identifying data deleted to prevent clearly unwarranted invasion of personal privacy

PUBLIC COPY

U.S. Department of Homeland Security
Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
Washington, DC 20529-2090

U.S. Citizenship and Immigration Services

H6

[redacted]

FILE: [redacted] Office: CHICAGO, ILLINOIS Date: NOV 2 3 2010

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:

[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. Any appeal or motion filed on or after November 23, 2010 must be filed with the $630 fee. 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,

for Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the District Director, Chicago, Illinois, 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 Belize 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 in the United States for more than one year and seeking readmission within ten years of her last departure from the United States. The applicant is married to 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 with her husband.

The district director found that the applicant failed to establish extreme hardship to her husband, and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) accordingly. *Decision of the District Director*, dated February 11, 2008. On appeal, counsel asserts that the district director did not properly evaluate the documents submitted by the applicant in support of her waiver application. Counsel then contends that the denial of the waiver application imposes extreme hardship on the applicant's husband. *See Form I-290B, Notice of Appeal and accompanying brief.*

The record includes, but is not limited to, counsel's brief in support of the appeal, a letter and an affidavit by the applicant's husband, a copy of a Warranty Deed issued to the applicant and her husband dated May 16, 2007, copies of other financial documents, copies of Earnings Statements for the applicant's husband, a copy of *The World Factbook* on Belize and copies of medical records of the applicant. The entire record was reviewed and considered in rendering this decision on appeal.

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.
>
> . . . .
>
> (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.

In the present case, the record reflects that on August 30, 1998, the applicant was admitted into the United States as a B-2 visitor with authorization to remain in the United States until March 1, 1999. The applicant did not leave the United States until April 3, 2000. On April 17, 2000, the applicant returned to the United States and was admitted as a B-2 visitor with authorization to remain in the United States until October 16, 2000. The applicant indicated that she has remained in the United States since her last entry on April 17, 2000. On July 27, 2005, the applicant's United States citizen spouse filed a Form I-130 on the applicant's behalf. On the same date, the applicant filed an Application to Register Permanent Resident or Adjust Status (Form I-485) based on the I-130 petition. On May 9, 2006, the Form I-130 was approved. On July 31, 2006, the applicant filed a Form I-601. On February 11, 2008, the district director denied the Form I-601 and the Form I-485, finding that the applicant failed to establish extreme hardship to her spouse.

The applicant accrued unlawful presence from March 1, 1999, until April 3, 2000, when she departed the United States. The applicant's admission into the United States with a B-2 visa on April 17, 2000, does not cure her prior unlawful presence from March 1, 1999 to April 3, 2000. The applicant's unlawful presence for more than one year and departure from the United States triggered the ten-year bar in section 212(a)(9)(B)(i)(II) of the Act. The applicant did not remain outside the United States for the requisite ten years before reentering the United States on April 17, 2000. Thus, the applicant is inadmissible to the United States under section 212(a)(9)(B)(i)(II) of the Act.

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 children can be considered only insofar as it results in hardship to a qualifying relative. The applicant's husband 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).

As a qualifying relative is not required to depart the United States as a consequence of an applicant's inadmissibility, two distinct factual scenarios exist should a waiver application be denied: either the qualifying relative will join the applicant to reside abroad or the qualifying relative will remain in the United States. Ascertaining the actual course of action that will be taken is complicated by the fact that an applicant may easily assert a plan for the qualifying relative to relocate abroad or to remain in the United States depending on which scenario presents the greatest prospective hardship, even though no intention exists to carry out the alleged plan in reality. *Cf. Matter of Ige,* 20 I&N Dec. 880, 885 (BIA 1994) (addressing separation of minor child from both parents applying for suspension of deportation). Thus, we interpret the statutory language of the various waiver provisions

in section 212 of the Act to require an applicant to establish extreme hardship to his or her qualifying relative(s) under both possible scenarios. To endure the hardship of separation when extreme hardship could be avoided by joining the applicant abroad, or to endure the hardship of relocation when extreme hardship could be avoided by remaining in the United States, is a matter of choice and not the result of removal or inadmissibility. As the Board of Immigration Appeals stated in *Matter of Ige*:

> [W]e consider the critical issue . . . to be whether a child would suffer extreme hardship if he accompanied his parent abroad. If, as in this case, no hardship would ensue, then the fact that the child might face hardship if left in the United States would be the result of parental choice, not the parent's deportation.

Id. See also Matter of Pilch, 21 I&N Dec. 627, 632-33 (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 deportation, 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. at 631-32; *Matter of Ige*, 20 I&N Dec. at 883; *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.*

We observe that 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.*, *In re 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).

Family separation, for instance, has been found to be a common result of inadmissibility or removal in some cases. *See Matter of Shaughnessy*, 12 I&N Dec. at 813. Nevertheless, family ties are to be considered in analyzing hardship. *See Matter of Cervantes-Gonzalez,* 22 I&N Dec. at 565-66. The question of whether family separation is the ordinary result of inadmissibility or removal may depend on the nature of family relationship considered. For example, in *Matter of Shaughnessy*, the Board considered the scenario of parents being separated from their soon-to-be adult son, finding that this separation would not result in extreme hardship to the parents. *Id.* at 811-12; *see also U.S. v. Arrieta*, 224 F.3d 1076, 1082 (9th Cir. 2000) ("Mr. Arrieta was not a spouse, but a son and brother. It was evident from the record that the effect of the deportation order would be separation rather than relocation."). In *Matter of Cervantes-Gonzalez*, the Board considered the scenario of the respondent's spouse accompanying him to Mexico, finding that she would not experience extreme hardship from losing "physical proximity to her family" in the United States. 22 I&N Dec. at 566-67.

The decision in *Cervantes-Gonzalez* reflects the norm that spouses reside with one another and establish a life together such that separating from one another is likely to result in substantial hardship. It is common for both spouses to relocate abroad if one of them is not allowed to stay in the United States, which typically results in separation from other family members living in the United States. Other decisions reflect the expectation that minor children will remain with their parents, upon whom they usually depend for financial and emotional support. *See, e.g., Matter of Ige*, 20 I&N Dec. at 886 ("[I]t is generally preferable for children to be brought up by their parents."). Therefore, the most important single hardship factor may be separation, particularly where spouses and minor children are concerned. *Salcido-Salcido*, 138 F.3d at 1293 (quoting *Contreras-Buenfil v. INS,* 712 F.2d 401, 403 (9th Cir. 1983)); *Cerrillo-Perez*, 809 F.2d at 1422.

Regardless of the type of family relationship involved, the hardship resulting from family separation is determined based on the actual impact of separation on an applicant, and all hardships must be considered in determining whether the combination of hardships takes the case beyond the consequences ordinarily associated with removal or inadmissibility. *Matter of O-J-O-,* 21 I&N Dec. at 383. Nevertheless, though we require an applicant to show that a qualifying relative would experience extreme hardship both in the event of relocation and in the event of separation, in analyzing the latter scenario, we give considerable, if not predominant, weight to the hardship of separation itself, particularly in cases involving the separation of spouses from one another and/or minor children from a parent. *Salcido-Salcido*, 138 F.3d at 1293.

The record reflects that the applicant's spouse, is a 34-year-old native and citizen of the United States. The applicant and her husband were married in Skokie, Illinois, on May 21, 2004. The applicant and her husband each have a child from a prior relationship. asserts that he is suffering extreme emotional and financial hardships as a result of the denial of the applicant's waiver application.

Regarding the emotional hardship of separation, states that after the death of his father in 2001, he had feelings of loneliness, depression and overwhelming incompleteness, that he had developed some bad habits and that he had lost focus in life until he met the applicant in 2003. *Affidavit of* dated July 29, 2006. states that after spending some time with the applicant, the empty feelings had gone. *Id.* states that he and the applicant have dedicated their lives to each other since they met and that the emotional withdrawal of a separation from the applicant would be "catastrophic to me," and he does not know how to mentally and emotionally handle her absence. *Id.* The applicant also states that he would be concerned for the applicant's safety if she is returned to Belize because her former abusive partner may restart his abuse of the applicant there. *Id.* further states that he and his family rely on the applicant to take their mother to her medical appointments and that if the applicant is removed to Belize, it would be difficult for his mother to get to her appointments and would be a hardship to him. *Id.* In his December 14, 2007 letter, states that the applicant is pregnant with their first child together, that the applicant has undergone extensive medical treatment in the United States to enable her to conceive, that she will need the same kind of expert care in the United States to successfully carry the pregnancy to term, but that if she is removed to Belize, he would be concerned for the health and safety of the applicant and their unborn child because the medical care in Belize is not as good as the medical care in the United States.

Regarding the financial hardship of separation, the applicant's husband states that he pays $233.00 bi-weekly in child support for his biological daughter, that he is responsible for their mortgage and other financial obligations in the United States, and that his medical insurance takes care of the applicant's medical care, but that if the applicant is removed to Belize, he would not be able to support two families, one in Belize and one in the United States as well as pay out of pocket for the applicant and their unborn child's medical care in Belize. *See Letter from* dated December 14, 2007. Counsel states that will experience severe financial hardship if the applicant cannot remain in the United States, that is the only source of income for the family, that he earned $39,840 in 2006 to support his entire family and pay for their financial obligations in the United States and that if the applicant is removed to Belize, "will certainly lose the house because of the harsh financial burden that will be thrust upon him." *Counsel's Brief in support of the Appeal.* The record contains a copy of the first page of the applicant and her husband's joint U.S. Income Tax Return for 2006 (Form 1040), copies of Earnings Statements for 2006, for the applicant's husband, a copy of a mortgage statement from Countrywide Home Loan for March 2008, and a copy of an insurance card from United Healthcare.

Although the applicant's husband claims that separation from the applicant would cause him emotional, psychological and financial hardship, the AAO does not find the evidence in the record sufficient to demonstrate that the challenges the applicant's husband will encounter, cumulatively

meet the extreme hardship standard. While the emotional hardship of separation is apparent from the applicant's husband's letter and affidavit, the applicant did not provide medical or psychological records, detailed testimony, or other evidence to show that any emotional or psychological hardships her spouse faces are unusual or beyond what would be expected upon family separation due to one member's inadmissibility.

While the record includes information about the applicant's husband's salary and the family's income in 2006, it does not contain the family's more recent financial information. The record does not include a detailed report or information about the family's expenses to show that the applicant's husband will suffer extreme financial hardship as a result of family separation. Counsel states that the applicant's husband is the sole financial provider for the family, and that he will suffer extreme financial hardship if the applicant is removed from the United States. Counsel has not provided any documentation to show the applicant's own contributions to the family or that the applicant's husband, who has taken care of the family financially in the past will no longer be able to do so. Going on record without supporting documentation is not sufficient to meet the applicant's burden of proof in this proceeding. *See Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)). Also, the record reflects that the applicant's husband completed a Form I-864, Affidavit of Support, in 2005, indicating that his annual salary was $30,000, and testified that his salary alone was sufficient to support his family of four. Accordingly, the AAO finds that the evidence in the record does not establish that the applicant's husband's hardship rises to the level of extreme hardship.

Regarding relocation, the applicant's spouse states that he would suffer hardship if he is forced to relocate to Belize to live with the applicant for the following reasons: he was born in the United States and has never traveled or lived in Belize, the applicant's living conditions in Belize are substandard, he will have difficulties continuing his financial support to his biological daughter, he will incur out of pocket expenses for the medical care of his family in Belize, the medical care in Belize is not as good as in the United States, and he will not be able to find a good paying job that will be sufficient for him to take care of his family in Belize and to continue paying for the support of his daughter in the United States. The record contains copies of *The World Factbook* on Belize and *The World Factbook* on United States.

The AAO acknowledges that the applicant's husband has family ties in the United States that may be impacted by his relocation to Belize; however, the evidence in the record does not establish that the challenges the applicant's husband will face if he relocates to Belize to be with the applicant, are beyond the common results of removal or inadmissibility to the level of extreme hardship. The AAO notes that the country condition information in the record provides a general overview of the country, but does not demonstrate that the applicant's husband will be unable to find employment there. The record reflects that the applicant's entire family lives in Belize, and the applicant has not addressed any family assistance she may receive in Belize. The AAO also notes that other than the statement from the applicant's husband, the record does not include any evidence of financial, medical, or other types of hardship that the applicant's husband would experience if he relocated to Belize to be with the applicant. Accordingly, the AAO does not find the record before it to demonstrate that the applicant's husband would suffer extreme hardship upon relocation to Belize.

In sum, although the applicant's spouse claims hardships based on family separation and financial hardship, the record does not support a finding that the difficulties, considered in the aggregate, would rise beyond the common results of removal or inadmissibility to the level of extreme hardship. *See Perez,* 96 F.3d at 392; *Matter of Pilch*, 21 I&N Dec. at 631. Although the distress caused by separation from one's family is not in question, a waiver of inadmissibility is only available where the resulting hardship would be unusual or beyond that which would normally be expected upon removal. *See id.* The AAO therefore finds that the applicant has failed to establish extreme hardship to her spouse, as required for a waiver of inadmissibility under section 212(a)(9)(B)(v) and under section 212(i) of the Act.

Section 291 of the Act, 8 U.S.C. § 1361, provides that the burden of proof is on the applicant to establish eligibility for the benefit sought. Here, the applicant has not met that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.