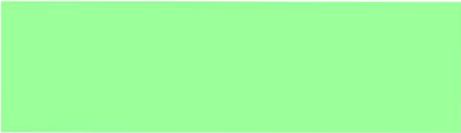




U.S. Citizenship
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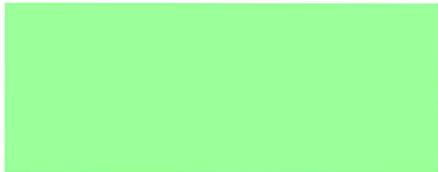


Date: **SEP 09 2014** Office: SAN FRANCISCO, CALIFORNIA FILE:

IN RE: Applicant:

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

ON BEHALF OF APPLICANT:



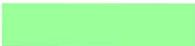
INSTRUCTIONS:

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
Chief, Administrative Appeals Office



DISCUSSION: The waiver application was denied by the Field Office Director, San Francisco, California. 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 Slovakia. She was 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 one year or more and seeking admission within ten years of her last departure. She is married to a United States citizen. 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).

The Field Office Director concluded that the applicant had failed to establish that the bar to her admission would impose extreme hardship on a qualifying relative, her U.S. citizen spouse, and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) on November 27, 2013.

On appeal, counsel for the applicant asserts the director’s decision was not neutral, that it considered evidence out of context, failed to consider evidence of hardship in the aggregate, and that the applicant’s spouse will experience extreme hardship both upon separation and upon relocation.

The record contains, but is not limited to, the following documents: a brief from counsel; statements from the applicant and her spouse; background materials on the country conditions in Slovakia; medical records related to the applicant’s sister-in-law’s health conditions and medical history; background materials on Neurofibromatosis and Neuropathy; copies of disability records for the applicant’s sister-in-law; photographs of the applicant, her spouse and his sister; a statement of psychological treatment for the applicant’s spouse; police records and background documents concerning the abduction of the applicant’s spouse as a child; copies of financial obligations for the applicant’s spouse; and background materials on the applicant’s spouse’s San Francisco Bay Area business.

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

(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.

....

The record indicates that the applicant entered the United States in 2001 under a J visa which expired on April 16, 2008. She remained in the United States until she departed in 2010. The applicant re-entered the United States on February 10, 2012 as a visitor and applied for adjustment of status on

December 11, 2012. The applicant was unlawfully present in the United States for over a year from April 16, 2008, until February 17, 2010, and is now seeking admission within ten years of her last departure from the United States. Accordingly, the applicant is inadmissible to the United States under section 212(a)(9)(B)(i)(II) of the Act. The applicant does not contest this finding.

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. Hardship to an applicant or their children 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 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.

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

Counsel for the applicant asserts on appeal that the applicant’s spouse will experience extreme hardship upon separation or relocation. Counsel explains that the applicant’s spouse’s primary hardship will be psychological, stemming from the fact that he was abducted along with his sister by their father when he was six, and that the incident has caused him and his sister psychological problems all of their lives, including a fear of abandonment by the applicant’s spouse. Counsel explains that the applicant’s sister-in-law is now very sick with Neurofibromatosis and Neuropathy, receives Supplemental Security Income (SSI) and requires the daily assistance of a caretaker, which is normally her mother, the applicant’s mother-in-law. As the applicant’s spouse explains in his letter, however, his mother has had several traumatic physical injuries in her life which has left her addicted to pain pills and struggling to maintain care for his sister. The applicant’s spouse asserts that he has been preparing to assume care for his disabled sister with the help of his spouse, the applicant, but will not be able to do so if she is removed from the United States.

The record contains numerous documents covering the medical history and treatment of the applicant’s spouse’s sister. While there is no statement from the sister-in-law’s primary care physician, the medical records document the history and progression of her conditions. In addition,

background materials on Neurofibromatosis and Neuropathy explain the condition's impact on patients. The record also contains a statement for the applicant's sister-in-law establishing she is receiving SSI.

The record also contains police reports corroborating the abduction of the applicant's spouse as a young child. These records detail the applicant's spouse and sister-in-law's abduction and transportation to a different state, and their father's attempt to hide them from their mother. A statement from the applicant's spouse's psychotherapist states that he has worked with the applicant's spouse since he was in elementary school. The letter states a separation from his spouse could potentially cause a disruption in his progress over the last few months.

Counsel for the applicant asserts that due to the applicant's spouse's psychological history he will also experience extreme hardship upon relocation because the applicant's spouse would have to sever the family ties with his mother and his sister who reside in the United States. Counsel also notes that the applicant's spouse owns a successful fitness salon, and that he would have to abandon this business if he relocated to Slovakia with the applicant. As noted above the record contains sufficient evidence corroborating the unique circumstances of the applicant's spouse's childhood. The statement of psychological treatment indicates that the emotional problems arising from the circumstances of his childhood are still having an emotional effect on the applicant's spouse. In addition, relocation would result in the applicant's spouse having to sever ties with his sister and close his personal fitness business. The record does not contain evidence indicating what income the applicant's spouse has earned from his business, but it does indicate that he would not be able to operate his business from abroad. Based on this evidence the record establishes that the applicant's spouse would experience psychological hardship rising to the level of extreme hardship due to relocation.

Counsel for the applicant has asserted that the applicant's spouse would suffer extreme hardship if separated from the applicant due to deep fears of loss and abandonment triggered by his kidnapping and abuse at a young age. The statement from the applicant's psychotherapist does not corroborate this, however, stating only that a separation from his spouse would cause a disruption in his progress. While the record establishes the applicant's spouse would experience psychological hardship due to separation, it does not establish that this hardship alone would result in extreme hardship.

Counsel for the applicant also asserts that the applicant would be unlikely to find employment to support herself in Slovakia due to the high unemployment rate and discrimination against women. The record contains background articles discussing discrimination against women in Slovakia and the economic conditions there, however, these articles do not establish that the applicant would specifically be impacted by such discrimination. Even with a high unemployment rate, there is no evidence that women are unable to obtain employment in Slovakia.

The applicant's spouse has stated that he has always been the head of his household, and that he is preparing financially for assuming the care of his sister with the help of the applicant. The record does demonstrate that his sister needs a caretaker, however, there is insufficient evidence to indicate that the applicant's spouse has assumed any of the responsibility for caring for his sister. Nor does the record contain evidence that the applicant's spouse's mother is unable or unwilling to continue

assisting her daughter. There is no documentation of any medical conditions for the applicant's spouse's mother to corroborate the applicant's spouse's assertions that she will be incapable of providing support for her daughter.

The record is unclear as to the amount of income the applicant's spouse's business generates, or that such income would be insufficient to meet his financial obligations. In a statement submitted by the applicant she indicates that she wants to finish her education in Slovakia in order to continue her education in the United States, something that must be considered since it has not been established the applicant would be unable to support herself financially in Slovakia.

While the record contains sufficient evidence to establish that the applicant's spouse would experience some emotional hardship due to separation, the evidence of psychological hardship does not support counsel's assertion that it rises to the level of extreme. There is insufficient evidence to establish that the applicant's spouse would be unable to meet his financial obligations or that he would experience a financial hardship which rises above what is common. Even when the hardships upon separation are considered in the aggregate, the record fails to establish that they rise to the level of extreme hardship.

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. 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 separation, we cannot find that refusal of admission would result in extreme hardship to the qualifying relative(s) in this case.

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. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.