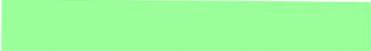


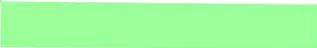


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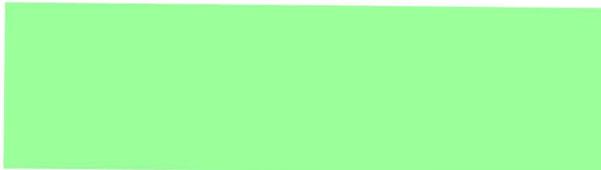


Date: **MAR 18 2014** Office: NEBRASKA SERVICE CENTER 

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. 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,



Ron Rosenberg
Acting Chief, Administrative Appeals Office

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

The applicant is a native and citizen of Vietnam 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 10 years of her last departure from the United States. The applicant is the spouse of a United States citizen and seeks a waiver of inadmissibility in order to reside in the United States with her spouse.

The service center director found that the applicant failed to establish that her qualifying relative would experience extreme hardship as a consequence of her inadmissibility. The application was denied accordingly. *See Decision of the Director* dated November 1, 2012.

On appeal counsel for the applicant contends in the Notice of Appeal (Form I-290B) that USCIS erred in denying the waiver application as the director did not consider all relevant hardships, including how the hardship to the applicant and children impact the spouse. With the appeal counsel submits a brief; a statement from the applicant's spouse; a psychological evaluation of the applicant, her spouse, and children; school information for the applicant's children; medical documentation for the applicant's son; financial documentation; and a letter from a family friend. The record contains a statement from the applicant and her sister and documents in support of the applicant's Application to Adjust Status (Form I-485).

The entire record was reviewed and considered in rendering this decision.

Section 212(a)(9)(B) 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.

The record reflects that the applicant entered the United States in July 2002 as the fiancée of a U.S. citizen with authorization to remain until October 2002. The record further reflects that the applicant married the petitioner and filed an Application to Adjust Status on two occasions based on that marriage. Both applications were subsequently denied. In 2007 the applicant was the beneficiary of an approved Petition for Alien Relative (Form I-130) filed by her current spouse, but a concurrently filed I-485 was denied, the applicant placed in removal proceedings for having remained in the United States beyond her authorized period of stay, and granted voluntary departure by an Immigration Judge in August 2009. Records show the applicant then departed the United States in December 2009. The director determined that the applicant was inadmissible for having remained unlawfully in the United States from October 2002 until her grant of voluntary departure, a period of more than one year.¹

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. 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).

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 is the only qualifying relative 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.

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

¹ The AAO notes that the applicant applied for adjustment of status in September 2002 and thus did not begin to accrue unlawful presence in October 2002, as the proper filing of an affirmative application for adjustment of status has been designated by the Attorney General [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 Consolidation of Guidance Concerning Unlawful Presence for Purposes of Sections 212(a)(9)(B)(i) and 212(a)(9)(C)(i)(I) of the Act*, dated May 6, 2009. Nevertheless, the applicant did accrue over one year of unlawful presence after this application was denied in 2004 and a subsequent adjustment application was denied in August 2006.

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. *Salcido-Salcido v. INS*, 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.

On appeal counsel asserts that due to the distance and expense it is difficult for the spouse to visit the applicant in Vietnam. Counsel asserts that the spouse is struggling to raise their children without the applicant, causing the spouse to feel hopeless and suffer depression. In her statement the applicant contends that due to caring for the children alone her spouse is unable to work overtime, hindering his ability for promotion. The spouse states that he cannot sleep, is becoming forgetful, and feels depressed, and a statement from the boyfriend of the applicant's sister also describes the spouse as being depressed and withdrawn due to separation from the applicant.

A psychosocial assessment, which provides a lengthy narrative on the families of the applicant and spouse in the United States and in Vietnam, states that the spouse has symptoms of depression, anxiety, and stress, including impaired memory and concentration, trouble breathing when nervous, rapid heartbeat, headaches, insomnia, spontaneous tearing, and a fear of dying and leaving his children with no one to care for them. The assessment states that the spouse is struggling to raise his children, but relatives cannot help for various reasons, including work or school, or living too far, or having their own children. It states that the applicant's children are struggling in school, where they started late because they were visiting the applicant in Vietnam, and that the spouse cannot care for them while working. It states that missing work when the children are sick makes the spouse fear losing his job and that he has no energy to care for the children. The assessment states that the spouse's life experiences include being a child during the Vietnam War, the deaths of relatives, the failure of his previous marriage and his older children not visiting much, losing his job, and now separation from the applicant.

The psychological assessment states that the spouse is experiencing depression and anxiety while living without the applicant and raising his children alone, but the report does not establish that the hardships to the applicant's spouse are beyond the hardships normally experienced when a spouse is found to be inadmissible. The record reflects that the applicant and the spouse have multiple family members near the spouse who have provided assistance, and it does not establish that they are unable to provide emotional and practical support for the spouse and his children.

The applicant asserts that her spouse suffers financial hardship due to her absence and the spouse states that he sends money to the applicant. The psychological assessment states that the spouse is struggling financially with the loss of the applicant's income, he now receives lower wages at his employment, and relatives are unable to lend money. The assessment contends that that spouse has no money to visit the applicant, cutting off the children from their mother. The assessment adds that the applicant plans to open a nail shop and go to cosmetology school if she returns to the United States.

The record contains a letter from the spouse's employer, documentation showing an IRA withdrawal and 2012 real estate taxes due, and a mortgage statement indicating the account is one month past due. However, the documentation does not establish the spouse's current expenses, assets, liabilities, or his overall financial situation. There is also no documentation to show that he sends money to the applicant or that the applicant contributed financially while in the United States to establish that without her physical presence in the United States her spouse experiences financial hardship.

The record contains letters from school administrators showing the applicant's children had unexcused absences and need help at home with letters and sounds, counting, reading and writing. The record does not support that these issues are related to the spouse's separation from the applicant or that the spouse is otherwise unable to find assistance for his children's schooling such that it causes him extreme hardship. As noted above, the applicant's spouse is the only qualifying relative for the waiver, and hardship to the applicant's children will not be separately considered, except as it may affect the applicant's spouse.

The AAO recognizes that the applicant's spouse endures hardship as a result of separation from the applicant. However, his situation if he remains in the United States is typical to individuals separated as a result of removal and does not rise to the level of extreme hardship based on the record. The difficulties that the applicant's spouse faces as a result of his separation from the applicant, even when considered in the aggregate, do not rise to the level of extreme hardship as contemplated by statute and case law.

In regard to relocation, counsel asserts on appeal that Vietnam has adverse country conditions, including limitations on freedom, and has crushing poverty, no employment possibilities, a high crime rate, inferior education, and inadequate health care that would cause the children to suffer and thus cause the spouse to experience suffering. Counsel asserts that the spouse cannot take his older children to Vietnam with him, and would be unable to make child support payments since he has no skills and would be unable to work in Vietnam. Counsel also asserts that the spouse has been in the United States for many years and has terrible memories of Vietnam.

In her statement the applicant asserts that her spouse will suffer extreme hardship if he were to relocate to Vietnam to reside with her. The applicant's spouse states that he is 50 years old with five children, including three with his ex-wife for whom he pays support. He states that he would suffer if he cannot see them, and has no possibilities for employment in Vietnam so he could not support the applicant and his children if he relocated there.

The psychological assessment asserts that police are corrupt and that there are no jobs where the families of the applicant and spouse live. The assessment contends that the applicant's spouse has spent his entire adult life in the United States and would be unable to adjust to Vietnam again. It adds that the spouse is sad over decreased visits from his older children, which would be worse if he were to go to Vietnam. The assessment asserts that it is difficult to get to a hospital in Vietnam and then there could be a long to wait and a payment.

The psychological assessment states that the applicant's children did not like Vietnam because of relatives' small houses with many people and tiny bathrooms, and because it was not clean, had flies and roaches, and was hot and dirty. The assessment states that the children do not speak or read Vietnamese and schools there are not free. The assessment asserts that the son had health problems at birth and that he has respiratory problems that will worsen in Vietnam because of their levels of dust and pollution. The assessment states that the U.S. Department of State cites the inadequacy of health care in Vietnam. However, the documentation submitted regarding the son's medical issues

at birth do not establish that the son currently has a condition that would cause hardship to the applicant's spouse were they to relocate to Vietnam. The record also does not support that conditions in Vietnam are so severe that hardship to the applicant's children would cause extreme hardship to the applicant's spouse.

The AAO finds that the record fails to establish that the applicant's spouse would experience extreme hardship if he were to relocate to Vietnam. Counsel submitted no documentation to support assertions about conditions in Vietnam or how they would affect the applicant's spouse. The spouse states that he cannot provide child support from Vietnam, but the divorce agreement indicates that child support would be provided until the age of 18, and the record shows that the spouse's three children from his prior marriage are now all over 18 years of age.

The record, reviewed in its entirety and in light of the *Cervantes-Gonzalez* factors, cited above, does not support a finding that the applicant's U.S. citizen spouse will face extreme hardship if the applicant is unable to reside in the United States. Rather, the record demonstrates that he will face no greater hardship than the unfortunate but expected disruptions, inconveniences, and difficulties arising whenever a spouse is removed from the United States and/or refused admission. Although the AAO is not insensitive to the applicant's spouse's situation, the record does not establish that the hardship he face rises to the level of "extreme" as contemplated by statute and case law.

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.

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.