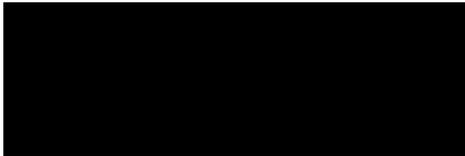


U.S. Department of Homeland Security  
U.S. Citizenship and Immigration Services  
Administrative Appeals Office (AAO)  
20 Massachusetts Ave., N.W., MS 2090  
Washington, DC 20529-2090  
**U.S. Citizenship  
and Immigration  
Services**



H6

Date: OCT 23 2012

Office: ATHENS, GREECE

FILE:

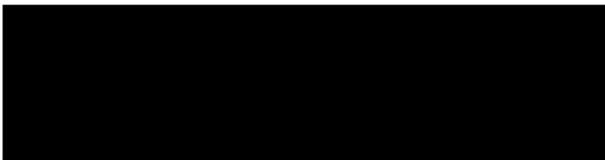


IN RE: Applicant:



APPLICATION: Application for Waiver of Grounds of Inadmissibility pursuant to section 212(a)(9)(B)(v) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(9)(B)(v), and Application for Permission to Reapply for Admission into the United States after Deportation or Removal under Section 212(a)(9)(A) of the Immigration and Nationality Act, 8 U.S.C. § 1182(a)(9)(A)

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 "Perry Rhew".

Perry Rhew  
Chief, Administrative Appeals Office

**DISCUSSION:** The Application for Waiver of Grounds of Inadmissibility (Form I-601) and Application for Permission to Reapply for Admission into the United States after Deportation or Removal (Form I-212) were denied by the Field Office Director, Athens, Greece. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained.

The record reflects that the applicant is a citizen of Israel who was found to be inadmissible to the United States pursuant to section 212(a)(9)(B)(i)(II) of the Act for having been unlawfully present in the United States for more than one year, and section 212(a)(9)(A) of the Act as an alien who has been previously removed. The applicant is married to a U.S. citizen and is the son of a U.S citizen parent, and seeks a waiver of inadmissibility pursuant to section 212(a)(9)(B)(v) of the Act and permission to reenter the United States in order to reside with his wife and mother in the United States.

The field office director found that the applicant failed to establish extreme hardship to a qualifying relative and denied the application accordingly. *Decision of the Field Office Director*, dated March 28, 2011.

On appeal, the applicant contends his wife's health is deteriorating as a result of their separation, and that she cannot relocate to Israel because she has no attachment or relation to Israel, a country in a constant state of war and under permanent threat of terrorism.

The record contains, *inter alia*: a copy of the marriage certificate of the applicant and his wife, indicating they were married on June 17, 2004; a copy of the birth certificate of the couple's U.S. citizen child; a letter and an affidavit from letters from letters and a declaration from the applicant's mother, a letter from a copy of Medical Certification for Disability Exceptions; a copy of the applicant's brother's Social Security benefit statement; letters of support; articles addressing multiple sclerosis; a copy of the U.S. Department of State's Travel Warning for Israel and other background materials; letters from employer; copies of tax returns, bills, and other financial documents; copies of photographs of the applicant and his family; and an approved Petition for Alien Relative (Form I-130). The entire record was reviewed and considered in rendering this decision on the appeal.

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 -

....

(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.

Section 212(a)(9) of the Act provides:

(A) *Certain aliens previously removed.*

- (i) *Arriving aliens.* Any alien who has been ordered removed under section [235(b)(1) of the Act] . . . and who again seeks admission within 5 years of the date of such removal (or within 20 years in the case of a second or subsequent removal or at any time in the case of an alien convicted of an aggravated felony) is inadmissible.
- (ii) *Other aliens.* Any alien not described in clause (i) who-
  - (I) has been ordered removed under section 240 or any other provision of law, or
  - (II) departed the United States while an order of removal was outstanding, and who seeks admission within 10 years of the date of such alien's departure or removal (or within 20 years of such date in the case of a second or subsequent removal or at any time in the case of an alien convicted of an aggravated felony) is inadmissible.
- (iii) *Exception.* – Clauses (i) and (ii) shall not apply to an alien seeking admission within a period if, prior to the date of the alien's reembarkation at a place outside the United States or attempt to be admitted from foreign contiguous territory, the Attorney General has consented to the alien's reapplying for admission.

In this case, the record shows, and the applicant does not contest, that he was unlawfully present in the United States from November 1999, when an immigration judge ordered the applicant removed *in absentia*, until January 2005, when the applicant filed his first Application to Register Permanent

Residence or Adjust Status (Form I-485). The applicant accrued unlawful presence of over five years and was removed from the United States on March 12, 2008. Accordingly, he is inadmissible to the United States under section 212(a)(9)(B)(i)(II) of the Act for being unlawfully present in the United States for a period of one year or more and section 212(a)(9)(A)(ii) as an alien who has been ordered removed and who was removed while an order of removal was outstanding.

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.

After a careful review of the record, the AAO finds that the applicant's wife, ██████████ has suffered and will continue to suffer extreme hardship if the applicant's waiver application were denied. The record contains ample documentation showing that ██████████ was diagnosed with multiple sclerosis in 2005. Letters from her physician state that multiple sclerosis is a chronic and progressive disease and that ██████████ symptoms have included pain and optic neuritis, which causes blindness and severe blurred vision, and that she requires daily injections of medication. According to her physician, disease management requires that ██████████ not be overly stressed physically or emotionally and as her multiple sclerosis progresses, it will become increasingly important for her husband to assist her in her care, including providing medical, physical, and emotional support. In addition, the record shows that since the applicant's departure from the United States, ██████████ has been caring for their seven-year old daughter, whom a Special Education teacher describes as being very defiant and incontinent, as a single parent while continuing to work full-time. The record shows ██████████ mother is deceased and according to ██████████ she also helps care for her seventy-two year old father. Considering these unique circumstances, the AAO finds that if ██████████ continues to stay in the United States without her husband, the effect of separation from the applicant goes above and beyond the experience that is typical to individuals separated as a result of inadmissibility or exclusion and rises to the level of extreme hardship.

Furthermore, relocating to Israel or to the Ukraine, where the applicant was born, to avoid separation would be an extreme hardship for ██████████. Relocation would disrupt the continuity of her health care and, as ██████████ contends, she would lose her health insurance that she currently has through her employer. In addition, the AAO notes that the U.S. Department of State has issued a Travel Warning addressing the risks for U.S. citizens of traveling to Israel due to ongoing violence and terrorist activity. *U.S. Department of State, Travel Warning, Israel*, dated August 10, 2012. The U.S. Department of State also suggests that "[i]f you are ill or infirm, we strongly recommend that you not travel to Ukraine." *U.S. Department of State, Country Specific Information, Ukraine*, dated June 6, 2012. Considering these factors cumulatively, the AAO finds that the hardship ██████████ would experience if she relocated to Israel or the Ukraine to be with her husband is extreme, going well beyond those hardships ordinarily associated with inadmissibility or exclusion. The AAO therefore finds that the evidence of hardship, considered in the aggregate and in light of the *Cervantes-Gonzalez* factors cited above, supports a finding that ██████████ faces extreme hardship if the applicant is refused admission.

The AAO also finds that the applicant merits a waiver of inadmissibility as a matter of discretion.

In discretionary matters, the alien bears the burden of proving that positive factors are not outweighed by adverse factors. *See Matter of T-S-Y-*, 7 I&N Dec. 582 (BIA 1957). The adverse factors in the present case include the applicant's unlawful presence in the United States, the applicant's failure to appear for his immigration hearing and his subsequent deportation, and the applicant's arrest for driving while intoxicated in 2002. The favorable and mitigating factors in the present case include: family ties in the United States including his U.S. citizen wife, daughter, and mother; the extreme hardship to the applicant's wife if he were refused admission; the hardship to the applicant's mother, whom the record shows has been diagnosed with severe depression and Alzheimer's disease, if he were refused admission; letters of support in the record describing the applicant as a great father and a person who always goes beyond the call of duty to help others; and the fact that the applicant has not had any other arrests or convictions in the past ten years.

The AAO finds that, although the applicant's immigration violations and arrest are serious and cannot be condoned, when taken together, the favorable factors in the present case outweigh the adverse factors, such that a favorable exercise of discretion is warranted. Therefore, the AAO finds that the applicant has established that a favorable exercise of the Secretary's discretion is warranted for the applicant's Form I-601 as well as for his Form I-212. Accordingly, the appeal will be sustained.

**ORDER:** The appeal is sustained.