

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**

(b)(6)

Date: JUN 28 2013

Office: ALBUQUERQUE, NM

FILE: [REDACTED]

IN RE: Applicant: [REDACTED]

APPLICATION: Application for Waiver of Grounds of Inadmissibility pursuant to section 212(a)(9)(B)(v) of the Immigration and Nationality Act (the 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, appearing to read "Ron Rosenberg".

Ron Rosenberg  
Acting Chief, Administrative Appeals Office

**DISCUSSION:** The waiver application was denied by the Field Office Director, Albuquerque, New Mexico. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained.

The record reflects that the applicant is a citizen of France who was found to be inadmissible to the United States pursuant to section 212(a)(9)(B)(i)(II) of the Act for having been unlawfully present in the United States for more than one year. The applicant is married to a U.S. citizen and seeks a waiver of inadmissibility pursuant to section 212(a)(9)(B)(v) of the Act in order to reside with his wife and step-daughter in the United States.

The field office director found that the applicant failed to establish extreme hardship to a qualifying relative and denied the application accordingly.

On appeal, counsel contends the applicant established extreme hardship, particularly considering the applicant's wife has an anxiety disorder and has a daughter with significant behavioral problems. Counsel also contends the applicant's wife would suffer extreme financial hardship.

The record contains, *inter alia*: a copy of the marriage certificate of the applicant and his wife, indicating they were married on June 12, 2010; a letter from the applicant; a letter and an affidavit from a letter from parents; a letter from a teacher; a psychological assessment; copies of pay stubs, bills, tax returns, and other financial documents; two articles addressing the lack of jobs in France; photographs of the applicant and his family; and an approved Petition for Alien Relative (Form I-130). The entire record was reviewed and considered in rendering this decision on the appeal.

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

(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.

In this case, the record shows, and the applicant does not contest, that he entered the United States under the visa waiver program in September 2005, overstayed his authorized stay, and departed the United States in September 2009. The applicant was unlawfully present in the United States from December 2005 until his departure in September 2009. The applicant accrued unlawful presence of over three years. He now seeks admission within ten years of his 2009 departure. Accordingly, he is inadmissible to the United States under section 212(a)(9)(B)(i)(II) of the Act for being unlawfully present in the United States for a period of one year or more and seeking admission within ten years of his departure.

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.

In this case, the applicant's wife, [REDACTED] states she was previously married and that she has a child from a previous relationship. She states her relationships before she met the applicant were destructive and made her feel like a failure. She states she fought over everything with her daughter's biological father and describes him as being overly emotional and inconsistent, and that he would have "rages and lapses of clear judgment." [REDACTED] states he would yell at their daughter and call her names even when she was an infant. According to [REDACTED] her daughter was aggressive and had violent fits after she spent time with her biological father, making [REDACTED] feel helpless because she could not do anything about it. She describes herself as a single mother with no support system or friends until she met the applicant. According to [REDACTED] the applicant gave her back her self-worth. She states that after he departed the United States for France, she flew to France to be with him. She states that he applied for a visa to return to the United States and that after he returned, she knew she had found her family. [REDACTED] states that the applicant provides her daughter with a reliable male figure and that her daughter is now rarely angry. [REDACTED] contends she was paralyzed from depression and stress to care for her daughter by herself. She states she could not go back to living her life alone and that she now has a supportive and healthy life with her husband. In addition, [REDACTED] states that because of her husband, she switched companies and is now hopeful of having a successful career. She states she could not pay the bills without her husband. Furthermore, [REDACTED] contends she cannot relocate to France because she does not speak French and, therefore, would be unable to find a job or go to school. She states her husband would also have a hard time finding a job because he does not have a college education. [REDACTED] fears that in France, they would be stranded and poor because they have no savings and no family to help them financially. She also states she would be far away from her family and would have to give up her dream of going to graduate school.

After a careful review of the record, the AAO finds that if the applicant's wife decides to remain in the United States without her husband, she would suffer extreme hardship. Regarding psychological hardship, the record contains an assessment from a counselor describing [REDACTED] previous relationship as abusive and stating that [REDACTED] has a history of suicidal ideation. According to the counselor, [REDACTED] is very fragile emotionally from her past trauma and her daughter, who had suffered from behavioral problems after witnessing the abuse, is now thriving. The counselor diagnoses

[REDACTED] with Generalized Anxiety Disorder and concludes that separating [REDACTED] from her husband would be an extreme, ongoing hardship because he is her only emotional support. In addition, regarding financial hardship, the record contains documentation corroborating [REDACTED] claim that her net income is approximately \$2,400 per month, but that her monthly expenses exceed \$4,000 per month. The AAO recognizes that if [REDACTED] decides to remain in the United States, she would no longer have her husband's financial support. Considering the unique circumstances of this case cumulatively, the AAO finds that the hardship the applicant's wife would experience if she remains in the United States is extreme, going beyond those hardships ordinarily associated with inadmissibility.

The AAO also finds that if [REDACTED] relocated to France to avoid the hardship of separation, she would experience extreme hardship. The record shows that [REDACTED] was born in the United States and the AAO acknowledges her contention that she does not speak French. The AAO also acknowledges her contention that her entire family resides in the United States and that relocating to France would separate [REDACTED] from her family. In addition, the AAO also recognizes [REDACTED] contention that she has been given an opportunity to be successful in her career and according to her Biographic Information form (Form G-325A), she has been working as a Graphics and Photography Coordinator for a gallery since September 2008. Relocating to France would entail leaving her job and all of the benefits that come with it. Furthermore, the record contains articles addressing the high rate of unemployment in France, particularly the "unemployment rate of 23 percent for non-EU foreigners," and the AAO acknowledges [REDACTED] fear of being unable to find a job in France as a non-French speaking American. Considering all of these factors cumulatively, the AAO finds that the hardship [REDACTED] would experience if she relocated to France to be with her husband is extreme, going well beyond those hardships ordinarily associated with inadmissibility or exclusion.

The AAO also finds that the applicant merits a waiver of inadmissibility as a matter of discretion.

In discretionary matters, the alien bears the burden of proving that positive factors are not outweighed by adverse factors. *See Matter of T-S-Y-*, 7 I&N Dec. 582 (BIA 1957). The adverse factors in the present case include the applicant's unlawful presence in the United States, periods of unauthorized employment, a conviction for driving while under the influence of intoxicating liquors or drugs, and evidence the applicant did not comply with conditions of probation. The favorable and mitigating factors in the present case include: the applicant's family ties to the United States, including his U.S. citizen wife and step-daughter; the extreme hardship to the applicant's family if he were refused admission; and a letter from a teacher describing the positive influence the applicant has on his step-daughter.

The AAO finds that, although the applicant's immigration violations and conviction are serious and cannot be condoned, when taken together, the favorable factors in the present case outweigh the adverse factors, such that a favorable exercise of discretion is warranted. Accordingly, the appeal will be sustained.

**ORDER:** The appeal is sustained.