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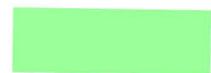


U.S. Citizenship  
and Immigration  
Services



Date: **APR 24 2014** Office: NEBRASKA SERVICE CENTER

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:

SELF-REPRESENTED

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. If you believe the AAO incorrectly applied current law or policy to your case or if you seek to present new facts for consideration, you may file a motion to reconsider or a motion to reopen, respectively. Any motion must be filed on a Notice of Appeal or Motion (Form I-290B) within 33 days of the date of this decision. **Please review the Form I-290B instructions at <http://www.uscis.gov/forms> for the latest information on fee, filing location, and other requirements.** See also 8 C.F.R. § 103.5. **Do not file a motion directly with the AAO.**

Thank you,

A handwritten signature in black ink that reads "Ron Rosenberg".

Ron Rosenberg  
Chief, Administrative Appeals Office

**DISCUSSION:** The waiver application was denied by the Director, Nebraska Service Center. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The record reflects that the applicant is a native and citizen of the United Kingdom 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 seeking readmission within ten years of his last departure from the United States.<sup>1</sup> The record indicates that the applicant is married to a U.S. citizen and is the father of a U.S. citizen child. He is the beneficiary of an approved Petition for Alien Relative (Form I-130). The applicant 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 reside in the United States with his spouse and child.

The Director concluded that the applicant had failed to establish that extreme hardship would be imposed on a qualifying relative and denied the Form I-601, Application for Waiver of Ground of Inadmissibility (Form I-601) accordingly. *Decision of the Service Center Director*, dated September 9, 2013.

On appeal, the applicant's spouse asserts that she needs the applicant with her in the United States and she is facing financial hardship in the absence of the applicant. She also submits additional medical documentation. *Form I-290B, Notice of Appeal or Motion*, dated October 6, 2013 (Form I-290B).

The record includes, but is not limited to, the following documentation: statements by the applicant, the applicant's spouse, and their family members; financial documentation, medical documentation for the applicant's spouse, child, and the applicant's spouse's daughter from a previous relationship; and letters of reference. The entire record was reviewed and considered in rendering a decision on the appeal.

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

(B) Aliens Unlawfully Present.-

(i) In general. - Any alien (other than an alien lawfully admitted for permanent residence) who-

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<sup>1</sup> The applicant is also inadmissible pursuant to section 212(a)(9)(A)(ii) of the Act, 8 U.S.C. § 1182(a)(9)(A)(ii), as an alien previously removed from the United States who is seeking admission within 10 years of his removal. He requires an approved Form I-212, Application for Permission to Reapply for Admission into the United States after Deportation or Removal (Form I-212). The record indicates that the applicant's Form I-212 was denied by the Director, Nebraska Service Center on September 9, 2013. Although the Director issued two separate decisions for the Form I-601 waiver and Form I-212, the applicant only submitted one Form I-290B listing both applications.

(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 indicates that the applicant entered the United States on January 21, 2010 under the Visa Waiver Program and was authorized to stay until April 21, 2010. The applicant married a U.S. citizen on October 27, 2010 and filed Form I-485, Application to Register Permanent Residence or Adjust Status (Form I-485) on March 9, 2011. The Form I-485 was denied on May 4, 2011 for failure to submit evidence of assets. The applicant was removed from the United States on October 13, 2011. The applicant was found to be inadmissible to the United States under section 212(a)(9)(B)(i)(II) of the Act for being unlawfully present in the United States from April 21, 2010 until he filed for adjustment of status on March 9, 2011.<sup>2</sup> His period of unlawful presence resumed on May 4, 2011, when the Form I-485 was denied, and continued until October 13, 2011, when he was removed. Therefore he was unlawfully present for a period of more than one year when he departed from the United States. The applicant does not contest this inadmissibility.

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

(v) Waiver.-The Attorney General [now 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 [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 or his child can be considered only insofar as it results in hardship to a qualifying relative. The applicant's 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 U.S. Citizenship and Immigration Services (USCIS) then assesses whether a favorable exercise of discretion is warranted. *See Matter of Mendez-Moralez*, 21 I&N Dec. 296, 301 (BIA 1996).

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<sup>2</sup> The proper filing of an affirmative application for adjustment of status has been designated by the Attorney General [now Secretary of Homeland Security, "Secretary"] as an authorized period of stay for purposes of determining bars to admission under section 212 (a)(9)(B)(i)(I) and (II) of the Act. *See Memorandum by Donald Neufeld, Acting Associate Director, Domestic Operations Directorate; Lori Scialabba, Associate Director, Refugee, Asylum and International Operations Directorate; Pearl Chang, Acting Chief, Office of Policy and Strategy, dated May 6, 2009.*

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 of Immigration Appeals (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. INS*, 138 F.3d 1292, 1293 (9<sup>th</sup> Cir. 1998) (quoting *Contreras-Buenfil v. INS*, 712 F.2d 401, 403 (9<sup>th</sup> 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 asserts that she is experiencing financial hardship without the applicant. Financial documentation in the record includes a 2010 W-2 Wage and Tax Statement indicating that the applicant's spouse earned \$7,874 in 2010. A Form I-864, Affidavit of Support Under Section 213A of the Act, filed on February 19, 2011, indicates that the applicant's spouse worked as a crew trainer at [REDACTED] with an annual income of \$996. Moreover, the applicant's Form I-485 was denied for failure to submit evidence of assets that meet the federal poverty line or obtain a joint sponsor. The applicant's spouse states that she is unable to afford housing and therefore resides with her sister, as corroborated by a 2012 medical document. The applicant's spouse submits evidence of remittances, showing that the applicant financially supported her and their child between November 2011 and September 2013, sending her approximately \$300 per month.

The record also indicates that the applicant's spouse is experiencing medical hardship. Medical documentation in the record dating to 2007 indicates that the applicant's spouse suffers from diabetes, asthma, hyperlipidemia, hypokalemia, and high cholesterol. Additionally, she has been treated for back and leg pain.

The record further indicates that the applicant's spouse was treated for depression in May 2013. According to a physician's notes, her depression was caused by having to raise their son alone, as the applicant is in England. The applicant's spouse was prescribed anti-depressant medication and follow-up visits for treatment of her depression were scheduled in June and September 2013.

The applicant's spouse gave birth to their child on January 14, 2012, three months after the applicant was removed from the United States. The record includes medical documentation for the applicant's son to show that that he experienced some medical problems after birth. However, these problems no longer appear to be an issue, and the record does not contain evidence showing that the applicant's son currently has medical conditions that may also cause hardship to the applicant's spouse.

The record establishes that if the waiver application were denied, the applicant's spouse would experience financial hardship, because she is unable to afford housing and other expenses without the assistance of her sister and the applicant. The record further shows that she is suffering medical and emotional hardship as a result of being separated from the applicant, and that her emotional hardship is exacerbated by her concern for their son's well-being and the depression she feels over the difficulty of raising their son on her own. These hardships, when considered in the aggregate, are beyond the common results of removal and rise to the level of extreme hardship if she remains in the United States without the applicant.

Concerning the hardship that the applicant's spouse may experience if she relocates to the United Kingdom to be with the applicant, the record reflects that the applicant's spouse was born in the

United States, and all her family resides in the United States. Among her family is a daughter from a previous relationship who, according to medical documentation in the record, suffers from epilepsy. Although she placed her daughter into foster care and her daughter has since been adopted, the record indicates that they have reconnected. Her daughter is now attending college. Moreover, the applicant's spouse has no ties to the United Kingdom, other than to the applicant.

The record indicates that the applicant is employed in the United Kingdom and has been able to provide financial support to his spouse and child in the United States. The applicant indicates, however, that he cannot maintain his own household in the United Kingdom and that he resides with his mother. He also states that the unemployment rate in the town where he resides in the United Kingdom is very high and that health care where he lives is very poor. The record includes no documentation corroborating his claims concerning work prospects for his spouse and does not indicate that his family requires health care that is unavailable in the United Kingdom.

The evidence shows that the applicant's spouse would experience emotional hardship if she were to relocate to the United Kingdom; however, the evidence fails to establish that the applicant would be unable to support his family or that his spouse would experience other hardships there. Absent additional factors of hardship to his spouse, the evidence of hardship that may result from her relocation to the United Kingdom, considered in the aggregate, does not rise to the level of extreme hardship as contemplated by statute and in case law. Based on the evidence on the record, the applicant has not established that his spouse would suffer hardship beyond the common results of removal if she were to relocate to the United Kingdom to reside with the applicant.

Although the applicant has demonstrated that the qualifying relative would experience extreme hardship if separated from the applicant, we can find extreme hardship warranting a waiver of inadmissibility only where an applicant has demonstrated extreme hardship to a qualifying relative in the scenario of separation *and* the scenario of relocation. The AAO has long interpreted the waiver provisions of the Act to require a showing of extreme hardship in both possible scenarios, as a claim that a qualifying relative will remain in the United States and thereby suffer extreme hardship as a consequence of separation can easily be made for purposes of the waiver even where there is no intention to separate in reality. *See Matter of Ige*, 20 I&N Dec. 880, 886 (BIA 1994). Furthermore, to separate and suffer extreme hardship, where relocating abroad with the applicant would not result in extreme hardship, is a matter of choice and not the result of inadmissibility. *Id.*, *see also Matter of Pilch*, 21 I&N Dec. 627, 632-33 (BIA 1996). As the applicant has not demonstrated extreme hardship from relocation, we cannot find that refusal of admission would result in extreme hardship to the qualifying relative in this case. Moreover, as the applicant has not established extreme hardship to a qualifying family member, no purpose would be served in determining whether he merits a waiver as a matter of discretion.

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 not been met.

**ORDER:** The appeal is dismissed.