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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

U.S. Citizenship and Immigration Services

H4

[redacted]

DATE: OCT 28 2011 OFFICE: SANTO DOMINGO, DOMINICAN REPUBLIC

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) and Application for Permission to Reapply for Admission into the United States after Deportation or Removal under Section 212(a)(9)(A) of the Immigration and Nationality Act, 8 U.S.C. § 1182(a)(9)(A).

ON BEHALF OF APPLICANT:

[redacted]

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

If you believe the law was inappropriately applied by us in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of $630. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Field Office Director, Santo Domingo, Dominican Republic, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The record reflects that the applicant is a native and citizen of Peru who was found by a Department of State Consular officer 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 over a year and seeking admission within ten years of her last departure from the United States; and under Section 212(a)(9)(A) of the Immigration and Nationality Act, 8 U.S.C. § 1182(a)(9)(A) for having been ordered removed from the United States and applying for permission to reapply for admission to the United States within ten years of her departure.

The record indicates that the applicant is a child of a United States citizen and is the beneficiary of an approved Petition for Alien Relative (Form I-130). The applicant 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), in order to reside in the United States.

The Field Office Director found no purpose would be served in considering the applicant's waiver application as she was also inadmissible under section 212(a)(6)(B) of the Act for which no waiver is available. She denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) accordingly. *Decision of the Field Office Director*, dated June 8, 2009.

On appeal, counsel asserts that the applicant's mother is experiencing extreme hardship and requests that the waiver application be approved. Counsel submits a brief and additional evidence. *See, Form I-290B and attachments.*

The record includes, but is not limited to, statements from the applicant's mother, medical documentation, including doctors' statements pertaining to the applicant's mother; a Supplemental Social Security Income statement relating to the applicant's mother's husband; and counsel's brief and attachments. The entire record was reviewed and considered in arriving at a decision on the appeal.

Section 212(a)(6) of the Act provides, in pertinent part:

> (B) Failure to attend removal proceeding.
>
> > (1) In general.-Any alien who without reasonable cause fails or refuses to attend or remain in attendance at a proceeding to determine the alien's inadmissibility or deportability and who seeks admission to the United States within 5 years of such alien's subsequent departure or removal is inadmissible.

Counsel asserts that the applicant is not inadmissible under section 212(a)(6)(B) of the Act as the applicant never failed to appear at her immigration hearings.

Having reviewed the record, the AAO finds it to support counsel's claim. We note that the record contains the transcript of the applicant's July 15, 1999 immigration proceedings at which she was ordered removed. The transcript clearly establishes the applicant's presence at this hearing. The AAO finds the record lacks evidence that the applicant failed to attend any of her removal hearings. Therefore, the AAO withdraws the field office director's determination that the applicant was inadmissible under section 212(a)(6)(B)of the Act. We also note that even if the applicant had failed to attend her removal hearing, her inadmissibility under section 212(a)(6)(B) of the Act would have expired as of April 18, 2011 and would no longer bar her entry to the United States.

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.

In the present application, the record reflects that the applicant entered the United States on May 18, 1992, with a B2 nonimmigrant visa, valid until November 17, 1992. The applicant filed an asylum application on November 27, 1992. Her asylum application was denied on July 15, 1999. A subsequent appeal was denied by the Board of Immigration Appeals (BIA) on September 8, 2000. The BIA thereafter denied the applicant's motion to reconsider on November 20, 2000. The applicant departed the United States on April 18, 2006.

Based on this history, the applicant accrued unlawful presence from November 21, 2000, the day after the BIA denied her motion until April 18, 2006 when she departed the United States.[1] The applicant is seeking admission into the United States within ten years of her April 18, 2006 departure. The applicant is, therefore, 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 more than one year.

Section 212(a)(9)(B)(v) of the Act provides for a waiver of section 212(a)(9)(B)(i) inadmissibility as follows:

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[1] Pursuant to section 212(a)(9)(B)(iii)(II) of the Act, no time during which a bona fide asylum application is pending may be taken into account in determining unlawful presence, unless the asylum applicant was employed without authorization during this period.

> 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 other family member can be considered only insofar as it results in hardship to a qualifying relative. The applicant's 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 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.

On appeal, counsel asserts that the applicant's mother is suffering extreme hardship without the applicant here to assist her. Counsel states that the applicant's mother suffers from severe heart disease, requires 24-hour care, and that before the applicant departed the United States she took care of her mother and made sure that her mother took her medication. Counsel also states that the applicant also took care of her grandmother who lived with them and that the applicant's mother and grandmother were financially, emotionally, and physically dependent on her. He asserts that since the applicant's departure her mother has had to see a psychiatrist and a psychologist to help her deal with the emotional distress created by the applicant's departure; and that she suffers from eating and sleeping disorders and "assorted ailments from her heart disease." Counsel states, in addition, that the applicant had been a major contributor to the household finances, and her mother has not been able to afford suitable housing, medical or automobile insurance, and other necessities.

In a July 1, 2009 affidavit, the applicant's mother states that her husband is disabled and that the applicant took care of everything for her, including taking her to doctors' appointments and to medical procedures, driving her to the pharmacy, and ensuring that she took the right medicine and the correct dosage. She asserts that because of her heart condition she must follow a special low fat diet and that the applicant would buy the food and prepare it for her. The applicant's mother states that the applicant paid half of the rent and food and helped pay household bills. The applicant's mother states that the applicant also did the same things for her grandmother who suffers from Alzheimer's disease.

The applicant's mother states that her medical conditions, particularly her heart disease, has worsened since the applicant's departure because she does not have transportation and that she is unable to keep all of her medical appointments and go to her medical procedures and has to find a way to get to the pharmacy. She also asserts that it is difficult for her to take the correct pills in the right dosages. The applicant's mother also contends that she suffers from depression and has "a

variety of symptoms associated with depression," such as difficulty sleeping and eating, and that her mental health has deteriorated to the point that she has to see a psychiatrist and a psychologist. The applicant's mother also states that she cannot depend on her husband because he is disabled.

The record includes medical documentation that establishes that the applicant's mother suffers from heart disease. Included in the record is a June 17, 2009, letter from [redacted] which confirms that the applicant's mother suffers from severe heart disease, takes medication for her heart condition, and had been under his care for three years. [redacted] also states that the applicant's mother has heart palpitations and chest pain and must have the applicant at her side to take care of her. A June 30, 2009 letter from [redacted] confirms that the applicant's mother has a history of myalgia, has experienced chronic joint pain for over a year, suffers from depression and episodes of dizziness, and takes various medications. [redacted] reports that due to her myalgia, the applicant's mother is, at times, unable to ambulate without help because of her pain. [redacted] also states that having the applicant's help would be of great benefit to her mother. A July 1, 2009 letter from psychiatrist [redacted] states that the applicant's mother suffers from a Major Depressive Disorder with atypical features and that she is taking antidepressant medication. [redacted] also states that it is important for the applicant to be with her mother. Additional medical documentation in the record indicates that the applicant's mother has been treated for heart disease since November 2005. The record also includes a Supplemental Social Security Income (SSI) statement addressed to the applicant's mother's spouse, which indicates that he is receiving SSI as a result of being disabled.

While the record fails to establish that the applicant's mother is financially dependent on her, the AAO does find the record to demonstrate that the applicant's mother is experiencing significant emotional and physical hardships in the applicant's absence. When these specific factors and the normal hardships created by separation are considered in the aggregate, the applicant has established that her mother would suffer extreme hardship if the waiver application is denied and she remains in the United States.

With respect to relocation, the applicant does not claim hardship to her mother if she joins her in Peru. In the absence of clear assertions from the applicant, the AAO may not speculate as to what hardships the applicant's mother would encounter if she moves to Peru. The AAO finds, therefore, that the applicant has failed to establish that her United States citizen mother would suffer extreme hardship were she to relocate abroad to reside with the applicant due to her inadmissibility.

Although the applicant has demonstrated that her mother would experience extreme hardship as a result of separation, 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. The AAO has long interpreted the waiver provisions of the Act to require a showing of extreme hardship in both possible scenarios, as 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 relocation, we cannot find that refusal of admission would result in extreme hardship to the qualifying relative in this case.

Having found the applicant statutorily ineligible for relief, no purpose would be served in discussing whether she merits a waiver as a matter of discretion.

The AAO notes that the field office director denied the applicant's Form I-212 Application for Permission to Reapply for Admission into the United States After Deportation or Removal (Form I-212) in the same decision. *Matter of Martinez-Torres,* 10 I&N Dec. 776 (reg. Comm. 1964) held that an application for permission to reapply for admission is denied, in the exercise of discretion, to an alien who is mandatorily inadmissible to the United States under another section of the Act, and no purpose would be served in granting the application. As the applicant is inadmissible under section 212(a)(9)(B)(v) of the Act no purpose would be served in granting the applicant's Form I-212.

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. *See* 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.