant's husband has worked for his employer as a handyman, earning \$21.92 an hour, since March 2000. A "Personnel Issue Meeting" memo reflects the applicant's husband had an "outburst" against his supervisor; the incident was deemed to be related to personal affairs that were affecting his work performance. He was warned that future incidents would be considered insubordination and that disciplinary action, including suspension, would be considered.

Upon review, the AAO finds that the evidence in the record, when considered in the aggregate, establishes the applicant's husband is experiencing financial and emotional hardship that rises above the common results of removal or inadmissibility, due to his separation from the applicant. Evidence establishes the applicant's husband supports two households and is financially struggling. He has received utility turn-off notices, was placed into eviction proceedings, and is supporting the applicant and their children. In addition, the applicant's husband suffers from post-traumatic stress disorder and clinical depression for which treatment is recommended. Personal stress has affected his work performance and led to personnel warnings. The cumulative evidence establishes the applicant's husband would experience financial and emotional hardship beyond that normally experienced upon removal or inadmissibility if he remains in the United States, separated from the applicant.

The cumulative evidence also establishes the applicant's husband would experience extreme hardship if he relocates to Guyana to be with the applicant. The applicant's husband was born and raised in the United States and has no family in, or cultural ties to, Guyana. He suffers from medical conditions that require ongoing treatment, is at risk for heart attack or stroke, and he has been diagnosed with post-traumatic stress disorder and clinical depression. A Department of State country-specific information report reflects that "medical care in Guyana does not meet U.S. standards" and "[e]mergency care and hospitalization for major medical illnesses or surgery are very limited, due to a lack of appropriately trained specialists, below standard in-hospital care, and poor sanitation." See http://travel.state.gov/travel/cis_pa_tw/cis/cis_1133.html. The report also corroborates the applicant's husband's safety concerns in Guyana: "Serious crime, including

murder and armed robbery, continues to be a major problem.” *Id.* The evidence, when considered in the aggregate, establishes the applicant’s husband would experience emotional and physical hardship beyond that normally experienced upon removal or inadmissibility if he relocates to Guyana to be with the applicant.

The AAO finds that the applicant merits a waiver of inadmissibility 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(a)(9)(B) of the Act relief is warranted in the exercise of discretion, the factors adverse to the alien include the nature and underlying circumstances of the inadmissibility 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 s/he is excluded and/or 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 unfavorable factors in this matter are the applicant’s accrual of unlawful presence in the United States between September 2001 and December 2009. The favorable factors are the hardship the applicant’s husband is facing and would face if the applicant is denied admission into the United States, the applicant’s ties to her lawfully permanent resident children in the United States, her good moral character, and her lack of a criminal record. The AAO finds that although the immigration violations committed by the applicant are serious in nature and cannot be condoned, taken together, the favorable factors in the present case outweigh the adverse factors, such that a favorable exercise of discretion is warranted.

Upon review of the totality of the evidence, the AAO finds that the applicant has established extreme hardship to her U.S. citizen spouse as required under section 212(a)(9)(B)(v) of the Act. It has also been established that the applicant merits a favorable exercise of discretion. The applicant has therefore met her burden of proving eligibility for a waiver of her ground of inadmissibility pursuant to section 212(a)(9)(B)(v) of the Act. The Form I-601 appeal will therefore be sustained.

ORDER: The appeal is sustained.