



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

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

MATTER OF L-S-R-

DATE: APR. 14, 2016

APPEAL OF NEBRASKA SERVICE CENTER 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 for unlawful presence. *See* Immigration and Nationality Act (the Act) section 212(a)(9)(B)(v), 8 U.S.C. § 1182(a)(9)(B)(v). A foreign national seeking to be admitted to the United States as an immigrant or to adjust to lawful permanent resident (LPR) status must be admissible or receive a waiver of inadmissibility. U.S. Citizenship and Immigration Services (USCIS) may grant this discretionary waiver if refusal of admission would result in extreme hardship to a qualifying relative or qualifying relatives.

The Director, Nebraska Service Center, denied the application. The Director concluded that the Applicant had failed to establish that a U.S. citizen or lawful permanent resident spouse or parent would experience extreme hardship were he unable to obtain a waiver of inadmissibility.

The matter is now before us on appeal. In the appeal, the Applicant submits additional evidence and claims that the Director erred in not finding that he is eligible for a waiver based on extreme hardship to his U.S. citizen sibling.

Upon *de novo* review, we will dismiss the appeal.

I. LAW

The Applicant is seeking admission as an immigrant and has been found inadmissible for unlawful presence. Section 212(a)(9)(B) of the Act, 8 U.S.C. § 1182(a)(9)(B), provides, in pertinent parts:

(i) In General

Any alien (other than an alien lawfully admitted for permanent residence) who—

- (1) was unlawfully present in the United States for a period of more than 180 days but less than 1 year, voluntarily departed the United States (whether or not pursuant to section 244(e)) prior to the commencement of proceedings

under section 235(b)(1) or section 240, and again seeks admission within 3 years of the date of such alien's departure or removal, or

(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.

(ii) Construction of Unlawful Presence

For purposes of this paragraph an alien is deemed to be unlawfully present in the United States if the alien is present in the United States after the expiration of the period of stay authorized by the Attorney General or is present in the United States without being admitted or paroled.

Section 212(a)(9)(B)(v) of the Act, 8 U.S.C. § 1182(a)(9)(B)(v), provides that section 212(a)(9)(B)(i) inadmissibility may be waived as a matter of discretion for

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.

Decades of case law have contributed to the meaning of extreme hardship. The definition of extreme hardship "is not . . . fixed and inflexible, and the elements to establish extreme hardship are dependent upon the facts and circumstances of each case." *Matter of Cervantes-Gonzalez*, 22 I&N Dec. 560, 565 (BIA 1999) (citation omitted). Extreme hardship exists "only in cases of great actual and prospective injury." *Matter of Ngai*, 19 I&N Dec. 245, 246-47 (BIA 1984). An applicant must demonstrate that claimed hardship is realistic and foreseeable. *Id.*; see also *Matter of Shaughnessy*, 12 I&N Dec. 810, 813 (BIA 1968) (finding that the respondent had not demonstrated extreme hardship where there was "no showing of either present hardship or any hardship . . . in the foreseeable future to the respondent's parents by reason of their alleged physical defects"). The common consequences of removal or refusal of admission, which include "economic detriment . . . [,] loss of current employment, the inability to maintain one's standard of living or to pursue a chosen profession, separation from a family member, [and] cultural readjustment," are insufficient alone to constitute extreme hardship. *Matter of Pilch*, 21 I&N Dec. 627 (BIA 1996) (citations omitted); but see *Matter of Kao and Lin*, 23 I&N Dec. 45, 51 (BIA 2001) (distinguishing *Matter of Pilch* 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 the qualifying relatives would relocate). Nevertheless, all "[r]elevant factors, though not extreme in themselves, must be considered in the aggregate in determining whether extreme hardship exists." *Matter of Ige*, 20 I&N Dec. 880, 882 (BIA 1994) (citations omitted). Hardship to the Applicant or others can be considered only insofar as it results in hardship to a qualifying relative. *Matter of Gonzalez Recinas*, 23 I&N Dec. 467, 471 (BIA 2002).

II. ANALYSIS

The only issue presented on appeal is whether hardship to the Applicant's U.S. citizen sibling may be considered with respect to a waiver of inadmissibility pursuant to section 212(a)(9)(B)(v) of the Act.¹

The evidence in the record, considered both individually and cumulatively, does not establish that the Applicant has a qualifying relative for purposes of a waiver of inadmissibility under section 212(a)(9)(B)(v) of the Act, namely, a U.S. citizen or lawful permanent resident spouse or parent. The Applicant is thus statutorily ineligible for a waiver. Because the Applicant is ineligible for a waiver, we will not address whether the Applicant merits a waiver as a matter of discretion.

A. Inadmissibility

As stated above, the Applicant has been found inadmissible under section 212(a)(9)(B)(i) of the Act for unlawful presence. The record reflects that the Applicant last entered the United States with a nonimmigrant visa in February 1990 and remained beyond his period of authorized stay. The Applicant subsequently applied for asylum in September 1993, and in June 1997, his case was administratively closed due to abandonment. The Applicant did not depart the United States until January 2013. The record thus establishes that the Applicant accrued more than one year of unlawful presence in the United States and is thus inadmissible pursuant to section 212(a)(9)(B) of the Act. The Applicant does not dispute this finding of inadmissibility on appeal.

B. Waiver

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 Applicant maintains that his U.S. citizen sibling will experience extreme hardship were she to remain in the United States while he continues to reside abroad, and alternatively, were his sibling to relocate abroad to reside with him. The record contains a statement from the Applicant's sibling, a copy of the approved Form I-130, Petition for Alien Relative, on his behalf, a copy of the Applicant's immigrant visa application, financial and medical documentation pertaining to the Applicant's sibling, property documentation, support letters on the Applicant's behalf, and employment authorization documents issued to the Applicant.

¹ The Applicant included only his U.S. citizen sister under Part 2, Information about Relative Through Whom Applicant Claims Eligibility, of his Form I-601.

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Section 212(a)(9)(B)(v) of the Act does not provide for a waiver based on extreme hardship to a United States citizen or lawful permanent resident sibling. Nor is extreme hardship to the Applicant a permissible consideration under the statute. In the instant appeal, the Applicant has not established that a qualifying relative for purposes of a Form I-601 waiver under section 212(a)(9)(B)(v) of the Act exists, namely, a U.S. citizen or lawful permanent resident spouse or parent. The Applicant is thus statutorily ineligible for a waiver.

C. Discretion

As the Applicant has not demonstrated extreme hardship to a qualifying relative or qualifying relatives, we need not consider whether the Applicant warrants a waiver in the exercise of discretion.

III. CONCLUSION

The Applicant has the burden of proving eligibility for a waiver of inadmissibility. *See* section 291 of the Act, 8 U.S.C. § 1361. The Applicant has not met that burden. Accordingly, we dismiss the appeal.

ORDER: The appeal is dismissed.

Cite as *Matter of L-S-R-*, ID# 16056 (AAO Apr. 14, 2016)