



U.S. Citizenship
and Immigration
Services

(b)(6)

DATE: JAN 11 2010 Office: VIENNA, AUSTRIA

IN RE: Applicant:

APPLICATION: Application for Waiver of Grounds of Inadmissibility under sections 212(a)(9)(B) and 212(a)(9)(A) of the Immigration and Nationality Act, 8 U.S.C. §§ 1182(a)(9)(B), 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.

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 with the field office or service center that originally decided your case by filing a 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

(b)(6)

DISCUSSION: The waiver application was denied by the Field Office Director, Vienna, Austria. 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 Czech Republic 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 one year or more and seeking readmission within 10 years of her last departure from the United States.¹ The applicant's spouse is a United States citizen and she seeks a waiver of inadmissibility in order to reside in the United States.

The Field Office Director found that the applicant failed to establish extreme hardship to a qualifying relative and the application was denied accordingly. *Decision of the Field Office Director*, dated September 22, 2011.

On appeal, counsel asserts that the applicant's spouse will experience extreme hardship if the applicant is not granted a waiver of inadmissibility. *Brief in Support of Appeal*, dated October 20, 2011.

The record includes, but is not limited to: counsel's brief, the applicant's statement, the applicant's spouse's statements, letters of support, a medical evaluation for the applicant's spouse, financial records and various immigration application forms. 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:

(B) Aliens Unlawfully Present.-

- (i) In general.-Any alien (other than an alien lawfully admitted for permanent residence) who-

.....

¹ The applicant was also found to be inadmissible under section 212(a)(9)(A)(ii) of the Act, 8 U.S.C. § 1182(a)(9)(A)(ii) as an alien who was ordered removed under section 240 of the Act, or any other provision of law, and who seeks readmission within 10 years of such alien's removal from the United States. Although counsel asserts that the applicant was only barred from admission for five years under section 212(a)(9)(A)(ii) of the Act, the record clearly shows that she is subject to a 10-year bar. The applicant's Form I-212 application for permission to reapply for admission into the United States was denied by the field office director in a separate decision (though containing the same content as the decision to deny the present Form I-601 application), and the applicant did not file a Form I-290B appeal to have the denial reviewed.

(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 [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.

The record reflects that the applicant was admitted to the United States on September 20, 1998 as a B-2 visitor for pleasure, with authorization to remain until March 19, 1999. The applicant remained beyond March 19, 1999 and accrued unlawful presence until filing an application for asylum on June 24, 2002. The applicant subsequently traveled outside of the United States twice with the first time occurring on December 28, 2002 and again for the final time on September 11, 2006. The applicant's asylum case was denied by an Immigration Judge *in absentia* and a Warrant of Removal was issued on October 17, 2006. The applicant was determined to have accrued unlawful presence in excess of one year and found inadmissible pursuant to section 212(a)(9)(B)(i)(II) of the Act. The AAO concurs in this finding and the applicant upon appeal does not contest inadmissibility under this section of the Act.

A section 212(a)(9)(B)(v) waiver of the bar to admission resulting from section 212(a)(9)(B)(i)(II) of the Act is dependent first upon a showing that the bar imposes an extreme hardship to the U.S. citizen or lawfully resident spouse or parent of the applicant. Hardship to the applicant can be considered only insofar as it results in hardship to a qualifying relative. The applicant's spouse is the only qualifying relative in this case. Once extreme hardship is established, it is but one favorable factor to be considered in the determination of whether the Secretary should exercise discretion. See *Matter of Mendez*, 21 I&N Dec. 296 (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 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 applicant's spouse indicates that he is suffering stress and anxiety due to his separation from the applicant. The applicant's spouse indicates that he has difficulty in sleeping and focusing on his daily activities since the applicant's inadmissibility has made it necessary for her to live away from

him in the Czech Republic. The applicant has offered support for her spouse's hardships in the form of an evaluation from a psychologist, [REDACTED] indicating that he is suffering from several issues including depression, lack of appetite and decreased energy. [REDACTED] evaluation also indicates that the applicant's spouse visited her for the purpose of providing a diagnosis and information regarding his psychological symptoms. [REDACTED] evaluation further indicates that after her session with the applicant's spouse her recommendation for recovery is that he be reunited with the applicant. The applicant's evidence further indicates that the financial cost to her spouse of traveling to see her is creating an unusual burden for him because he must take time away from his seasonal employment in order to travel to the Czech Republic, which does not allow him to save a larger portion of his earnings.

The applicant did not offer sufficient evidence to support the assertion that separation is causing extreme hardship for the qualifying spouse. The applicant's spouse indicated that he is feeling depressed and stressed due to the applicant living away from him in the Czech Republic. The psychologist's evaluation submitted for the purpose of substantiating this issue although considered in its entirety, did not sufficiently demonstrate that the harm suffered is extreme in nature. According to this evaluation, there was one session conducted with the applicant's spouse for the purposes of providing information regarding his psychological symptoms. Within this evaluation there was no indication that any other possible factors outside of the applicant's inadmissibility were discussed as contributors in the formulation of a diagnosis. There was also no psychological treatment plan established or offered into evidence other than a request for the return of the applicant to the United States, with which to determine a level of hardship to the applicant's spouse.

Moreover, although the applicant's spouse states that he is having financial hardship due to his need to travel to see the applicant there was insufficient evidence provided to demonstrate that it was hardship beyond the normal difficulties faced by loved ones of individuals found to be inadmissible. The applicant did not provide information to support the assertions that the qualifying spouse must travel during his seasonal work period in order to visit her. In addition, the applicant also did not provide sufficient documentation to show that there has been any material loss in income to the qualifying relative due to these events. Nor was evidence offered to indicate that the costs of travel to see the applicant have caused the qualifying spouse to suffer more hardship than the normal consequences of a relative's inadmissibility. The fact that he is unable to sell his home for a profit or save a greater sum of money may be difficult circumstances, but they have not been shown to be extreme in nature.

The applicant's evidence also states that the qualifying spouse would suffer financial difficulty if he were to relocate to the Czech Republic in order to live with the applicant. The applicant's spouse in his statement indicates that he would not be able to find a comparable pay scale in his current field of employment as a tennis coach if he moved to live with the applicant. The applicant's spouse also indicates that he is unable to sell his home in the current housing market due to its de-valuation and would suffer a loss if forced to sell his home at this time.

There has also been insufficient evidence offered to support that relocation would cause extreme hardship to the applicant's spouse. Although the applicant's spouse in his statement indicates that he

would be unable to secure a comparable salary as a tennis coach in the Czech Republic the evidence does not demonstrate that any income loss would be more than might be expected under the circumstances or, that the possible diminution in salary would be so great as to prohibit him from earning a reasonable living in his chosen profession. Additionally, the record does not show that the applicant's spouse would suffer an unusual financial loss should he sell his home. According to the evidence provided, the applicant's spouse currently holds a mortgage that is below the market value of his home, so that although he may not receive a large profit if he were to sell it at this time, he also would not suffer so dramatic a loss as to be an extreme hardship.

In this case, the record does not contain sufficient evidence to show that the hardships faced by the qualifying relative, considered in the aggregate, rise beyond the common results of removal or inadmissibility of a spouse or close family member to the level of extreme hardship. The AAO therefore finds that the applicant has failed to establish extreme hardship to her U.S. citizen spouse as required under section 212(a)(9)(B)(v) of the Act. As the applicant has not established extreme hardship to a qualifying family member no purpose would be served in determining whether the applicant merits a waiver as a matter of discretion.

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. 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.