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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

Date: **APR 17 2013**

Office: ROME (LONDON)

FILE: [REDACTED]

IN RE: Applicant: [REDACTED]

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.

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,

*R*   
Ron Rosenberg  
Acting Chief, Administrative Appeals Office

**DISCUSSION:** The waiver application was denied by the District Director, Rome, Italy, and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The record establishes that the applicant is a native of Eritrea and national of Sweden who entered the United States on multiple occasions under the Visa Waiver Program and remained beyond the period of authorized stay. The applicant was thus 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. The applicant does not contest this finding of inadmissibility. Rather, he seeks a waiver of inadmissibility in order to reside in the United States with his U.S. citizen fiancée.

The district 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 Inadmissibility (Form I-601) accordingly. *Decision of the District Director*, dated July 25, 2012.

In support of the appeal, counsel submits the following: a brief; an affidavit from the applicant's fiancée; financial documentation; mental health documentation pertaining to the applicant's fiancée; an affidavit from the applicant's sibling and medical and mental health documentation pertaining to the applicant's niece; and a support letter regarding the applicant's care of his mother. 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. The applicant's U.S. citizen fiancée is the only qualifying relative in this case. Hardship to the applicant can be considered only insofar as it results in hardship to a qualifying relative. 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*, 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 fiancée contends that she will suffer emotional, academic and financial hardship were she to remain in the United States while the applicant continues to reside abroad due to his inadmissibility. In a declaration, the applicant’s fiancée explains that she is in her late 40s and wants to have a child and she thus needs the applicant to reside in the United States. In addition, the applicant’s fiancée details that she has to work two jobs to make ends meet, and were the applicant to reside in the United States, he would be able to assist her financially, which would enable her to return to school to become a Registered Nurse. Finally, the applicant’s fiancée details that as a result of the applicant’s inadmissibility, she is having abdominal pains, palpitations, and nervousness and is struggling with anxiety and depression. *Affidavit of* [REDACTED] dated August 21, 2012.

To begin, the mental health documentation provided does not establish that the emotional and physical hardships the applicant’s fiancée is experiencing are beyond the hardships normally associated with long-term separation from a fiancée. Nor has it been established that the applicant’s fiancée is unable to visit the applicant abroad on a regular basis. 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)). As for the academic and financial hardship referenced, no documentation has been provided on appeal concerning the applicant’s financial contributions to his fiancée’s household prior to his departure from the United States to establish that his absence specifically has caused his fiancée financial hardship and the inability to pursue her studies. Finally, it has not been established that the applicant is unable to obtain gainful employment abroad that would allow him to assist his fiancée financially in the United States. The AAO recognizes that the applicant’s fiancée will endure hardship as a result of continued separation from the applicant. However, her situation, if she 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 AAO concludes that based on the evidence provided, it has not been established that the applicant's U.S. citizen fiancée will experience extreme hardship were she to remain in the United States while the applicant continues to reside abroad due to his inadmissibility.

The applicant's fiancée contends that she would experience hardship were she to relocate abroad to reside with her fiancée due to his inadmissibility. To begin, she explains that she fled Eritrea in 1978 and came to the United States as a refugee in 1981 and as a result of the political and financial turmoil there, she does not want to return to her and her fiancé's native country. As for relocating to Sweden, the applicant's fiancée details that although she visited Sweden for about two weeks in 2011, she experienced hardship as a result of being unfamiliar with the country, culture, customs and language. Finally, the applicant's fiancée details that she has been residing in the United States for over 31 years and were she to relocate abroad, she would suffer due to long-term separation from her gainful employment, her community, her friends, her church and all she is familiar with. *Supra* at 3-4 and *Affidavit from* [REDACTED] dated April 20, 2012.

The record establishes that the applicant's fiancée, currently in her late 40s, fled Eritrea as a teenager and has no ties to Sweden. Moreover, as noted by the applicant's fiancée, she has been residing in the United States for over three decades. Further, the record establishes that she has been gainfully employed for over a decade with [REDACTED], recently obtained her CAN (Certified Nursing Assistant) certification, and wishes to continue school to become a Registered Nurse. Were the applicant's fiancée to relocate abroad to reside with the applicant as a result of his inadmissibility, she would have to leave her community, her church, her friends, the pursuit of a degree in registered nursing, and her long-term gainful employment. It has thus been established that the applicant's fiancée would suffer extreme hardship were she to relocate abroad to reside with the applicant due to his inadmissibility.

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 relocate and thereby suffer extreme hardship can easily be made for purposes of the waiver even where there is no actual intention to relocate. *Cf. Matter of Ige*, 20 I&N Dec. 880, 886 (BIA 1994). Furthermore, to relocate and suffer extreme hardship, where remaining in the United States and being separated from the applicant would not result in extreme hardship, is a matter of choice and not the result of inadmissibility. *Id.*, also *cf. Matter of Pilch*, 21 I&N Dec. 627, 632-33 (BIA 1996). As the applicant has not demonstrated extreme hardship from separation, we cannot find that refusal of admission would result in extreme hardship to the applicant's fiancée in this case.

The record, reviewed in its entirety, does not support a finding that the applicant's U.S. citizen fiancée 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 or fiancé(e) is removed from

the United States or is refused admission. There is no documentation establishing that the applicant's fiancée's hardships are any different from other families separated as a result of immigration violations. Although the AAO is not insensitive to the applicant's fiancée's situation, the record does not establish that the hardships she would face rise to the level of "extreme" as contemplated by statute and case law.

In proceedings for application for waiver of grounds of inadmissibility under section 212(i) of the Act, 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 application is denied.