U.S. Department of Homeland Security
U. S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090

(b)(6)

U.S. Citizenship and Immigration Services

[redacted]

DATE: DEC 30 2014 Office: NEBRASKA SERVICE CENTER 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:

SELF-REPRESENTED

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 Director, Nebraska Service Center. 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 Trinidad and Tobago who was inspected and admitted to the United States in July 2004 and lived here until August 2007, when she returned to Trinidad and Tobago. As a result, she 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 one year or more. The applicant seeks a waiver of inadmissibility in order to reside in the United States with her U.S. citizen parent.

The director concluded the applicant had failed to establish that extreme hardship would be imposed on a qualifying relative and, accordingly, denied the Application for Waiver of Ground of Inadmissibility (Form I-601). *Decision of the Director,* May 2, 2014.

On appeal, the applicant provides additional documentation to support the claim that a qualifying relative would suffer extreme hardship as a result of the applicant's inadmissibility, including: a hardship statement, financial information, and medical records. The record also includes documentation submitted in support of the Form I-601. The entire record was reviewed and considered in rendering this decision.

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

> 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.
> >
> > . . . .
> >
> > (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 Attorney General (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 applicant entered 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, and she therefore requires a waiver of inadmissibility under section 212(a)(9)(B)(v) of the Act.

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-Moralez,* 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 applicant has established extreme hardship to a qualifying relative. 22 I&N Dec. 560, 565 (BIA 1999). 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; the Board added that not all of these factors need be analyzed in any given case and emphasized that the list is 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, while 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, or cultural readjustment 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, although 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)); conversely, *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 case-by-case whether denial of admission would result in extreme hardship to a qualifying relative.

On appeal, the applicant asserts that evidence not previously provided substantiates that denial of her waiver application will impose extreme hardship on her 68-year-old mother.

Regarding hardship due to separation, the applicant submits documentation of her mother's medical conditions to address the director's conclusion that this hardship would not rise to the level of extreme. The applicant claims that her mother is unable to be left alone due to her health conditions. In support, the applicant provides copies of two years of medical records consisting of laboratory results and physician's "progress notes" for medical care. Significant conditions of health are relevant factors in establishing extreme hardship. The evidence is insufficient to establish, however, that the applicant's mother suffers from such conditions. The progress notes and laboratory results contain medical terminology and abbreviations that are not easily understood. These documents were prepared for review by medical professionals and do not contain a clear explanation of the current medical condition of the applicant's mother. 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.

Despite lacking a physician's explanation of the medical records, we observe that test results include notations that the qualifying relative has no heart disease, and she is taking medication for high cholesterol and diabetes. Although confirming that she has asthma, documentation shows insurance benefits provided a home nebulizer to administer medication, her lungs are otherwise clear of disease, and her condition is aggravated by the dander of the pet cats in the household of the son with whom she lives. We note that she has been advised by health professionals to live in a cat-free environment, but her son is unwilling to remove the family's pets to ease her medical situation. The applicant's mother claims to be depressed over her daughter's absence. While sensitive that this

absence represents an emotional hardship to the qualifying relative, there is no indication that the applicant's absence has caused her mother's medical needs to go unmet. The evidence is insufficient to establish the severity of the hardship or how the daughter's absence affects her mother.

Regarding financial hardship, the applicant's mother documents receiving $626 monthly social security benefits, in addition to having her healthcare needs paid by Medicare, but fails to offer evidence of her expenses. She claims that she wishes to remove herself from her son's household, but is unable to afford to live elsewhere without the applicant's economic support. There is no evidence of any past employment or income in the United States or in her native country, nor any documentation that she has ever sought or received offers of employment here. Without evidence that the applicant's absence has made her mother unable to meet her financial obligations, we are unable to conclude that the applicant's inability to immigrate is causing hardship to a qualifying relative. The record thus falls short of establishing any consequences beyond those commonly associated with separation of family members that would rise to the level of extreme hardship.

Regarding the qualifying relative's hardship should she relocate abroad, the applicant claims that the crime situation in Trinidad and Tobago and her mother's medical condition would represent hardships rising to the level of extreme. No evidence is provided regarding her personal safety or establishing that her medical needs would be unmet overseas, except for the incorporation of the text of local new articles into the qualifying relative's statement. We observe that, while the issues reported in these articles are discussed in official U.S. government reports, *see Trinidad and Tobago—Country Information,* U.S. Department of State, May 1, 2014, the evidence is insufficient to establish the applicant's mother would suffer extreme hardship by returning to her native country. There is no indication she would be living with the applicant in an area of high risk, no evidence she would be specifically targeted, and no showing that required medication or treatment would be unavailable. Although there is documentation of drug costs overseas, the evidence fails to establish that the applicant's mother lacks the resources to obtain medication.[1] Nor is there any indication that the purchasing power of her social security income, together with the applicant's resources, would be insufficient to cover the expenses of daily living.

Other than her two adult sons in the United States, there is no evidence the qualifying relative has significant personal ties here that would be severed if she moved abroad. Further, the qualifying relative is no longer working and owns no property. We note that, while she lives with one of her sons, there is no indication of the nature of their relationship. There are no statements on record from either son and no indication they are unable to visit their mother overseas. Although the applicant's mother has lived here for over 20 years and claims to have given up everything in Trinidad and Tobago, we note that both of her daughters still live there.
Considering the entire record, there is no indication the qualifying relative suffers from a serious medical condition for which treatment is unavailable in Trinidad and Tobago, or that she would lose contact with close relatives or experience financial loss were she to move abroad. Therefore, based

[1] As noted previously, she already possesses the nebulizer used to administer her asthma medicines, but there is no documentation of the regular or recurring medical costs incurred, whether or not covered by insurance.

on a totality of the circumstances, we conclude the applicant has not established that her mother would suffer extreme hardship were she to relocate abroad to reside with the applicant.

While the applicant provides new documents on appeal, the evidence, when considered in the aggregate, fails to establish that her mother would suffer extreme hardship if the applicant is unable to immigrate. The record demonstrates that the applicant's mother faces no greater hardship than the unfortunate, but expected, disruptions, inconveniences, and difficulties arising whenever a family member is removed from the United States or refused admission. Although we are not insensitive to the applicant's mother's situation, the record does not establish that the hardship she would face rises to the level of "extreme" as contemplated by statute and case law. Having again found the applicant statutorily ineligible for relief, no purpose would be served in discussing 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.