

(b)(6)



U.S. Citizenship
and Immigration
Services

DATE: **SEP 30 2014**

Office: NEWARK

FILE: [REDACTED]

IN RE:

Applicant: [REDACTED]

APPLICATION:

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

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,

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 Field Office Director, Newark, New Jersey. 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 Portugal 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 for one year or more and seeking readmission within 10 years of her last departure. The applicant's spouse and child are U.S. citizens. She seeks a waiver of inadmissibility in order to reside in the United States.

The Field Office Director found that the applicant had failed to establish extreme hardship to a qualifying relative and denied the Form I-601, Application for Waiver of Grounds of Inadmissibility (Form I-601), accordingly. *Decision of the Field Office Director*, dated October 7, 2013.

On appeal, the applicant's spouse details his concerns about the applicant's safety and her son's medical issues, asserting that he would experience emotional and financial hardship if her Form I-601 were not approved. *Form I-290B, Notice of Appeal or Motion*, dated November 1, 2013. In addition, due to previous domestic-violence issues he asserts that she is exempt from inadmissibility based on section 212(a)(9)(B)(iii)(IV) of the Act.¹

The record includes, but is not limited to, affidavits by the applicant and her spouse, photographs, educational and medical records for the applicant's child, financial records, and information about Portugal. The entire record was reviewed and considered in rendering a decision on the appeal.

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.

....

¹ This section of the Act refers to applicants who self-petition under the Violence Against Women Act (VAWA), as addressed in section 212(a)(6)(A)(ii) of the Act. The record includes no evidence, however, that the applicant is a VAWA self-petitioner; the applicant's spouse instead filed a Form I-130, Petition for Alien Relative, on her behalf.

- (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 [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.

The record reflects that the applicant entered the United States under the visa-waiver program in December 2001, and she departed the United States on August 26, 2006. She then returned to the United States in October 2007. The applicant accrued unlawful presence from March 2002, the date her authorized period of stay ended, until August 26, 2006, the date she departed the United States. The applicant is inadmissible to the United States under section 212(a)(9)(B)(i)(II) of the Act for being unlawfully present in the United States for a period of one year or more and seeking readmission within ten years of her departure from the United States. The applicant does not contest her inadmissibility.

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 her child can be considered only insofar as it results in hardship to a qualifying relative, in this case the applicant's spouse. If extreme hardship to a qualifying relative is established, the applicant is statutorily eligible for a waiver, and U.S. Citizenship and Immigration Services 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.

We will first address hardship to the applicant’s spouse upon relocation to Portugal. The record includes evidence of hardship to the applicant as a victim of domestic abuse by her ex-spouse. According to her current spouse, her ex-spouse tried to kill her; they have received Internet death threats from her ex-spouse; and the applicant’s ex-spouse stated that if she returns to Portugal he will kill her for having him deported. The applicant corroborates her spouse’s statements and includes additional details of her abuse. The record also includes a September 24, 2009 temporary restraining order and a September 24, 2009 removal order for the applicant’s ex-spouse.

The applicant’s spouse, a native of Angola, states that he will not be able to secure a job in Portugal in his profession; teachers make about \$1,000 per month and not everyone is able to obtain a job; and “the unemployment rate for teachers is outrageous.” The record includes an advertisement for teacher positions in Portugal; and articles about teachers marching for better working conditions in Portugal and salaries in the teaching profession in Europe.

The record also includes educational and medical documentation showing that the applicant's child is a special-education student in a "learning/language disability impaired severe" classroom; he has attention deficit hyperactivity disorder (ADHD), seizure disorder, reactive airway disease and autism; and he takes medications that may cause side effects in extreme heat.

The record reflects that the applicant's ex-spouse abused her in 2009. However, the record does not include evidence of recent threats or harm the applicant experienced after 2009. Hardship to the applicant is considered to the extent it would cause hardship to the applicant's spouse. Though the record is thorough about the applicant's own fears of harm, it does not include sufficient evidence to support finding that her spouse would experience emotional hardship due to her hardship. Moreover, the applicant's spouse may experience some hardship in Portugal due to his concerns about the educational and medical hardship the applicant's son would experience there; however, the extent of this emotional hardship is difficult to determine based on the evidence. In addition, though her spouse may experience some financial hardship in Portugal, the applicant submits no evidence of the cost of living in Portugal and evidence concerning their specific financial circumstances and employment opportunities there. The record includes insufficient evidence of emotional, financial, medical or other types of hardship that, considered in the aggregate, establishes that the applicant's spouse would experience extreme hardship upon relocation to Portugal.

We will now address hardship to the applicant's spouse upon remaining in the United States. The applicant's spouse states that he would experience emotional and financial hardship, because he is unable to care for himself and his household "in an adequate fashion" and he is too old to learn; the applicant takes care of household duties; and he does not have enough money to travel to Portugal even once a year to visit the applicant and her son. The applicant's spouse claims the applicant's absence would affect him greatly and could cause the marriage to break down. The record indicates that the applicant's spouse is 61 years old.

The applicant's spouse also states that he has stress related to her safety issues; his levels of fear and anxiety would increase tremendously if she were removed to Portugal; the applicant's ex-spouse has contacted him and threatened to kill the applicant if she returns to Portugal; he fears that he would lose the applicant and her child to violence at the hands of her ex-husband; he wakes up a few times every night to make sure things are okay; and he has lost 10 pounds since her immigration interview.

The applicant's spouse also states that the applicant's child is like his own son; he is the only father figure who has not caused her son to suffer; he helps her son get to school on time and attends school meetings; he is on call if her son, who has epilepsy and ADHD, has a seizure, and he has responded to calls from his school; he takes her son to medical appointments; and he would suffer seeing her son's condition worsen in Portugal because, in addition to her son not knowing Portuguese and becoming stressed and frustrated, the type of medical care the applicant's son needs is non-existent and schools there cannot handle his special needs.

The applicant's spouse asserts that he also would experience financial hardship if he were to remain in the United States, because the applicant would not be able to work in Portugal, as her son needs care; he would have to financially support them from the United States; and he would not be able to make

ends meet maintaining two homes. The record includes paystubs for the applicant's spouse from [REDACTED] and the Board of Education of the [REDACTED]. The applicant's spouse's employment contract reflects a salary of \$73,539 and his 2011 U.S. federal tax return reflects an income of \$104,934. The record includes no other evidence addressing his financial hardship if he were to remain in the United States.

The record reflects that the applicant's spouse has a close relationship with the applicant's child and actively assists with his educational and medical issues. The applicant's spouse's claim that the applicant would care for her son in Portugal and he would have to maintain two separate households, if corroborated, would cause some financial hardship. The record does not include sufficient evidence, however, to establish the extent of financial hardship the applicant's spouse may experience, such as evidence of potential expenses in maintaining two households. In addition, without evidence of a current threat to the applicant, the applicant's spouse's claim that he fears for her and her son's safety is not corroborated. The record includes insufficient documentary evidence of emotional, financial, medical or other types of hardship that, considered in the aggregate, establishes that he would experience extreme hardship upon remaining in the United States.

The record fails to establish the existence of extreme hardship to a qualifying relative caused by the applicant's inadmissibility to the United States. Therefore, we find that no purpose would be served in discussing whether she merits a waiver as a matter of overall 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.