



U.S. Citizenship
and Immigration
Services

(b)(6)

DATE: FEB 27 2013

OFFICE: MOSCOW

IN RE:

APPLICATION:

Application for Waiver of Grounds of Inadmissibility under Section 212(a)(9)(B)(v) and 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 black ink that reads "Ron Rosenberg".

Ron Rosenberg
Acting Chief, Administrative Appeals Office

(b)(6)

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

The applicant is a native and citizen of Ukraine 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 readmission within ten years of her departure from the United States. The applicant 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 live in the United States with her U.S. citizen spouse and lawful permanent resident child.

The Field Office Director concluded that the applicant failed to establish that extreme hardship would be imposed on a qualifying relative and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) accordingly. *See Decision of the Field Office Director*, dated May 31, 2012.

On appeal counsel contends that the director's decision is erroneous as a matter of fact and law and an abuse of discretion. *See Form I-290B, Notice of Appeal or Motion* (Form I-290B), received June 7, 2012, and *counsel's brief*.

Counsel refers to AAO decisions from other cases to support his assertions. The AAO notes that only published decisions by the AAO that are designated as precedent in accordance with the requirements discussed in 8 C.F.R. § 103.3(c) are binding on U.S. Citizenship and Immigration Services (USCIS) officers.

The record contains, but is not limited to: Form I-290B; counsel's brief; Forms I-601; Form I-485, Application to Register Permanent Residence or Adjust Status; Forms I-130; statements by the applicant and the applicant's spouse, son, family and friends; psychiatric and psychological reports of the applicant's spouse; medical documents; telephone records; financial documents; birth, marriage and divorce certificates; and country-conditions reports. 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.

The record reflects that the applicant entered the United States on May 23, 2004 on a fiancée visa and was authorized to remain until August 21, 2004. The applicant did not depart and was placed in immigration proceedings. She timely complied with an order granting her voluntary departure by departing from the United States on November 4, 2010. The record supports the inadmissibility finding pursuant to section 212(a)(9)(B)(i)(II) of the Act, and counsel does not contest the applicant's inadmissibility.

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

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 first upon a showing that the bar imposes an extreme hardship on a qualifying family member, which includes the U.S. citizen or lawful permanent resident spouse or parent of the applicant. Hardship to the applicant and his child can be considered only insofar as it results in hardship to a qualifying relative. In the present case, the applicant's spouse is the 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*, 22 I&N Dec. 560, 565 (BIA 1999), the 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 U.S. 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 v. I.N.S.*, 138 F.3d 1292 (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 contains references to hardship the applicant’s child would experience if the waiver application were denied. It is noted that Congress did not include hardship to an alien’s children as a factor to be considered in assessing extreme hardship under section 212(a)(9)(B)(v) of the Act. In the present case, the applicant’s spouse is the only qualifying relative for the waiver under section 212(a)(9)(B)(v) of the Act, and hardship to the applicant’s child will not be separately considered, except as it may affect the applicant’s spouse.

The AAO finds that the applicant has established that her husband is suffering extreme hardship as a consequence of being separated from her. The applicant’s 34 year-old husband married the applicant on February 4, 2008. The applicant’s spouse states that after meeting the applicant he felt a sense of hope in his life that he had not had for a long time. He explains he and the applicant worked hard for their dreams of family-oriented life to come true and purchased a car and a home and filed the immigration applications for the applicant and her son to have legal status in the United States. After the applicant’s application to adjust her status to lawful permanent resident

was denied, the applicant's spouse states he felt lost, hopeless, nervous and could not sleep or eat. He explains that he could not cope with these feelings, and began to see a psychiatrist in July 2009; his claim is corroborated by a report from Dr. [REDACTED] dated July 12, 2009. After the applicant left the United States, the applicant's spouse states that he wanted to spend all his time talking to the applicant. The record includes corroborating evidence of phone records of their communication. The applicant's spouse maintains that he had trouble concentrating at work, could not sleep and lost his appetite. He sought medical help and began to take anti-depressants under the supervision of his primary-care physician. A note from Dr. [REDACTED] and prescription receipts were submitted as evidence. He later began treatment with psychiatrist Dr. [REDACTED] who diagnosed the applicant with adjustment disorder with mixed anxiety and depressed mood. The applicant's spouse continued to see Dr. [REDACTED] on a monthly basis, who found that the applicant's spouse's mental condition was worsening despite his taking medications. Dr. [REDACTED] notes in a report dated April 24, 2012 that the applicant's spouse has panic attacks, "unpleasant dreams," and "severe levels of insomnia [and] depression" due to his separation from the applicant. The applicant's spouse was also referred to a psychologist, Dr. [REDACTED] who diagnosed him with severe major depressive disorder in February 2012. A letter from Dr. [REDACTED] explains that the applicant's spouse has undergone regular treatment with him between February and April 2012, and his symptoms range "from moderate to acute." Dr. [REDACTED] states that in April 2012, he found the applicant's spouse "to be in more personal distress than usual" and he remained "persistently sad, hopeless, . . . helpless [and] highly anxious." On June 18, 2012, hospital records indicate that the applicant was admitted to [REDACTED] after he told his aunt he wanted to "jump off a bridge." Records indicate that the dosage of his anti-depressant medication was increased and he underwent therapy.

The applicant's spouse's psychiatrist and psychologist indicate that the applicant's spouse struggles financially. The applicant's spouse indicates that he is paying their mortgage of \$1,617.00 per month and other household expenses; he also sends money to the applicant, as financial documents and remittance receipts demonstrate. He states he is also paying thousands of dollars in travel to Ukraine to visit the applicant, expenses to take care of the applicant's son who lives with him, and attorney's fees, which he struggles to pay. He states and documents corroborate that his yearly income is approximately \$30,000.00. He maintains that in the last nine months, his account balance has significantly decreased, as bank statements in the record show. He fears that he will be depleted of funds in the near future and will not be able to support himself or his family.

The AAO has considered cumulatively all assertions of separation-related hardship to the applicant's spouse, including the emotional strain of being separated from his wife; his delicate psychological state; the financial responsibilities of maintaining two households, his own and the applicant's in Ukraine; the care he provides alone for the applicant's son; and the expenses of travel to visit the applicant. Considered in the aggregate, the AAO finds that the evidence is sufficient to demonstrate that the applicant's U.S. citizen spouse is suffering and would continue to suffer extreme hardship due to separation from the applicant.

The applicant also demonstrates that her qualifying spouse would suffer extreme hardship in the event that he relocated to Ukraine. The applicant's spouse states that he does not speak Ukrainian,

which is the national language. He explains that Ukrainian society is very nationalistic and fears being harmed and discriminated against for being a foreigner and U.S. citizen. He also fears general violence and crime there. He states that when he has visited Ukraine, he always felt nervous and remained vigilant for fear of being attacked because he is not Ukrainian. He states that he is always accompanied by someone for his own safety and to translate for him. Country-condition reports of Ukraine corroborate the applicant's spouse's sentiments and illustrate instances of violence directed towards non-nationals.

The applicant's spouse further fears financial hardship in Ukraine. He states that the applicant has applied for multiple jobs, including that of a teacher and a maid, and has not received any offers of employment. He explains that the language barrier and discrimination against foreigners will cause him difficulty in finding employment. He notes that the society is economically unstable. He also states that medications are expensive and hard to find in Ukraine, and without them he would "completely fall apart." He further explains that people in Ukraine are "disgusted by or hate people with psychological problems." Country-conditions that were submitted indicate that those with mental health issues have been abused by their own family, neighbors, police and the state and are usually treated in psychiatric hospitals and institutions.

The applicant's spouse also has family and community ties to the United States. His aunt whom he stayed with explains that he has three nephews that he adores and treats as his own children and also an extensive network of friends. She explains that he would be forced to leave all of these if he relocated to Ukraine. The applicant's spouse states that the only person he would know in Ukraine is his wife.

The AAO has considered cumulatively all assertions of relocation-related hardship to the applicant's spouse, including possible harm and discrimination; the language barrier; a lack of financial resources; stated safety concerns; societal stigmatization of mental health conditions; a lack of mental health services and medical care; and family and community ties in the United States. Considered in the aggregate, the AAO finds that the evidence is sufficient to demonstrate that the applicant's U.S. citizen spouse would suffer extreme hardship were he to relocate to Ukraine to be with the applicant.

Considered in the aggregate, the applicant has established that his wife would face extreme hardship if the applicant's waiver request is denied. Extreme hardship is a requirement for eligibility, but once established it is but one favorable discretionary factor to be considered. *Matter of Mendez-Moralez*, 21 I&N Dec. at 301. For waivers of inadmissibility, the burden is on the applicant to establish that a grant of a waiver of inadmissibility is warranted in the exercise of discretion. *Id.* at 299. The adverse factors evidencing an alien's undesirability as a permanent resident must be balanced with the social and humane considerations presented on his behalf to determine whether the grant of relief in the exercise of discretion appears to be in the best interests of this country. *Id.* at 300.

In *Matter of Mendez-Moralez*, in evaluating whether section 212(h)(1)(B) relief is warranted in the exercise of discretion, the Board stated that:

The factors adverse to the applicant include the nature and underlying circumstances of the exclusion 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, recency and seriousness, and the presence of other evidence indicative of an 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 the alien began his residency at a young age), evidence of hardship to the alien and his family if he is excluded and deported, service in this country's Armed Forces, a history of stable employment, the existence of property or business ties, evidence of value and service to 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).

Id. at 301.

The Board further states that upon review of the record as a whole, a balancing of the equities and adverse matters must be made to determine whether discretion should be favorably exercised. The equities that the applicant for section 212(a)(9)(B)(v) relief must bring forward to establish that she merits a favorable exercise of administrative discretion will depend in each case on the nature and circumstances of the ground of exclusion sought to be waived and on the presence of any additional adverse matters, and as the negative factors grow more serious, it becomes incumbent upon the applicant to introduce additional offsetting favorable evidence. *Id.* at 301.

The favorable factors in this matter are the extreme hardship the applicant's U.S. citizen spouse would face if the applicant is not granted this waiver, whether he accompanied the applicant or remained in the United States; her family and community ties in the United States; her good character, as indicated in several statements; and her lack of a criminal record. The unfavorable factor in this matter is the applicant's unlawful presence in the United States. Although the applicant's violation of immigration law cannot be condoned, the positive factors in this case outweigh the negative factor.

In these proceedings, the burden of establishing eligibility for the waiver rests entirely with the applicant. *See* section 291 of the Act, 8 U.S.C. § 1361. In this case, the applicant has met her burden. Accordingly, the appeal will be sustained.

ORDER: The appeal is sustained.