



U.S. Citizenship
and Immigration
Services

(b)(6)

DATE: APR 09 2013 OFFICE: DETROIT, MICHIGAN

FILE: [REDACTED]

IN RE: Applicant: [REDACTED]

APPLICATIONS: 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.

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,

Ron Rosenberg
Acting Chief, Administrative Appeals Office

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

The record reflects that the applicant is a native and citizen of Canada 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 record indicates that the applicant is married to a U.S. citizen and he is the father of two U.S. citizen children. He is the beneficiary of an approved Petition for Alien Relative (Form I-130) and Petition for Alien Fiancé (Form I-129F). The applicant 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 his spouse and children.

The Field Office Director found that the applicant had failed to establish that extreme hardship would be imposed on the applicant's qualifying relative and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) accordingly. *Decision of the Field Office Director*, dated August 7, 2012.

On appeal, the applicant, through counsel, asserts that the Field Office Director erred in denying the applicant's waiver application. *Form I-290B, Notice of Appeal or Motion*, filed September 7, 2012. Counsel claims that the applicant's wife will suffer extreme hardship if she is separated from the applicant or joins him in Canada. *Id.* Counsel also submits new evidence of hardship on appeal.

The record includes, but is not limited to, counsel's briefs, statements from the applicant's wife and family, letters of support, medical and psychological documents for the applicant's wife, financial documents, household and utility bills, employment documents for the applicant's wife, articles on the effect of removal of parents on children and families, and country-conditions documents for Canada. The entire record was reviewed and considered in arriving at a decision on the appeal.

Section 212(a)(9) 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.

....

- (v) Waiver.-The [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.

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 children can be considered only insofar as it results in hardship to a qualifying relative. The applicant's wife 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 United States Citizenship and Immigration Services (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 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. 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. INS*, 138 F.3d 1292, 1293 (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 indicates that on July 17, 2000, the applicant entered the United States under a valid TN nonimmigrant status and remained in that status until December 20, 2004. There is no evidence that he applied for and was granted an extension of stay. In January 2011, the applicant departed the United States.¹ On January 2, 2011, the applicant was denied entry into the United States based on his unlawful presence and unauthorized employment. He reentered the United States on April 26, 2011 under a valid TN nonimmigrant status. On November 25, 2011, the applicant filed an application for adjustment of status, which was denied on August 7, 2012. The applicant accrued unlawful presence between December 20, 2004, and January 2011. The applicant is, therefore, 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 more than one year, and he seeks admission within 10 years of his departure from the United States. The applicant does not contest his inadmissibility.

The record contains references to hardship the applicant’s children would experience if the waiver application were denied. It is noted that Congress did not include hardship to an alien’s child as a factor to be considered in assessing extreme hardship. In the present case, the applicant’s spouse is the only

¹ The applicant’s waiver application indicates he was in the United States until January 2, 2011. According to his spouse’s affidavit dated September 25, 2012, however, the family left the United States in December 2010. This inconsistency in departure dates does not affect the unlawful-presence determination in this case.

qualifying relative for the waiver under section 212(a)(9)(B)(v) of the Act, and hardship to the applicant's children will not be separately considered, except as it may affect the applicant's spouse.

Describing her hardship should she join the applicant in Canada, in her statement dated September 25, 2012, the applicant's wife states she has no family in Canada, all of her family resides in the United States, and she is "extremely close" to them. In her appeal brief, counsel indicates that the applicant's wife relies on her parents and sister for support. In a psychological evaluation dated September 13, 2012, counselor [REDACTED] indicates that it would be difficult for the applicant's wife to reside in Canada, because of the distance from her family and the costs to travel back to the United States to visit her family. Counsel also states it would be difficult for the applicant's wife to travel back to the United States with three small children, and because her parents are getting older and her sister works full-time, it would be difficult for them to travel to Canada. The applicant's wife also states their children would suffer by being separated from her family, because they spend so much time together.

Counsel states Canada has high unemployment rates, and the applicant and his wife would have difficulty finding "suitable work" there. The applicant's wife states she is self-employed as a photographer. Her photography business focuses on portraits for high-school seniors, and there is no market for this type of photography in Canada. Counsel claims the applicant's wife would lose the money she has invested in her business and her client base. Additionally, if the applicant's wife is able to secure employment in Canada, she would not make enough money to pay off her debts. Counsel also states that the applicant's wife will be ineligible for Canadian health coverage for a year, and she will be unable to afford the out-of-pocket medical expenses she needs before her coverage begins. Moreover, counsel states healthcare in Canada is "far inferior to the American system of health coverage."

The AAO acknowledges that the applicant's wife is a U.S. citizen and that relocation abroad would involve some hardship. However, the record does not contain documentary evidence showing that she would be unable to obtain employment in Canada that would allow her to use the skills she has acquired in the United States. The submitted country-conditions documents do not indicate that the applicant's wife would be unable to work as a photographer in Canada. Going on record without supporting documentation is not sufficient to meet the applicant's burden of proof in this proceeding. *See 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)). Regarding the medical hardship to the applicant's spouse, no documentary evidence was submitted establishing that she cannot receive medical treatment for her conditions in Canada or that she has to remain in the United States to receive treatment. Additionally, regarding the hardship that the applicant's children may experience in Canada, they are not qualifying relatives under the Act, and the applicant has not shown that hardship to their children would elevate his wife's challenges to an extreme level. Therefore, based on the record before it, the AAO finds that, considering the potential hardships in the aggregate, the applicant has failed to establish that his wife would suffer extreme hardship if she relocated to Canada.

Concerning the applicant's wife's hardship in the United States, in her statement dated September 25, 2012, the applicant's sister-in-law claims that her sister will "face significant emotional distress" if separated from the applicant. The applicant's wife claims that she has a history of anxiety and has sought

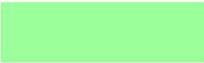
treatment for it in the past. [REDACTED] reports that according to the applicant's wife, she has struggled with anxiety for the last 10 years and she also has obsessive-compulsive disorder (OCD). The applicant's wife claims that she is feeling anxious again, but the applicant helps her manage her stress better than therapy. [REDACTED] diagnoses the applicant's wife with depressive disorder and post-traumatic stress, and indicates that her OCD would be exacerbated if she is separated from the applicant. Additionally, in her statement dated September 12, 2012, nurse [REDACTED] indicates that "it would be an emotional hardship" for the applicant's wife to be separated from the applicant, because her pregnancy is complicated by advanced maternal age.

The applicant's sister-in-law states that during the three months that the applicant and his wife were separated, his wife was "an emotional wreck, extremely anxious, and physically worn out." Ms. [REDACTED] states the applicant's wife suffered "serious depression" during her previous separation from the applicant. The applicant's wife claims that without the applicant, it was difficult to take care of their child on her own. [REDACTED] reports that the applicant's wife felt she was "out of control," "screaming at her young child, and [she] came close to shaking him." Additionally, the applicant's wife states their children need the applicant's presence.

The applicant's wife states the applicant is the sole provider for their family, and his employment provides health insurance for the family. She states she is self-employed as a part-time photographer. She claims that without the applicant's income, they will be unable to afford their home and will lose their health insurance. Counsel states the applicant's health insurance is "critical" for his wife, since she is expecting their third child. Additionally, counsel states the applicant's wife would be unable to afford to travel between the United States and Canada. Further, she will be unable to afford the monthly household expenses and daycare for their children.

The AAO acknowledges that the applicant's wife will suffer emotional and financial hardship due to her separation from the applicant. The AAO finds that when the applicant's wife's emotional and financial issues are considered in combination with the hardships that usually result from separation of a spouse, and the effect of their children's hardship on her, the applicant has established that his wife will experience extreme hardship in the United States in his absence.

We can find extreme hardship warranting a waiver of inadmissibility only where an applicant has demonstrated extreme hardship to a qualifying relative in the scenario of separation *and* the scenario of relocation. A claim that a qualifying relative will remain in the United States and thereby suffer extreme hardship as a consequence of separation can easily be made for purposes of the waiver even where there is no intention to separate in reality. *See Matter of Ige, supra* at 886. Furthermore, to separate and suffer extreme hardship, where relocating abroad with the applicant would not result in extreme hardship, is a matter of choice and not the result of inadmissibility. *Id., see also Matter of Pilch, supra* at 632-33. As the applicant has not demonstrated extreme hardship from relocation, we cannot find that refusal of admission would result in extreme hardship to the qualifying relative in this case.



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In proceedings for application for waiver of grounds of inadmissibility under section 212(a)(9)(B)(v) of the Act, the burden of proving eligibility remains entirely with the applicant. *See* 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.