



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

(b)(6)

DATE: **MAY 06 2013**

Office: PORTLAND, ME

FILE: [REDACTED]

IN RE: [REDACTED]

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

ON BEHALF OF APPLICANT:
[REDACTED]

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, appearing to read "Ron Rosenberg".

Ron Rosenberg
Acting Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Acting Field Office Director, Portland, Maine. An appeal of the denial was dismissed by the Administrative Appeals Office (AAO). The matter is now before the AAO on motion. The motion will be granted and the underlying application remains denied.

The record reflects that the applicant, a native of Haiti and citizen of Canada, claims to have entered the United States from Canada in 2000. The applicant alleges she then made several subsequent brief departures from that time until 2009, reentering through the Vermont border or through Miami claiming to be a visitor when she was in fact residing and working without authorization in the United States. The applicant was thus 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 more than one year. The applicant seeks a waiver of inadmissibility under section 212(a)(9)(B)(v) of the Act, 8 U.S.C. § 1182(a)(9)(B)(v), to reside in the United States with her U.S. citizen spouse.

The acting field office director concluded that the applicant had failed to establish that extreme hardship would be imposed on a qualifying relative and denied the Application for Waiver of Ground of Excludability (Form I-601) accordingly. *Decision of the Acting Field Office Director*, dated March 30, 2011.

On appeal, the AAO determined that the applicant had not established her qualifying relative spouse would experience extreme hardship if he remained in the United States while the applicant resided abroad due her inadmissibility, or if the applicant's spouse were to relocate abroad to reside with the applicant.

On motion counsel contends the decision of the AAO was erroneous, against the evidence, and an abuse of discretion. With the motion counsel submits documentation including a brief; affidavits from the applicant's mother and spouse; financial documentation; employment information for the spouse; and documentation relating the daughter of the applicant and spouse. The entire record was reviewed and considered in rendering this decision.

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

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 [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...

A waiver of inadmissibility under section 212(a)(9)(B)(v) of the Act is dependent on a showing that the bar to admission imposes extreme hardship on a qualifying relative, which includes 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 U.S. citizen spouse is the only qualifying relative in this case. 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 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.

As noted, the AAO determined that extreme hardship to the applicant’s spouse has not been established. The AAO concluded that the record provides little detail and no supporting evidence concerning the emotional hardship the applicant’s spouse states he would experience due to separation from his spouse, that the record contains no documentation or explanation of the spouse’s medical condition and treatment, and that it has not been established the applicant’s spouse would be unable to travel to Canada to visit the applicant. The AAO further determined that it has not been established that the applicant and her spouse would be unable to find employment in Canada, that the applicant’s spouse to be unable to adjust culturally and be isolated from family in the United States, that the applicant’s spouse would be unable to attain residence status, or that the applicant’s spouse would have no access to health care.

On motion counsel asserts the AAO failed to consider medical evidence and a physician’s letter to show that the spouse’s health is compromised without the applicant and that her income is indispensable to support the family. Counsel contends the decision failed to consider the spouse’s statement he would be emotionally devastated without the applicant. Counsel asserts the applicant’s good credit contrasts with that of her spouse and enabled them to purchase a home and engage in other financial transactions. Counsel contends the applicant’s daughter in the U.S. military receives emotional and financial support from the applicant allowing her to serve and that a high school daughter could be uprooted at a vulnerable age. Counsel further asserts the applicant provided evidence that the spouse would face enormous cultural, financial, and medical challenges if forced to

live in Canada and that living there would cause him to lose his network of friends and family in the United States.

In his affidavit the applicant's spouse states it would be a hardship to relocate with his age, health, and family ties to the United States. He states he has only visited Canada twice and has no ability to obtain employment there with no ties or legal status. He states that if he relocates his health, welfare, and financial situation will be at risk as he would need to wait for residency there before applying for national health insurance, possibly incurring out of pocket expenses. He states his property was recently repossessed, but he is still residing in the home, and that they are purchasing a new home in the applicant's name. He further states the applicant makes crucial financial contributions to the family. The spouse states that without the applicant he would be solely responsible for his teenage step-son while working and having a significant medical condition. He states it would be expensive to visit the applicant in Canada while supporting his children in the United States because he would then lack the applicant's income.

Counsel notes that the applicant's mother is also a qualifying relative but not considered. Counsel asserts the applicant's mother speaks no English, is unable to work or drive, and requires daily assistance for traveling to medical appointments, church events and other locations, for which the applicant would be unable to help if removed to Canada. Counsel contends the applicant provides emotional support and other daily care for her mother allowing a sister to then care for her own family. Counsel asserts the applicant's mother has no ties to Canada, would not relocate due to her ties in the United States, and has no income that would allow her to visit the applicant.

In her affidavit the applicant's mother states she resides with one of her children, but due to that child holding two jobs and having her own children she only provides a place for the mother to live while the mother depends on the applicant for assistance with daily activities, including travel, cooking, and shopping. She states she relies on the applicant for language translation. She states that separation from the applicant would be detrimental to her physical, mental and emotional health, but she has no ties to Canada and could not relocate as it would separate her from family in the United States.

The AAO finds that the applicant has failed to establish that her qualifying spouse will suffer extreme hardship as a consequence of being separated from the applicant. Counsel and the applicant's spouse contend the spouse would be emotionally devastated if separated from the applicant. They also contend that he needs the applicant due to his health and for her financial contributions. Documentation on record, however, does not establish that the spouse's medical condition is so severe that he requires the applicant's presence in the United States, or that without the applicant's financial contributions the spouse would experience extreme hardship. The AAO acknowledges the applicant's spouse will experience hardship. However, the difficulties that the applicant's spouse would face as a result of separation from the applicant, even when considered in the aggregate, do not rise to the level of extreme as contemplated by statute and case law.

The AAO also finds the record to establish that the applicant's spouse would experience extreme hardship if he were to relocate to Canada to reside with the applicant. Counsel and the applicant's

spouse assert he would be unable to find employment in Canada, that his health and welfare would be at risk, and he would lose his ties in the United States. The record does not document this hardship.

The AAO also concludes that the record does not establish the applicant's mother would experience extreme hardship due to the applicant's inadmissibility. Counsel and the applicant's mother state that the mother depends on the applicant for daily activities as other family members are unavailable. However, the applicant's mother lives with family members and has additional family in the United States. The record contains no evidence or documentation to support that the applicant's mother is unable to find assistance for her daily activities or that the activities are so significant that it would cause extreme hardship if she were unable to regularly access them. The record also does not establish that the applicant's mother would experience extreme hardship if she were to relocate to Canada to reside with the applicant. The record does not support the applicant's mother would be unable to adjust to living in Canada with the applicant, a Canadian citizen, or that living there would prevent her from visiting family in the United States to such an extent as to rise to the level extreme hardship.

The record contains references to hardship the applicant's children would experience if the waiver application were denied. It is noted that Congress did not include hardship to an alien's children as a factor to be considered in assessing extreme hardship under section 212(a)(9)(B)(v) of the Act. In the present case, the applicant's spouse and parent are the only qualifying relatives for the waiver under section 212(a)(9)(B)(v) of the Act, and hardship to the applicant's children will not be separately considered, except as it may affect the applicant's spouse and parent.

The record, reviewed in its entirety, does not support a finding that the applicant's spouse or mother will face extreme hardship if the applicant is unable to reside in the United States. Rather, the record demonstrates that they will face no greater hardship than the unfortunate, but expected disruptions, inconveniences, and difficulties arising whenever a loved one is removed from the United States or is refused admission. There is no documentation establishing that the hardships of the applicant's spouse or mother are any different from other families separated as a result of immigration violations. Although the AAO is not insensitive to the situation, the record does not establish that the hardships faced by the applicant's spouse or mother rise to the level of "extreme" as contemplated by statute and case law. Having found the applicant statutorily ineligible for relief, no purpose would be served in discussing whether the applicant merits a waiver as a matter of discretion.

In proceedings for application for waiver of grounds of inadmissibility, 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 prior decisions are affirmed. The waiver application is denied.

ORDER: The prior decisions are affirmed.