



**U.S. Citizenship
and Immigration
Services**

**Non-Precedent Decision of the
Administrative Appeals Office**

MATTER OF N-J-L-AP-

DATE: OCT. 21, 2015

MOTION OF THE ADMINISTRATIVE APPEALS OFFICE DECISION

APPLICATION: FORM I-601, APPLICATION FOR WAIVER OF GROUNDS OF
INADMISSIBILITY

The Applicant, a native and citizen of Trinidad and Tobago, seeks a waiver of inadmissibility. *See* Immigration and Nationality Act (the Act) § 212(a)(9)(B)(v), 8 U.S.C. § 1182(a)(9)(B)(v). The Director, Nebraska Service Center, denied the application. A subsequent appeal was dismissed by the Administrative Appeals Office (AAO). The matter is now before us on a motion to reopen. The motion to reopen is denied.

The Applicant 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 more than one year and again seeking admission within ten years of her last departure from the United States. She seeks a waiver of inadmissibility in order to reside in the United States with her U.S. citizen parent.

In a decision dated May 2, 2014, the Director found that the Applicant did not establish that her qualifying relative would experience extreme hardship as a consequence of her inadmissibility. The application was denied accordingly.

On appeal, we affirmed in our December 30, 2014, decision that the Applicant did not demonstrate that her qualifying relative would experience extreme hardship should she remain in the United States without the Applicant or relocate abroad to be with her. As such, we denied the application.

On motion, the Applicant's parent asserts that her eldest daughter's waiver application was approved with the exact supporting documentation submitted by the Applicant, and she does not understand why the Applicant's waiver was not also granted. In addition, the parent indicates that she is suffering emotionally due to her separation from the Applicant, and that she would experience emotional and medical hardships upon relocation.

In addition to evidence already considered on appeal, the Applicant provides a letter from her qualifying parent and a letter from the parent's doctor.

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.

The Applicant was admitted to the United States on July 14, 2004, in B-2 status, overstayed her authorized period of admission, and departed the country on August 10, 2007, to await immigrant visa processing in Trinidad and Tobago. The Applicant does not contest the finding that she is inadmissible under section 212(a)(9)(B)(i)(II) of the Act for having accrued one year or more of unlawful presence. She therefore requires a waiver of inadmissibility under section 212(a)(9)(B)(v) of the Act.

Section 212(a)(9)(B)(v) of the Act provides for a waiver of this 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 under section 212(a)(9)(B)(v) 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. The Applicant's U.S. citizen mother 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.

In our December 30, 2014, decision, we previously found that the Applicant did not establish that the parent would suffer extreme hardship as a consequence of being separated from her. Specifically, the Applicant did not provide sufficient evidence on appeal to illustrate how the

parent's medical, emotional or financial hardships upon separation were outside the ordinary consequences of removal.

In the instant motion, the Applicant's parent indicates that it is likely, that within a few years, she will require regular family care, presumably referring to her medical hardships. To support these assertions, the Applicant provides a letter from her doctor certifying that she currently has asthma, cholesterol, pre-diabetes, bilateral shoulder pain, and that she is overweight. While this letter clearly states the conditions of the Applicant's parent, it does not indicate that her medical condition will decline or that she will require regular care. Further, as we stated in our prior decision, the documentation provided does not sufficiently detail the nature and extent of her conditions, nor does it describe the treatment or family assistance required. Absent an explanation in plain language from the treating physician of the exact nature and severity of any condition and a description of any treatment or family assistance needed, we cannot reach conclusions concerning the severity of a medical condition or the treatment needed.

With regard to the parent's emotional hardship upon separation, the parent's letter, provided on motion, indicates that she feels a strong maternal bond with her children, especially since her children grew up without their father. The parent also states that since the Applicant's waiver application was denied, leaving her behind in Trinidad and Tobago, she has been pushed into a state of depression and feels that separating her family has thrown her into a physical and emotional muddle and is breaking her heart. The doctor's letter, referenced above, also indicates that the Applicant's parent has been experiencing recent mood symptoms including insomnia, anhedonia, feeling down/depressed/hopeless, fatigue, racing thoughts. While we acknowledge that the parent is experiencing emotional difficulties due to the absence of her daughter, the record does not contain sufficient documentation to establish the extent of her emotional and psychological hardships.

On motion, the Applicant does not address the financial hardships that were asserted on appeal, or provide any further documentation to support the previous assertions that the parent would experience financial hardships upon separation. As we stated previously, without evidence that the Applicant's absence has negatively affected her parent's financial situation, we are still unable to conclude that the Applicant's inability to return to the United States is causing financial hardship to the parent.

Although we reconsidered, on motion, the parent's medical, emotional and financial hardships upon separation, we find that the record still lacks sufficient documentation concerning the severity of her hardships, or that the hardships, considered in the aggregate, amount to extreme hardship.

On motion, the parent states that she cannot relocate to Trinidad and Tobago because she requires access to regular, expert medical care and that, as she has significant health issues, her health can be impacted negatively without access to the high standard of care that she receives in the United States. She also states that she would only be able to afford public medical care in Trinidad and Tobago, which would risk her health and ultimately her life. In our previous decision, we indicated that little evidence was provided to establish that the parent's medical needs would be unmet overseas, and no additional evidence was provided on motion to cure these deficiencies. Moreover,

we noted in our prior decision that, although there is documentation of drug costs overseas, the evidence does not show that the parent lacks the resources to obtain medication.

The Applicant's parent indicates she plans to relocate to the United States and/or may have already moved here. In addition, she states has two adult sons and grandchildren in the United States. However, as we noted previously, there is no evidence the parent has other significant personal ties to the United States which would be severed if she moved abroad or whether she has any other family ties to Trinidad and Tobago. Further, we noted in our previous decision that the parent is no longer working and owns no property. We also indicated that, there are no statements on record from the parent's children indicating any inability to visit their parent overseas.

On motion, the parent also asserts that her eldest daughter's waiver application was approved with the exact supporting documentation submitted on behalf of the Applicant, and she does not understand why the Applicant's waiver was not also granted. Although the parent does not conclude that the Applicant's waiver application should have also been approved, her letter appears to seek an explanation for why the Applicant's waiver remains denied, when her eldest daughter's was approved. We note that the Applicant has not submitted sufficient explanation or documentation to show that her sister's case was similar to her own, and that we are not bound to unpublished, non-precedent decisions.

Considering the entire record on motion, we again find there is no indication the parent suffers from a serious medical condition for which treatment is unavailable in Trinidad and Tobago, or that she will experience emotional or medical hardships upon relocation. Therefore, based on a totality of the circumstances, we again conclude the Applicant has not established that the parent would suffer extreme hardship were she to relocate to Trinidad and Tobago to reside with the Applicant.

In this case, the record does not contain sufficient evidence to show that the hardships faced by the qualifying relative, considered in the aggregate, rise beyond the common results of removal or inadmissibility to the level of extreme hardship. We therefore find that the Applicant has not established extreme hardship to her U.S. citizen parent as required under section 212(a)(9)(B)(v) of the Act. 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 motion to reopen is denied.