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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: JAN 10 2013

Office: MOSCOW

IN RE: Applicant:

APPLICATION: Application for Waiver of Grounds of Inadmissibility under section 212(a)(9)(B)(v) of 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,

  
Ron Rosenberg  
Acting Chief, Administrative Appeals Office

**DISCUSSION:** The Form I-601, Application for Waiver of Ground of Inadmissibility (Form I-601) and the Form I-212, Application for Permission to Reapply for Admission Into the United States After Deportation or Removal (Form I-212) were concurrently denied by the Field Office Director, Moscow, and are now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained. The applications will be approved.

The applicant is a native and citizen of Latvia who entered the United States with a valid B-2 nonimmigrant visa in February 1993 and remained beyond the period of authorized stay. In February 1997, the applicant was ordered removed in absentia. The applicant did not depart the United States until July 2008. 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, 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 under section 212(a)(9)(A)(ii) of the Act, 8 U.S.C. § 1182(a)(9)(A)(ii), as an alien previously removed. The applicant does not contest these findings of inadmissibility. Rather, she seeks a waiver of inadmissibility under 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 her U.S. citizen spouse. In addition, the applicant seeks permission to reapply for admission into the United States under section 212(a)(9)(A)(iii) of the Act, 8 U.S.C. § 1182(a)(9)(A)(iii).

The field office director concluded that the applicant had failed to establish that extreme hardship would be imposed on a qualifying relative. The field office director further noted that approving the Form I-212 would serve no purpose as the Form I-601 was being denied. As such, the I-212 was denied as a matter of discretion concurrently with the Form I-601. *Decision of the Field Office Director*, dated November 21, 2011.

On appeal, counsel for the applicant submits a brief. The entire record was reviewed and considered in rendering a decision on the appeal.

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

(A) Certain alien previously removed.-

(i) Arriving aliens.-Any alien who has been ordered removed under section 235(b)(1) or at the end of proceedings under section 240 initiated upon the alien's arrival in the United States 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 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 aliens 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 aliens' reembarkation at a place outside the United States or attempt to be admitted from foreign continuous territory, the Attorney General [now, Secretary, Department of Homeland Security] has consented to the aliens' reapplying for admission.

**(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 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 spouse 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-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 U.S. citizen spouse asserts that he will suffer extreme hardship were he to remain in the United States while the applicant continues to reside abroad due to her inadmissibility. In a declaration the applicant's spouse explains that he is extremely lonely without his wife and is feeling great abandonment. The applicant's spouse notes that as a result of his wife's absence, he has not been able to find the same level of peace and comfort from friends and co-workers. In addition, the applicant's spouse asserts that his physical well-being has been impacted by her absence. He explains that due to a major accident in 2006, he had to undergo cervical surgery and total knee replacement. As a result, basic chores around the house, including bathing, dressing, food shopping and light home cleaning, are tasks of significant magnitude for him. He notes that when his wife was residing in the United States, she cared for him and provided any level of comfort she could. Without her, his capabilities to care for himself are limited and he thus has to rely on others to assist him, thereby causing him hardship. Finally, the applicant's spouse details that since the applicant's departure, he is struggling financially as he is supporting two households. He notes that jobs are scarce in Latvia and the applicant is relying on his monetary assistance for her living expenses. He also references that he has not been able to capitalize on the reduced mortgage rates and refinancing opportunities because the applicant must be present to sign the paperwork.

dated July 13, 2011.

In support, a psychological evaluation has been provided to establish that the applicant's spouse is suffering from Dysthymic Disorder and severe anxiety, has had recurrent suicidal ideation and is considered to be at risk for psychological deterioration. *Affidavit of* , dated December 16, 2010. In addition, a letter has been provided from the applicant's spouse's treating physician, Dr. , confirming his multiple diagnoses, including recurrent back pain as a result of disc herniation, knee surgery, total knee replacement, high blood pressure, heart condition, vitamin D deficiency, and high cholesterol. confirms that the applicant's spouse takes multiple medications and remains under her care, an orthopedics care and a chiropractor's care. *See Letter from* , dated November 17, 2010. Additional letters have been provided from the applicant's spouse's treating physicians confirming his current treatment plan, including regular visits and continued therapy. Moreover, letters have been provided from the applicant's spouse's friends and co-workers confirming the hardships the applicant's spouse is experiencing as a result of his wife's absence and the role they have played in assisting him with respect to his daily care. Evidence of the applicant's spouse's Disabled Person Parking Permit and New Jersey Transit

Disabled Identification has also been submitted. A letter has also been provided from the applicant's spouse's employer outlining all the accommodations they have made to ensure that the applicant's spouse is able to continue his employment. *See Letter from [REDACTED] Public Schools*, dated October 24, 2011. Further, evidence of the extensive financial contributions the applicant's spouse has made to his wife while in Latvia has been provided by counsel.

The record reflects that the cumulative effect of the emotional, physical and financial hardship the applicant's spouse would experience due to the applicant's inadmissibility rises to the level of extreme. The AAO thus concludes that were the applicant unable to reside in the United States due to her inadmissibility, the applicant's spouse would suffer extreme hardship if he remains in the United States.

With respect to relocating abroad, the applicant's spouse explains that he would experience emotional, physical and financial hardship. To begin, the applicant's spouse details that he was born in the United States and has no ties to Latvia. In addition, the applicant's spouse details that he is presently considered a disabled person by the New Jersey State Department of Transportation and has been issued accommodations as a result of a major accident that substantially limited his physical mobility, movement and stamina. As a result of said accident he was required to undergo cervical surgery and total knee replacement and now experiences numerous restrictions with regards to bending, kneeling, climbing and running. He further notes that he has heart problems and is under a regimen of numerous medications to control hypertension, cholesterol and arterial deposit build-up. The applicant's spouse thus contends that were he to relocate abroad, he would not be able to obtain affordable and effective medical care and accommodations for his disability. Finally, the applicant's spouse references the problematic economic conditions in Latvia. *Supra* at 1-3.

The record establishes that the applicant's spouse, currently in his late 50s, was born in the United States and has no ties to Latvia. He is unfamiliar with the country, culture, customs and language spoken. Moreover, the record indicates that the applicant's spouse has been gainfully employed by the [REDACTED] Public Schools since September 1999 and is currently earning over \$80,000. Further, the record contains extensive documentation establishing the applicant's spouse's medical conditions and need for continued affordable and effective medical treatment and accommodations for his disability. Were he to relocate abroad, the applicant's spouse would have to leave his home, his community, his long-term gainful employment and the professionals familiar with his medical conditions and treatment plan. Finally, the AAO notes that health care in Latvia falls short of Western standards and individuals with disabilities may find accessibility and accommodation very different in Latvia from what is found in the United States. *See Country Specific Information-Latvia, U.S. Department of State*, dated April 24, 2012. The AAO thus concurs with the field office director that the applicant's spouse would suffer extreme hardship were he to relocate abroad to reside with the applicant due to her inadmissibility.

A review of the documentation in the record, when considered in its totality, reflects that the applicant has established that her U.S. citizen spouse would suffer extreme hardship were the applicant unable to reside in the United States. Accordingly, the AAO finds that the situation

presented in this application rises to the level of extreme hardship. However, the grant or denial of the waiver does not turn only on the issue of the meaning of "extreme hardship." It also hinges on the discretion of the Secretary and pursuant to such terms, conditions and procedures as she may by regulations prescribe. In discretionary matters, the alien bears the burden of proving eligibility in terms of equities in the United States which are not outweighed by adverse factors. See *Matter of T-S-Y*, 7 I&N Dec. 582 (BIA 1957).

In evaluating whether . . . relief is warranted in the exercise of discretion, the factors adverse to the alien 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 and seriousness, and the presence of other evidence indicative of the 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 alien began 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 or service in 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).

See *Matter of Mendez-Moralez*, 21 I&N Dec. 296, 301 (BIA 1996). The AAO must then "balance the adverse factors evidencing an alien's undesirability as a permanent resident with the social and humane considerations presented on the alien's behalf to determine whether the grant of relief in the exercise of discretion appears to be in the best interests of the country." *Id.* at 300. (Citations omitted).

The favorable factors in this matter are the extreme hardship the applicant's U.S. citizen spouse would face if the applicant were to remain in Latvia, regardless of whether he accompanied the applicant or stayed in the United States; community ties; church membership; support letters; home ownership; the apparent lack of a criminal record; and the passage of almost twenty years since the applicant remained beyond the period of authorized stay. The unfavorable factors in this matter are the applicant's periods of unlawful presence while in the United States, her placement in removal proceedings, her failure to appear and the applicant's removal from the United States in 2008.

The immigration violations committed by the applicant are serious in nature and cannot be condoned. Nonetheless, the AAO finds that the applicant has established that the favorable factors in her application outweigh the unfavorable factors. Therefore, a favorable exercise of the Secretary's discretion is warranted.

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As referenced above, the field office director denied the applicant's Form I-212 concurrently with the Form I-601. As the AAO has now found the applicant eligible for a waiver of inadmissibility, it will withdraw the field office director's decision on the Form I-212 and render a new decision.

A grant of permission to reapply for admission is a discretionary decision based on the weighing of negative and positive factors. The AAO has found that the applicant warrants a favorable exercise of discretion related to the adjudication of the Form I-601. For the reasons stated in that finding, the AAO finds that the applicant's Form I-212 should also be granted as a matter of discretion.

In proceedings for application for waiver of grounds of inadmissibility and permission to reapply for admission, the burden of establishing that the application merits approval remains entirely with the applicant. Section 291 of the Act, 8 U.S.C. § 1361. The applicant has sustained that burden. Accordingly, this appeal will be sustained and the applications approved.

**ORDER:** The appeal is sustained. The applications are approved.