

(b)(6)

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



U.S. Citizenship
and Immigration
Services

DATE: **AUG 28 2013**

OFFICE: NEBRASKA SERVICE CENTER

File: [REDACTED]

IN RE:

Applicant: [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:

SELF-REPRESENTED

INSTRUCTIONS:

This is a non-precedent decision. The AAO does not announce new constructions of law nor establish agency policy through non-precedent decisions. If you believe the AAO incorrectly applied current law or policy to your case or if you seek to present new facts for consideration, you may file a motion to reconsider or a motion to reopen, respectively. Any motion must be filed on a Notice of Appeal or Motion (Form I-290B) within 33 days of the date of this decision. **Please review the Form I-290B instructions at <http://www.uscis.gov/forms> for the latest information on fee, filing location, and other requirements.** See also 8 C.F.R. § 103.5. **Do not file a motion directly with the AAO.**

Thank you,

A handwritten signature in cursive script, appearing to read "Michael Shumway".

for Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The Nebraska Service Center Director denied the waiver application and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native and citizen of Haiti 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 the fiancé of a U.S. citizen and the beneficiary of an approved Petition for Alien Fiancé(e) (Form I-129). 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.

The director concluded that the applicant failed to establish that extreme hardship would be imposed on a qualifying relative and denied the Form I-601, Application for Waiver of Grounds of Inadmissibility (Form I-601), accordingly. *See Decision of the Service Center Director*, dated August 6, 2012.

On appeal the applicant's fiancée contends that she will suffer extreme hardship if a waiver is not granted. *See Form I-290B, Notice of Appeal or Motion* (Form I-290B), received September 8, 2012.

The record contains, but is not limited to: Form I-290B, the applicant's fiancée's statement thereon and a supporting brief; earlier statements from the applicant's fiancée, her children, and the applicant's children; birth, marriage and divorce certificates; documents related to the applicant's refugee claim in Canada; employment verification for the applicant's fiancée; financial records; medical records; family photos; and Haiti country conditions information. The entire record was reviewed and considered in rendering this decision on the appeal.

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

(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.

The record shows that the applicant entered the United States on November 22, 2002 with a B-2 visitor visa. The applicant overstayed the period authorized by his temporary visa before departing the United States in August 2006 to Canada, where he filed a claim for refugee

protection. The applicant accrued unlawful presence in the United States for a period in excess of one year. As the applicant is seeking admission within 10 years of his departure, he was found to be inadmissible pursuant to section 212(a)(9)(B)(i)(II) of the Act, 8 U.S.C. § 1182(a)(9)(B)(i)(II). The record supports this finding, the applicant does not contest inadmissibility, and the AAO concurs that the applicant is inadmissible under section 212(a)(9)(B)(i)(II) of the Act.

A waiver of inadmissibility under section 212(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, fiancé(e), 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. In the present case, the applicant's fiancée is his only 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-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 fiancée is a 36-year-old native and citizen of the United States who asserts extreme hardship of an economic nature. She indicates that in June 2006, two months before the applicant relocated to Canada, she met him when her car broke down and he repaired it. She writes that the applicant is a hard worker, great provider, loves his children/family, and is needed in the United States to make their economic situation better. The applicant's fiancée states that she has substantial debt including several medical bills which have been sent to collections. A document from [REDACTED] indicates that the applicant's fiancée has been employed by the company since March 2009, works as a customer assistant and earns an annual salary of \$29,702. Billing statements submitted for the record show that two medical bills, totaling \$464.23, have been referred for collection. The applicant's fiancée has additionally submitted a resident ledger, a lease, and several billing statements. She maintains that if admitted, the applicant would start his own auto repair shop business in the United States through which her economic situation would be improved. No documentary evidence has been submitted demonstrating the applicant's earnings in Canada over the past six years, his past earnings in the United States, or any other evidence from which an accurate assessment might be made as to the likely financial impact of the applicant's admission to the United States. While the applicant's admission may result in some financial contribution toward his fiancée's ongoing expenses, the evidence in the record is insufficient to establish that she is unable to continue supporting herself in his absence, during the four years remaining in his temporary period of inadmissibility.

The applicant's fiancée states that during the six years she has been separated from the applicant, she has endured financial hardship that is now devastating her health and causing her an extreme amount of stress. While medical records show that the applicant's fiancée miscarried in January 2012 and was diagnosed with onset Diabetes II in March 2012, the evidence does not show that

either condition is a result of separation from the applicant. While not insignificant, the evidence in the record does distinguish any physical or emotional difficulties faced by the applicant's fiancée from those ordinarily associated with a loved one's inadmissibility. The AAO acknowledges that separation from the applicant has and may continue to cause various difficulties for the applicant's fiancée. However, we find the evidence in the record insufficient to demonstrate that the challenges encountered by the qualifying relative, when considered cumulatively, meet the extreme hardship standard.

Addressing relocation, the applicant's fiancée indicates that she has never resided in Haiti, has no family there and does not speak French Creole. She states that relocation would result in the loss of her current employment and with it the excellent employer-provided health insurance she and her two children, ages 16 and 18, enjoy in the United States. The applicant's fiancée writes that the lack of affordable and adequate health care in Haiti is an issue. She states that she is deeply concerned for her safety as kidnapping in Haiti is rising. In addition to the country conditions information submitted for the record, the AAO has reviewed the U.S. State Department's current Travel Warning for Haiti, dated August 13, 2013. Therein U.S. citizens are warned that Haiti's infrastructure remains in poor condition and inadequate, and that medical facilities, including ambulance services, are particularly weak. The report continues that U.S. citizens have been victims of violent crime, including murder and kidnapping, predominately in the Port-au-Prince area, and while the Haitian government has made progress in recent months to arrest and disrupt perpetrators, kidnapping for ransom can affect anyone in Haiti, particularly those maintaining long-term residence.¹ The applicant's fiancée states that Haiti has a very bad economy, jobs are practically non-existent, and the unemployment rate is extremely high. The record contains no supporting documentary evidence that addresses employment in Haiti or the country's economy.

While the AAO finds the evidence sufficient to demonstrate that the applicant's fiancée would experience extreme hardship were she to relocate to Haiti, 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.

Also, we find that the evidence in the record is insufficient to demonstrate that the applicant's fiancée could not relocate to Canada, where he currently resides. The record shows that the applicant has resided in Toronto, Ontario, Canada since August 2006. Letters from the applicant's children indicate that his 36-year-old daughter, [REDACTED] and his 34-year-old son, [REDACTED] also reside in Toronto. The applicant's fiancé writes that the applicant does not have permanent immigration

¹ http://travel.state.gov/travel/cis_pa_tw/tw/tw_6051.html

status in Canada, would be unable to sponsor her to reside with him there, and thus she and her children would have to relocate to Haiti to be with him. She adds that the biological father of her 16-year-old son may not allow him to leave the United States, but no corroborating documentary evidence has been submitted. The record is not conclusive regarding the applicant's current immigration status in Canada. While a decision dated April 7, 2009 shows that the applicant was denied refugee status in Canada, the applicant's fiancée indicates only that he does not have permanent status. She also indicates that she was visited him there. There is no evidence in the record indicating that the government of Canada has attempted to deport the applicant's fiancée or ordered him to leave the country, or that he has any intention of voluntarily returning to Haiti himself. No evidence has been submitted to address whether the applicant is currently employed in Canada and/or whether he is authorized to work there. Therefore, we will not rule out the possibility of the applicant's fiancée relocating to Canada, which would render relocation to Haiti a choice, and not the result of inadmissibility, assuming the applicant cannot show that his fiancée would experience extreme hardship in Canada. 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)).

The applicant has, therefore, failed to demonstrate that the challenges his fiancée faces are unusual or beyond the common results of removal or inadmissibility to the level of extreme hardship. Accordingly, the AAO finds that the applicant has failed to demonstrate extreme hardship to a qualifying relative and thus, no purpose would be served in determining whether he merits a waiver as a matter of discretion.

In application proceedings, it is the applicant's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361. Here, that burden has not been met.

ORDER: The appeal is dismissed.