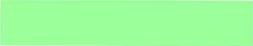
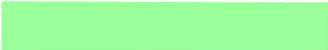


(b)(6)

U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals
20 Massachusetts Ave. NW MS 2090
Washington, DC 20529-2090
**U.S. Citizenship
and Immigration
Services**

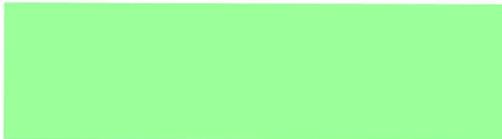


DATE: **MAR 20 2013** OFFICE: **MOSCOW** FILE: 
(No A number)

IN RE: 

APPLICATION: Application for Waiver of Grounds of Inadmissibility pursuant to 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:



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

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 pursuant to section 212(a)(9)(B)(i)(II) of 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 departure from the United States. The applicant is the beneficiary of an approved Petition for Alien Relative (Form I-130) filed on her behalf by her U.S. citizen husband. The applicant seeks a waiver of inadmissibility (Form I-601) 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 husband.

In a decision dated March 14, 2012, the Field Office Director concluded that the required standard of proof of extreme hardship to a qualifying relative was not met and the applicant's application for a waiver of inadmissibility was denied accordingly.

On appeal, counsel for the applicant does not contest the applicant's inadmissibility, but states that refusal of the applicant's admission to the United States will result in extreme hardship to the applicant's U.S. citizen spouse.

In support of the waiver application, the record includes, but is not limited to legal arguments by the applicant's counsel, a letter from the applicant's spouse, a letter from the applicant, documentation regarding the applicant's spouse's mental health, letters of support from family of the applicant's spouse, documentation concerning the applicant's spouse's children, a copy of the joint parenting agreement for the applicant's spouse concerning his children, financial records for the applicant's spouse, photographs of the applicant and her spouse, country condition information for Ukraine, and documentation regarding the applicant's immigration history.

The AAO conducts appellate review on a *de novo* basis. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). The entire record was reviewed and considered in rendering a decision on the appeal.

The applicant is inadmissible under section 212(a)(9)(B)(i)(II) of the Act for having been unlawfully present in the United States for one year or more. 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.

...

(v) Waiver.-The Attorney General 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 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. No court shall have jurisdiction to review a decision or action by the Attorney General regarding a waiver under this clause.

The applicant states that she entered the United States without inspection on or about December 2, 2004 and remained in the United States until her departure on January 3, 2012, accruing unlawful presence during that entire period. As the period of unlawful presence accrued is one year or more, the applicant is inadmissible to the United States under section 212(a)(9)(B)(i)(II) of the Act for a period of 10 years from her departure from the United States. The applicant does not contest this finding of inadmissibility on appeal.

A waiver of ground of inadmissibility under section 212(a)(9)(B)(v) of the Act is available for spouses of U.S. citizens. In order to qualify for this waiver, however, the applicant must first prove that the refusal of her admission to the United States would result in extreme hardship to her 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 deportation, 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, 885 (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, 1293 (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 AAO now turns to the question of whether the applicant in the present case has established that a qualifying relative would experience extreme hardship as a result of her inadmissibility.

On appeal, counsel for the applicant states that the applicant’s U.S. citizen spouse will suffer extreme hardship if the applicant is not granted a waiver of inadmissibility. In regards to the hardship that the applicant’s spouse will suffer as a result of separation from the applicant, counsel states that the applicant’s spouse previously suffered from depression following his divorce from the mother of his three school-age children and that he has again begun to experience depression and anxiety as a result of his separation from the applicant. In support of that statement, the record contains two letters from the applicant’s spouse’s treating psychologist, [REDACTED] stating that she has been counseling the applicant’s spouse intermittently since his divorce and that the applicant’s spouse reentered therapy after the applicant’s departure to the Ukraine to

seek her visa. [REDACTED] states that the applicant's spouse reports increased depressive symptoms including "decreased appetite, weight loss, disrupted sleep, difficulty concentrating, ruminative thinking," withdrawal and isolation from others. A letter from the applicant's spouse's sister states that she has "witnessed firsthand the impact" that separation from the applicant has had on her brother. She states that her brother has a "lack of interest in everyday activities" and that she has driven to his apartment when he has not answered the phone in order to make sure that he is ok. She also reports that she has witnessed his weight loss and lack of appetite. In particular, she states she is concerned because "this is by far the worse [sic] I have ever seen him" and "[i]t is very scary for me because I don't want him to give up on his children."

Counsel also states that the applicant's qualifying relative has suffered from financial hardship as a result from separation from the applicant. The applicant's spouse's sister reports that she has been assisting her brother since the applicant's departure as he is not able to cover his monthly expenses without the applicant's income. She states that the applicant's spouse will be moving in with her temporarily as a result of his financial situation. The record indicates that the applicant's spouse earned \$33,535.08 in 2010 according to his W-2 Form from [REDACTED]. The record also indicates that the applicant's spouse has three minor children from his previous marriage. The joint parenting agreement indicates that the applicant's spouse has joint custody of his children, but that their primary physical residence is with their mother. The record illustrates that the applicant's spouse must pay child support in the amount of \$322.70 bi-weekly, plus 32% of any additional income that he may receive from his additional employment. The applicant's spouse's parents report that the applicant assisted in paying for the couple's expenses prior to her departure. The record indicates that the applicant worked in cleaning services prior to her departure from the United States. Although the record does not contain sufficient documentary evidence to illustrate the degree of financial hardship suffered by the applicant, the AAO concludes that, considering the evidence in the aggregate, in particular the applicant's qualifying relative's long-term struggle with depression and his worsening condition especially in light of his responsibilities to his children, that the applicant's spouse is experiencing extreme hardship resulting from his separation from the applicant.

In regards to the hardship that the applicant's qualifying relative would suffer if he were to relocate to the Ukraine, the record reflects that the applicant's spouse was born and raised in the United States and would be relocating to a country to which he is not familiar. The applicant's spouse reports that he does not speak Ukrainian and has not traveled to the Ukraine. This fact would also make it very difficult for him to find employment there, especially taking into consideration the economic situation in the Ukraine as set forth in the record. In particular, however, the AAO makes note of the applicant's spouse's joint custody of his three minor children from his previous marriage, as well as his child support obligations. The applicant's spouse also submitted documentation to illustrate that he relies on his employment to provide health insurance for himself and his children. The record also indicates that the applicant's spouse has a close relationship with his parents and sister who reside near him in Illinois. This evidence, when considered in the aggregate, establishes that the applicant's qualifying relative would suffer extreme hardship were he to relocate abroad to reside with the applicant.

When the specific hardship factors noted above and the hardships routinely created by the separation of families are considered in the aggregate, the AAO finds that the applicant has established that her spouse would face extreme hardship if the applicant's waiver request is denied. The applicant has established statutory eligibility for a waiver of her inadmissibility under section 212(a)(9)(v) of the Act.

In that the applicant has established that the bar to her admission would result in extreme hardship to her qualifying relative, the AAO now turns to a consideration of whether the applicant merits a waiver of inadmissibility as a matter of discretion. In discretionary matters, the applicant 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, 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 adverse factors in the present case are the applicant's unlawful presence in the United States, for which she now seeks a waiver. The mitigating factors include the hardship to the applicant's qualifying relative, the numerous letters of support indicating the positive role that the applicant played in the qualifying relative's life, and the lack of a criminal record for the applicant.

The AAO finds that the immigration violations committed by the applicant are serious in nature and cannot be condoned. Nevertheless, when taken together, the mitigating factors in the present case outweigh the adverse factor, such that a favorable exercise of discretion is warranted.

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.

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See section 291 of the Act, 8 U.S.C. § 1361. In discretionary matters, the applicant bears the full burden of proving his or her eligibility for discretionary relief. *See Matter of Ducret*, 15 I&N Dec. 620 (BIA 1976). Here, the applicant has met that burden. Accordingly, the appeal will be sustained.

ORDER: The appeal is sustained.