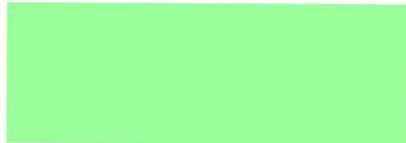




U.S. Citizenship
and Immigration
Services

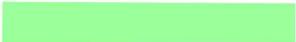
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Date: **SEP 20 2013**

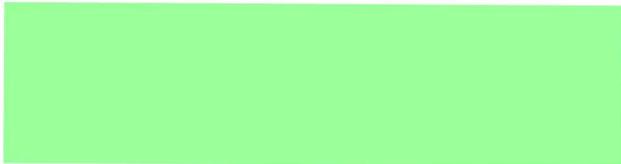
Office: ROME (LONDON)

FILE: 

IN RE: Applicant: 

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

ON BEHALF OF APPLICANT:



INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office (AAO) in your case. This is a non-precedent decision. The AAO does not announce new constructions of law nor establish agency policy through non-precedent decisions.

Thank you,

A handwritten signature in black ink, appearing to read "Ron Rosenberg".

Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the District Director, Rome, Italy and an appeal was dismissed by the Administrative Appeals Office (AAO). A subsequent motion was dismissed by the AAO. The matter is again before the AAO on motion. The motion will be granted and the prior decisions of the AAO are withdrawn.

The applicant is a native and citizen of the Czech Republic who was found to be inadmissible to the United States pursuant to 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 United States for more than one year and again seeking admission within ten years of his last departure from the United States. The applicant does not contest this finding of inadmissibility. Rather, he seeks a waiver of inadmissibility in order to reside in the United States with his U.S. citizen spouse.

The District Director found that the applicant failed to establish that his qualifying relative would experience extreme hardship as a consequence of his inadmissibility. The application was denied accordingly. *See Decision of the District Director*, dated January 31, 2011.

On appeal, the AAO determined that the applicant had failed to establish that extreme hardship would be imposed on a qualifying relative. The appeal was subsequently dismissed. *Decision of the AAO*, dated November 2, 2012.

In November 2012, the applicant filed a motion to reopen the AAO's decision. The motion was granted but the AAO's decision was affirmed as the AAO found that extreme hardship to a qualifying relative had not been established. *See Decision of the AAO*, dated May 22, 2013.

With the instant motion, counsel for the applicant submits the following: a brief; a letter from the applicant's spouse; financial documentation; evidence of wire transfers made by the applicant's spouse to her husband abroad; a neuropsychological evaluation pertaining to the applicant's spouse; letters in support from family and friends; documentation pertaining to the applicant's son, born in 2001, and the child's mother; and a letter from the applicant. The entire record was reviewed and considered in rendering this decision.

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

(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.

Section 212(a)(9)(B)(v) of the Act provides for a waiver of section 212(a)(9)(B)(i) inadmissibility as follows:

The Attorney General [now Secretary of Homeland Security] 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 . . . 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. The applicant's U.S. citizen wife is the only qualifying relative in this case. Hardship to the applicant, his son or his son's mother can be considered only insofar as it results in hardship to a 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-Moralez*, 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 v. I.N.S.*, 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.

In the AAO’s decision to grant the motion and affirm its decision, the AAO noted with respect to having the applicant’s spouse remain in the United States while the applicant continued to reside abroad due to his inadmissibility, no documentation had been provided establishing why the applicant’s spouse’s sister was unable to care for her mother, alleviating the hardships referenced by the applicant’s spouse with respect to having to care for her mother without her husband’s daily support. Nor had it been established that the applicant’s spouse was experiencing hardship as a result of having to live with her sister. Further, the AAO noted that it has not been established that based on the applicant’s spouse’s income, she was experiencing financial hardship as a result of her husband’s inadmissibility. Finally, the AAO referenced that no supporting documentation had been provided establishing that the emotional hardship the applicant’s spouse was experiencing as a result of long-term separation from her husband was beyond the hardships normally associated with separation from a spouse as a result of inadmissibility. *Supra* at 4.

With the instant motion, counsel contends that the applicant’s spouse, currently in her early 50s, is suffering emotional and financial hardship as a result of long-term separation from her spouse. To begin, counsel notes that the applicant’s spouse recently had to sell her home in a “short sale” and was forced to move in with her sister. In addition, counsel asserts that the applicant is unable to assist his wife financially as he was recently laid off and remains unemployed. Counsel maintains that his wife is sending the applicant \$300 per month so that he can pay his rent, thereby causing her financial hardship. Finally, counsel references that the applicant’s spouse has developed symptoms of depression and anxiety and is currently taking an antidepressant. *Brief in Support of Motion*, dated June 19, 2013.

In support, counsel has provided an evaluation from [REDACTED] Psy.D., establishing that the applicant's spouse has been diagnosed with Adjustment Disorder with Mixed Anxiety and Depressed [REDACTED] recommends intensive psychotherapy to help the applicant's spouse cope with her situations more effectively and continued pharmacotherapy to assist with her anxiety and depression. See [REDACTED]. In addition, with respect to the emotional hardship referenced, numerous letters in support have been provided from friends and family outlining the hardships the applicant's spouse is experiencing as a result of long-term separation from her husband. As explained by [REDACTED] the applicant's spouse's sister and current housemate, the applicant's spouse is depressed, is not sleeping through the night, is taking medication daily in order to get through the day, and misses her husband dearly. See *Letter from* [REDACTED], dated June 3, 2013. Further, a letter has been provided from the applicant explaining the difficulties in obtaining gainful employment and noting that his wife is sending him money to pay rent. See *Letter from* [REDACTED] dated June 12, 2013. Evidence of wire transfers from the applicant's spouse to her husband abroad has been provided by counsel. Moreover, evidence establishing the applicant's employment while in the United States is in the record. Finally, documentation establishing that the applicant is behind on his child support payments as a result of the problematic economy in the Czech Republic has been provided. Based on a thorough review of the record, the AAO concludes that on motion it has been established that were the applicant unable to reside in the United States, the applicant's spouse would suffer extreme hardship.

With respect to relocating abroad to reside with the applicant as a result of his inadmissibility, the AAO found that extreme hardship to the applicant's spouse had been established. *Supra* at 5. As such, this criterion will not be readdressed on motion.

A review of the documentation in the record, when considered in its totality, reflects that the applicant has established that his U.S. citizen spouse would suffer extreme hardship were the applicant unable to reside in the United States. Accordingly, the AAO finds that the situation presented in this application rises to the level of extreme hardship. However, the grant or denial of the waiver does not turn only on the issue of the meaning of "extreme hardship." It also hinges on the discretion of the Secretary and pursuant to such terms, conditions and procedures as he may by regulations prescribe. In discretionary matters, the alien 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-Moralez, 21 I&N Dec. 296, 301 (BIA 1996). The AAO must then, “[B]alance 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 favorable factors in this matter are the extreme hardship the applicant’s U.S. citizen spouse and child would face if the applicant were to remain in the Czech Republic, regardless of whether they accompanied the applicant or remained in the United States, the applicant’s community ties, past employment in the United States, the applicant’s apparent lack of a criminal record, the payment of taxes and support letters. The unfavorable factors in this matter are the applicant’s nonimmigrant visa overstays in 2000 and 2005 and periods of unlawful presence and unlawful employment while in the United States.

The immigration violations committed by the applicant are serious in nature and cannot be condoned. Nonetheless, the AAO finds that the applicant has established that the favorable factors in his application outweigh the unfavorable factors. Therefore, a favorable exercise of the Secretary’s discretion is warranted.

In application proceedings, it is the applicant's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361. Here, that burden has been met.

ORDER: The motion will be granted and the prior decisions of the AAO will be withdrawn.