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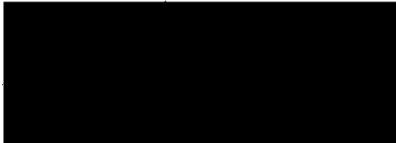
U.S. Department of Homeland Security  
U.S. Citizenship and Immigration Services  
Office of Administrative Appeals MS 2090  
Washington, DC 20529-2090



U.S. Citizenship and Immigration Services

**PUBLIC COPY**

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FILE: [Redacted] Office: BALTIMORE, MD Date: OCT 18 2010

IN RE: [Redacted]

APPLICATION: Application for Waiver of Grounds of Inadmissibility under section 212(a)(9)(B)(v) of the Immigration and Nationality Act (the Act), 8 U.S.C. section 1182(a)(9)(B)(v).

ON BEHALF OF APPLICANT:



**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. The fee for a Form I-290B is currently \$585, but will increase to \$630 on November 23, 2010. 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 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 District Director, Baltimore, Maryland. 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 St. Vincent. She 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 one year or more and seeking admission within ten years of her last departure. She is married to a United States citizen. She 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).

The District Director concluded that the applicant had failed to establish that the bar to her admission would impose extreme hardship on a qualifying relative, her U.S. citizen spouse, and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) on February 26, 2008.

On appeal, counsel for the applicant asserts that the District Director failed to consider the hardship factors in the aggregate, committing an error of law and that the record establishes the applicant's burden.

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

(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 record indicates that the applicant entered the United States on April 29, 2000, and remained until she departed voluntarily in August 2007. The applicant filed the Form I-485, Application to Register Permanent Residence or Adjust Status, on September 11, 2006, and, as such, accrued unlawful presence between April 29, 2000 and September 11, 2006. As the applicant resided unlawfully in the United States for over a year and is now seeking admission within ten years of her last departure from the United States, she is inadmissible under section 212(a)(9)(B)(i)(II) of the Act.

Section 212(a)(9)(B)(v) of the Act provides for a waiver of section 212(a)(9)(B)(i) 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 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 spouse's adult children and grandchildren can be considered only insofar as it results in hardship to a qualifying relative. The applicant's spouse 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 United States Citizenship and Immigration Services (USCIS) then assesses whether a favorable exercise of discretion is warranted. See *Matter of Mendez-Morales*, 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 includes, but is not limited to, counsel’s brief; a statement from the applicant’s spouse; medical documentation and reports pertaining to the applicant and her spouse; copies of bank statements; copies of business licenses from the State of Maryland, along with other business records; copies of income tax returns for the applicant’s spouse and his business; country conditions materials on St. Vincent, including, a periodical on the country’s health system, as well as a Background Note and the section on St. Vincent from Country Reports on Human Rights Practices – 2006, published by the Department of State; copies of birth certificates and marital history documentation; support letters from the applicant’s spouse’s family; and photographs of the applicant and her husband.

The entire record was reviewed and all relevant evidence considered in rendering this decision.

With regard to hardship upon relocation, counsel asserts that the applicant’s spouse is 57-years-old, has never lived outside the United States, has no immediate family in St. Vincent, and has significant family and community ties to the United States. Counsel also states that relocation would result in significant financial loss for the applicant’s spouse since he would have to close his business and sell his property in a depressed real estate market. This loss, counsel asserts, would, in turn, affect the

applicant's spouse's health. Counsel further contends that the applicant's spouse has only two years of college, has no skills other than having worked in a residential care facility and would be looking for employment at a time in his life when most people in St. Vincent have retired. Counsel also asserts that applicant's spouse would be unable to afford to open a [REDACTED] and that in light of the high unemployment rate in St. Vincent, the applicant has no skills that she could use to get a job to support herself and her spouse.

The record includes country conditions materials that discuss conditions in St. Vincent in terms of national statistics, but these materials are not sufficiently probative to establish that the applicant or her spouse would experience significant hardship upon relocation. Nonetheless, the AAO recognizes that the applicant is 60-years-old, has never lived outside the United States, has no family or cultural ties to St. Vincent, has family and community ties to the United States, and would experience higher than normal financial hardships if he lost his business investment by relocating. When these impacts are viewed in the aggregate, the resulting hardship rises above that normally associated with the inadmissibility of a family member. Accordingly, the AAO finds that the applicant has established that her spouse would experience extreme hardship upon relocation.

With regard to the hardship that the applicant's spouse would experience if he remains in the United States, counsel states that the applicant and her spouse own two properties, which operate as assisted living facilities for the mentally challenged, and that the applicant's spouse would be unable to afford an additional employee to help run the business if the applicant were removed from the United States. Counsel asserts that this would lead to the applicant's spouse losing his business and his home since the applicant and her spouse reside at one of the properties where they provide assisted care services.

The applicant's spouse asserts that the applicant supports their business by ensuring that the residents take their medication, helping with the cleaning of the homes, cooking meals for the residents and assisting with managing the business' finances. He also states that it is hard to run the business with the high Adjustable Rate Mortgage (ARM) they have and that his mortgage payments have recently gone up.

The record contains individual tax returns, statements of business losses and profits, other business and property documentation, and personal bank statements. An examination of this evidence reveals that the applicant's spouse had an income, generated by his business, of roughly [REDACTED] in 2004 and 2005. In 2006, after the applicant married her spouse, her spouse reported roughly [REDACTED] in income. The applicant's spouse purchased his first property in 2000, and operated his business for five years before they were married. The applicant's contribution to her spouse's business is unclear, as is the impact of her departure. Business documentation indicates that the mortgages on both properties, their car and truck expenses, maintenance and repairs, as well as utilities, are all paid for out of the business' earnings, significantly reducing the applicant's spouse's cost of living expenses. There are also Form 1099s in the record indicating that the applicants' spouse received non-employee compensation of [REDACTED] from [REDACTED] and [REDACTED] from the State of Maryland in 2006. Accordingly, the record does not provide a clear picture of the financial impact of the applicant's removal on her spouse.

Counsel also asserts that the applicant suffers from [REDACTED] in addition to having had foot surgery. Counsel asserts that the applicant's spouse has [REDACTED] which the applicant has helped him manage. Counsel further states that if the applicant is removed, her spouse would have to put more hours into his business and would suffer from [REDACTED] which would [REDACTED]. Counsel contends that the applicant's spouse would worry about the applicant's health, which would make his depression over their separation worse.

There is no evidence that the applicant has been diagnosed with a mental health condition by a licensed mental health practitioner. The emergency room reports submitted into the record indicate that, in 2006, the applicant was admitted after [REDACTED]. These reports also state that the applicant later retracted this threat and asserted that she had made it to make her husband angry. There is no other evidence of depression. Other documentation submitted to establish the applicant's medical conditions demonstrates that she visited the emergency room for stomach and chest pains, but the results or diagnoses arising from these visits are not clear. The record does contain sufficient evidence to establish that the applicant underwent foot surgery in 2005, although no current prognosis is provided. Neither does the record indicate that the applicant has any limitations as a result of this surgery. While the record contains evidence that the applicant has had some medical issues, the evidence submitted is not sufficient to establish that she has significant medical problems. Moreover, the applicant is not a qualifying relative for the purposes of this proceeding and the record fails to demonstrate how any hardships she would encounter upon removal would cause hardship to her spouse.

There is also no documentation that establishes the applicant's spouse has been diagnosed with a mental health condition, despite counsel's speculation that he would become depressed and jeopardize his health if the applicant were removed. The record contains a one sentence, handwritten note from the [REDACTED] stating that the applicant's spouse suffers from [REDACTED]. However, this brief statement is insufficient to establish that the applicant's spouse would experience medical hardship if the applicant were removed as it fails to indicate the severity of his medical conditions, how they affect his ability to function independently or that the applicant plays a role in providing for his health care needs.

The applicant's spouse has submitted a letter indicating that the applicant takes care of his grandchildren, but the record fails to support this claim. There is no indication that the applicant's spouse is responsible for his grandchildren physically or financially, or that the applicant's absence would result in childcare responsibilities for him. The applicant's spouse has immediate family in the area and nothing has been submitted that indicates these family members would be unable or unwilling to assist the applicant's spouse in caring for his grandchildren, or even assisting him with his business to mitigate the impact of the applicant's departure.

The AAO notes that the record contains evidence submitted by the applicant to support her assertions regarding the hardship that her spouse would experience in her absence. This evidence,

however, is not sufficiently probative to establish that the hardship factors in this case, even when considered in the aggregate, would constitute extreme hardship for her spouse if he remains in the United States without her.

The record, reviewed in its entirety and in light of the *Cervantes-Gonzalez* factors cited above, does not support a finding that the applicant's spouse would face extreme hardship if the applicant is removed. U.S. court decisions have repeatedly held that the common results of removal or inadmissibility are insufficient to prove extreme hardship. See *Hassan v. INS*, 927 F.2d 465, 468 (9th Cir. 1991). In addition, *Perez v. INS*, 96 F.3d 390 (9th Cir. 1996), held that the common results of deportation are insufficient to prove extreme hardship and defined extreme hardship as hardship that was unusual or beyond that which would normally be expected upon deportation. The AAO therefore finds that the applicant has failed to establish extreme hardship to her U.S. citizen spouse as required under section 212(a)(9)(B)(v) of the Act. 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.

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 rests 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.