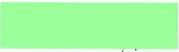


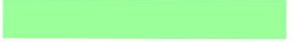


**U.S. Citizenship
and Immigration
Services**

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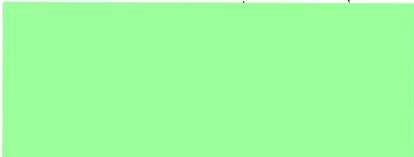


DATE: **MAR 20 2013** OFFICE: VIENNA, AUSTRIA FILE: 

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, appearing to read "Ron Rosenberg".

Ron Rosenberg, Acting Chief
Administrative Appeals Office

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

The applicant is a native and citizen of Bulgaria 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 Fiancée (Form I-129F) filed on her behalf by her U.S. citizen fiancé. 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 fiancé.

In a decision dated March 16, 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 fiancé.

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 fiancé, a letter from the applicant, documentation regarding the applicant's fiancé's mental health, letters of support from family and friends, medical information for the applicant's fiancé's father, documentation regarding the applicant's fiancé's past employment, documentation regarding the applicant's fiancé's financial support of the applicant, documentation of the applicant's fiancé's travel to Bulgaria, documentation regarding country conditions in Bulgaria, 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 record indicates that the applicant was admitted to the United States in June 2005 on an H2B visa, received multiple extensions of her visa, and then a change of status in 2007 to visitor with authorization to remain no longer than six months. The applicant remained in the United States until her departure in March 2010 to her native Bulgaria. The applicant accrued one year or more of unlawful presence between the expiration of her authorized stay as a visitor until her departure. 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 and pursuant to 22 C.F.R. § 41.81, the applicant is eligible to apply for a waiver of inadmissibility as the fiancée of a U.S. citizen. In order to qualify for this waiver, however, she 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 fiancé will suffer extreme hardship if the applicant is not granted a waiver of inadmissibility. In regards to the hardship that the applicant's fiancé will suffer as a result of separation from the applicant, counsel

states the applicant's qualifying relative has a history of depression that was controlled when the applicant was with her fiancé in the United States, but that has gone into relapse since her departure. She states that this could result in the applicant's qualifying relative being at risk for developing a more serious depressive illness in the future. In support of this statement, the record contains two assessments prepared by [REDACTED] of [REDACTED]. [REDACTED] states that the applicant's fiancé first received treatment in her clinic in 1998 for alcohol abuse and began anti-depressants in 2000. She states that the applicant's qualifying relative suffers from Major Depressive Disorder that was stable and in remission during his relationship with the applicant, but that his condition has worsened since the applicant's departure. In response, she states that she has increased his medication. She also states that this puts the applicant's spouse at greater risk for another episode of a serious depressive illness. Letters in the record from family and friends of the qualifying relative also indicate that the applicant's fiancé has lost motivation as a result of separation from the applicant and is engaging in behaviors that are damaging to his emotional, physical, and financial health.

Counsel also states that the applicant's qualifying relative has suffered from financial hardship as a result from separation from the applicant. In support of that statement, the record contains documentation illustrating the applicant's qualifying relative's trips to Bulgaria as well as his financial support of the applicant in Bulgaria, which amount to a considerable expense. The record also indicates that the applicant's qualifying relative's frequent travel to Bulgaria was a primary reason for his being laid off from his previous employment. The applicant's qualifying relative states that he is presently working for a start-up company and not earning a salary. The applicant's qualifying relative's employment and financial struggles are supported by letters in the record from family and friends, as well the applicant's previous employer. The AAO notes the applicant's qualifying relative's difficult employment position and additional expenses, although the degree of financial hardship that he is suffering is not clear. The record does not contain evidence of the applicant's qualifying relative's income, such as his federal tax returns or a complete picture of his expenses. Nonetheless, 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, the applicant's fiancé 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 Bulgaria, the record reflects that the applicant's fiancé was born and raised in the United States and would be relocating to a country to which he is not familiar aside from visits to see the applicant. He would be unable to communicate with non-English speakers, as he does not speak any of the prominent languages spoken in the country. This fact would also make it very difficult for him to find employment, especially taking into consideration the economic situation in Bulgaria as set forth in the record. The applicant's qualifying relative states that his attempts to work remotely from Bulgaria have been unsuccessful as a result of the time difference and living conditions of the applicant there. Moreover, the record establishes that the applicant's qualifying relative has close family ties in the United States, namely he is caring for his elderly parents. The applicant's qualifying relative also owns property in the United States with a mortgage of \$300,000, the value of which he says has depreciated to \$170,000. The AAO notes that there is

documentation in the record of the mortgage but not of the depreciation of the property. Letters from the applicant's fiancé's mental health provider, in addition to letters from his family, support the applicant's fiancé's description of the importance of his family ties in the United States. 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. 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.