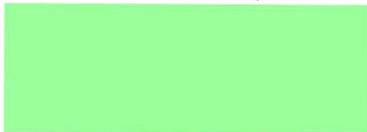


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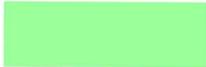


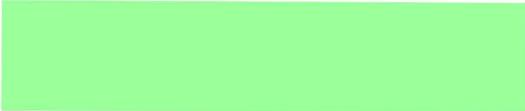
U.S. Citizenship
and Immigration
Services



DATE: **MAR 21 2013**

OFFICE: NEWARK

FILE: 

IN RE: 

APPLICATION:

Application for Waiver of Grounds of Inadmissibility under Section 212(9)(B)(v) of the Immigration and Nationality Act, 8 U.S.C. § 1182(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.

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 in accordance with the instructions on 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,

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, Newark, New Jersey and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native of Czechoslovakia and citizen of Slovakia who was found to be inadmissible to the United States under 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 country for more than one year and seeking readmission within ten years of her departure from the United States. The applicant is the beneficiary of an approved Petition for Alien Relative (Form I-130). She seeks a waiver of inadmissibility pursuant to section 212(a)(9)(B)(v) of the Act, 8 U.S.C. § 1182(a)(9)(B)(v), in order to remain in the United States with her U.S. citizen spouse.

The director concluded that the applicant failed to establish that extreme hardship would be imposed on a qualifying relative and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) accordingly. *See Decision of the Field Office Director*, dated May 30, 2012.

On appeal, counsel asserts the director was incorrect in finding that the applicant's spouse would not experience extreme hardship if the waiver were denied. *See Form I-290B, Notice of Appeal or Motion* (Form I-290B), received June 28, 2012, and *counsel's brief*.

Counsel also references AAO decisions from other cases to support her assertions. The AAO notes that only published decisions by the AAO that are designated as precedent in accordance with the requirements discussed in 8 C.F.R. § 103.3(c) are binding on U.S. Citizenship and Immigration Services (USCIS) officers.

The record contains, but is not limited to: Form I-290B and counsel's brief; Form I-601; Form I-130; Form I-485, Application to Register Permanent Residence or Adjust Status; statements by the applicant, the applicant's spouse, and friends; psychological evaluations; medical records; financial documents; employment letters; naturalization, birth, marriage and divorce certificates; and photographs. 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:

(i) [A]ny 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.

The record reflects that the applicant entered the United States on five occasions. On two of these occasions she entered the United States as a visitor and departed more than one year after the time period authorized. The record supports the inadmissibility finding pursuant to section 212(a)(9)(B)(i)(II) of the Act, and counsel does not contest the applicant's inadmissibility.

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

Waiver.-The [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.

A waiver of inadmissibility under section 212(a)(9)(B)(v) of the Act is dependent first upon a showing that the bar imposes an extreme hardship on a qualifying family member, which includes the U.S. citizen or lawful permanent resident spouse or parent of the applicant. In the present case, the applicant's spouse is the only 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*, 22 I&N Dec. 560, 565 (BIA 1999), the Board provided a list of factors it deemed relevant in determining whether an alien has established extreme hardship to a qualifying relative. The factors include the presence of a lawful permanent resident or U.S. 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).

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 v. I.N.S.*, 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 is a 62 year-old native of Czechoslovakia and citizen of the United States. He states that before he met the applicant, he had been depressed, lonely and angry after his previous marriage ended and because of his estranged relationship with his three adult children. Letters submitted by their friends indicate that the applicant’s spouse was alone and did not socialize much or take care of himself before he met the applicant. The applicant’s spouse indicates that the applicant was kind and generous, and he “found happiness again.” A psychologist, who twice evaluated the applicant’s spouse, explains that the applicant’s spouse is a truck driver, and the applicant talks to him and keeps him “happy on the road.” Documents relating to the applicant’s spouse’s truck company and his contractor corroborate claims of his employment. The applicant’s spouse states through his psychologist that with the applicant, he has “some place to go. Somebody who waits for [him].” He states that the applicant takes care of him by reminding him to take his medication, attending his doctor’s appointments with him, cooking healthy meals, and helping him to “live healthier.” He declares that without the applicant, he would have likely suffered a heart attack and died because he has high blood pressure. A

medical document indicates that the applicant's spouse is taking medication for high blood pressure.

The applicant indicates that ever since he learned of the applicant's immigration issue, he feels "stressed and anxious." He states that he cannot focus or concentrate, which distracts him from his work while driving. A psychologist explains that the applicant's spouse meets the criteria for depressive syndrome and his symptoms include loss of interest in activities outside of his employment, disturbance in his sleep and appetite, difficulty concentrating, and feelings of worthlessness and hopelessness. A psychologist states that he "appears to have no support system...poor motivation and self esteem."

The applicant's spouse further explains that the applicant "does everything for [their] household, which allows [him] to go to work and earn money." The applicant indicates that she is responsible for shopping and cleaning. Although the applicant's spouse has steady employment, he notes that he cannot afford to pay for both his expenses and the applicant's, were she to live in Slovakia. A copy of the applicant's spouse's tax returns and financial documents were submitted as evidence. He indicates the applicant would have difficulty supporting herself in Slovakia, as she has lived in the United States for many years and the unemployment rate in Slovakia is high. News articles submitted as evidence reflect a 14 percent unemployment rate in Slovakia in March 2012. Counsel also asserts that the applicant's spouse would not be able to afford airline tickets and time away from his work. Counsel submits evidence of costs for airline tickets ranging from \$1,300 to \$4,700.

The AAO has considered cumulatively all assertions of separation-related hardship to the applicant's spouse, including the emotional impact of being separated from his wife, his psychologist state, the loss of the applicant's assistance in improving his health, the potential financial impact of paying for his household and the applicant's household in Slovakia, and the cost of visiting the applicant. Although the AAO acknowledges the difficulties of separation, considered in the aggregate, the AAO finds that the evidence is not sufficient to demonstrate that the applicant's U.S. citizen spouse would suffer extreme hardship due to separation from the applicant.

The applicant's spouse states that although he loves his wife, he cannot live in Slovakia. He indicates that he has stable employment in the United States and will be able to retire in a few years. He states that if he relocated to Slovakia, he would lose his retirement benefits and have no money to support himself and the applicant. The record does not contain evidence to support his assertions that he would lose his retirement benefits if he relocated. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)).

The applicant's spouse also explains that he would not have health-care benefits in Slovakia to cover his medication costs. The record, however, includes a medical document indicating that he does not have insurance and covers his own medical costs in the United States. He also worries about

the high unemployment rate in Slovakia and the likelihood of finding employment, given his age and limited skills. He further states that he has no friends or family in Slovakia. Counsel asserts that the applicant's spouse has lived in the United States for approximately 28 years.

The AAO has considered cumulatively all assertions of relocation-related hardship to the applicant's spouse, including his length of residence in the United States, adjusting to a country where he has not lived for many years, his age, and the financial impact of relocation. Considered in the aggregate, the AAO finds that the evidence is not sufficient to corroborate claims that the applicant's U.S. citizen spouse would suffer extreme hardship were he to relocate to Slovakia to be with the applicant.

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. 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. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.