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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

H6

[Redacted]

FILE: [Redacted]

Office: [Redacted]

Date: APR 13 2011

IN RE: [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, 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,

Michael Humway

for Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Acting District Director (“district director”), [REDACTED]. 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 [REDACTED] 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 admission within 10 years of his last departure from the United States. He was further found inadmissible under section 212(a)(1)(A)(iii) of the Act, 8 U.S.C. § 1182(a)(1)(A)(iii), as an alien who is determined to have had a physical or mental disorder and behavior associated with the disorder that may pose, or has posed, a threat to the property, safety, or welfare of the alien or others. The applicant seeks waivers of inadmissibility pursuant to sections 212(a)(9)(B)(v) and 212(g) of the Act, 8 U.S.C. §§ 1182(a)(9)(B)(v) and 1182(g).

The district director concluded that the applicant had failed to establish that his bar to admission would impose extreme hardship on a qualifying relative, his United States citizen spouse. The director further concluded that neither the applicant nor his sponsor has “signed acknowledgement of the conditions prescribed in consultation with the Centers for Disease Control.” The director denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) accordingly.

On appeal, counsel asserts that the applicant’s spouse is experiencing extreme hardship from “various health and psychological issues.” *Appeal Statement*, dated January 1, 2011.

In support of the application, the record contains, but is not limited to, a letter from the applicant’s spouse, medical documentation, and psychological evaluations. The entire record was reviewed and considered in rendering a decision on the appeal.¹

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

(a) Classes of Aliens Ineligible for Visas or Admission.--Except as otherwise provided in this Act, aliens who are inadmissible under the following paragraphs are ineligible to receive visas and ineligible to be admitted to the United States:

(1) Health-related grounds.--

(A) In general.--Any alien-

(iii) who is determined (in accordance with regulations prescribed by the

¹ The record also contains a letter from the applicant’s spouse written in Spanish without a corresponding certified English translation. Because the applicant failed to submit a certified translation of the document, the AAO cannot determine whether the evidence supports the applicant’s claims. *See* 8 C.F.R. § 103.2(b)(3). Accordingly, the evidence is not probative and will not be accorded any weight in this proceeding.

Secretary of Health and Human Services in consultation with the Attorney General [now Secretary of Homeland Security])—

(I) to have a physical or mental disorder and behavior associated with the disorder that may pose, or has posed, a threat to the property, safety, or welfare of the alien or others, or

(II) to have had a physical or mental disorder and a history of behavior associated with the disorder, which behavior has posed a threat to the property, safety, or welfare of the alien or others and which behavior is likely to recur or to lead to other harmful behavior. . . is inadmissible.

(B) Waiver authorized.--For provision authorizing waiver of certain clauses of subparagraph (A), see subsection (g).

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

(g) The Attorney General may waive the application of—

(3) subsection (a)(1)(A)(iii) in the case of any alien, in accordance with such terms, conditions, and controls, if any, including the giving of bond, as the [Secretary], in the discretion of the [Secretary] after consultation with the Secretary of Health and Human Services, may by regulation prescribe.

The record reflects that the applicant was referred for a psychological evaluation because of his conviction for driving while intoxicated (DWI) of alcohol. The psychologist classified the applicant as having a Class A medical condition, Alcohol Abuse, with associated Harmful Behavior. See *Psychological Evaluation*, dated June 25, 2007; *Medical Examination for Immigrant or Refugee Applicant (Form DS-2053)*, dated June 25, 2007. The district director found the applicant inadmissible under section 212(a)(1)(A)(iii) of the Act on this basis.

Regulations at 8 C.F.R. § 212.7(b) govern aliens with certain mental conditions, who are eligible for immigrant visas but require the approval of waivers of grounds of inadmissibility. The regulations require that the applicant submit the waiver application and a statement to the appropriate USCIS office indicating that arrangements have been made to provide the alien's complete medical history, including details of any hospitalization or institutional care or treatment for any physical or mental condition; the alien's current physical and mental condition, including prognosis and life expectancy; and a psychiatric examination. 8 C.F.R. § 212.7(b)(4). "For an alien with a past history of mental illness, the medical report shall also contain available information on which the U.S. Public Health Service can base a finding as to whether the alien has been free of such mental illness for a period of time sufficient in the light of such history to demonstrate recovery." *Id.* The medical report must then be forwarded to the U.S. Public Health Service for review. *Id.* These regulations further provide:

(ii) *Submission of statement.* Upon being notified that the medical report has been reviewed by the U.S. Public Health Service and determined to be acceptable, the alien or the alien's sponsoring family member shall submit a statement to the consular or [USCIS] office. The statement must be from a clinic, hospital, institution, specialized facility, or specialist in the United States approved by the U.S. Public Health Service. The alien or alien's sponsor may be referred to the mental retardation or mental health agency of the state of proposed residence for guidance in selecting a post-arrival medical examining authority who will complete the evaluation and provide an evaluation report to the Centers for Disease Control. The statement must specify the name and address of the specialized facility, or specialist, and must affirm that:

(A) The specified facility or specialist agrees to evaluate the alien's mental status and prepare a complete report of the findings of such evaluation.

(B) The alien, the alien's sponsoring family member, or another responsible person has made complete financial arrangements for payment of any charges that may be incurred after arrival for studies, care, training and service;

(C) The Director, Division of Quarantine, Center for Prevention Services, Centers for Disease Control, [REDACTED] shall be furnished:

(1) The report evaluating the alien's mental status within 30 days after the alien's arrival; and

(2) Prompt notification of the alien's failure to report to the facility or specialist within 30 days after being notified by the U.S. Public Health Service that the alien has arrived in the United States.

(D) The alien shall be in an outpatient, inpatient, study, or other specified status as determined by the responsible local physician or specialist during the initial evaluation.

The record contains a Centers for Disease Control (CDC) Form 4.422-1, Statements in Support of Application for Waiver of Inadmissibility. Part I of CDC form 4.422-1 reflects that the Department of Health and Human Services Public Health Service (PHS) received the required medical documentation regarding the applicant's present condition. The PHS reviewing official, [REDACTED] Director, Division of Global Migration and Quarantine, National Center for Infectious Diseases, classified the applicant as having a Class A medical condition, Alcohol Abuse, which renders him inadmissible under section 212(a)(1)(A)(iii)(I). Part II of CDC form 4.422-1 shows that, pursuant to 8 C.F.R. § 212.7(b)(4)(ii), the applicant obtained the required statement from [REDACTED] a Licensed Chemical Dependency Counselor. As noted by the district director, the applicant's wife failed to complete Part III of Form CDC 4.422-1, attesting that necessary arrangements for further examination of the applicant will be made upon his entry to the United States. However, on December 21, 2007, [REDACTED] approved the applicant's Form CDC 4.422-1, thus certifying PHS's opinion that appropriate follow-up care will be provided upon the applicant's entry to the United States, and that PHS has no objection to his entry.

The record remains unclear on the issue of whether applicant has actually satisfied the regulatory requirements for a section 212(g) waiver. However, there is no purpose in addressing this issue further as the record reflects that the applicant is also inadmissible under section 212(a)(9)(B) of the Act, for having been unlawfully present in the United States for more than one year and seeking admission within 10 years of his last departure from the United States.

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.

....

(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.

The record shows that the applicant entered the United States without inspection in August 1992. The applicant remained in the United States until departing in June 2007. The applicant accrued unlawful presence from April 1, 1997, the date of the enactment of unlawful presence provisions under the Act, until June 2007. The applicant does not dispute this on appeal. The applicant is attempting to seek admission into the United States within ten years of his June 2007 departure from the United States. The applicant is, therefore, inadmissible to the United States under section 212(a)(9)(B)(II) of the Act for having been unlawfully present in the United States for a period of more than one year and seeking admission to the United States within ten years of his last departure.

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 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 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.

On appeal, counsel asserts that the applicant's spouse relies on the applicant for emotional and financial support. Counsel states that the applicant helped raise her three children, who are 20, 18 and 16 years old. Counsel contends that the applicant's spouse may lose her employment due to frequently visiting the applicant in [REDACTED]. Counsel indicates that the applicant's spouse's income is insufficient to provide for four household members. Counsel notes that the applicant's spouse is suffering from anxiety and stress that may trigger depression and health issues. *Appeal Brief*, dated August 13, 2008.

The applicant's spouse asserts that she suffers from depression, loss of appetite and lack of sleep. She states that in 2008, she was diagnosed with an Ovarian Cyst, and was only able to have it removed in February 2010 because of financial reasons. She states that if the applicant was present in the United States, she would have been able to rely on him for support during her recovery. She contends that she has been suffering from uric acid for two years. She states that without the applicant's financial support, she has had to work harder, causing a physical strain on her body. She states that her doctor believes she has signs of osteoporosis or arthritis. She notes that she was admitted to the [REDACTED] Adult Psychiatric Unit in [REDACTED] from December 3, 2010 until December 10, 2010 because of her depression. She states that she was given medication as part of her treatment. She states that her older children have moved out of her home and her remaining son will be leaving for college. She notes that she will be alone at home, and will not have anyone to care for her. She asserts that her depression has affected her employment, and she has been removed from her department and received a reduction in salary. She states that she also has the added expense of visiting the applicant in [REDACTED] which contributes to her financial strain. *Statement from* [REDACTED], dated December 19, 2010.

The AAO will give considerable weight to the emotional hardship the applicant's spouse is suffering as a result of separation from the applicant. In *Salcido-Salcido v. INS*, 138 F.3d 1292, 1293 (9th Cir. 1998), the Ninth Circuit Court of Appeals, referring to the separation of an alien from qualifying relatives, held that "the most important single hardship factor may be the separation of the alien from family living in the United States," and that "[w]hen the BIA fails to give considerable, if not predominant, weight to the hardship that will result from family separation, it has abused its discretion." (Citations omitted). The record demonstrates that the emotional hardships in this case are severe, and rise above the typical hardships that result from inadmissibility. The record contains a psychiatric evaluation reflecting that the applicant was admitted to [REDACTED] Hospital "due to

severe depression and anxiety because of several family factors.” *Psychiatric Evaluation of* [REDACTED] [REDACTED] dated December 5, 2010. The evaluation notes that the applicant’s spouse “presents with increased depression, decreased function in daily life, decreased sleep and decreased appetite. . . . She is depressed about her husband leaving 3-1/2 years ago to [REDACTED] She is also depressed about her kids getting older and leaving the house, which would leave her isolated and alone.” *Id.* The treatment plan established for the applicant’s spouse includes admission to the adult psychiatric unit with a recommendation for group and family therapy as well as a prescription for the antidepressant, Cymbalta. *Id.*

All elements of hardship to the applicant’s spouse, should she remain separated from the applicant, have been considered in the aggregate. The AAO finds that the recent emotional and psychological hardships the applicant’s spouse is suffering as a result of her separation from the applicant rise to the level of extreme hardship.

Nevertheless, the applicant must also demonstrate that his spouse would suffer extreme hardship if she relocated to her native country of [REDACTED] to maintain family unity.

On appeal, the applicant’s spouse asserts that if she relocated to [REDACTED] she would no longer have frequent contact with her adult children. She states that her husband cannot find steady employment, and there is a “rash of kidnappings and danger due to the drug cartels.” *Statement from* [REDACTED] [REDACTED] dated December 19, 2010.

The AAO notes that applicant’s spouse has not stated, and the record does not demonstrate, where the applicant resides in [REDACTED]. The applicant’s Biographic Information Form (Form G-325A) and waiver application only list his address in [REDACTED]. The Department of State travel warning on [REDACTED] indicates that the majority of the violence in the country is regional, near the U.S.-Mexico border. *See U.S. Department of State, Travel Warning, [REDACTED]* dated September 10, 2010. Furthermore, the applicant has not described his experiences in [REDACTED] and whether he has been a victim of violence in the country. Therefore, the AAO is not in a position to make a determination on the safety concerns the applicant’s spouse would have if she relocated to [REDACTED].

The AAO recognizes that the applicant’s spouse would suffer some financial hardships as a result of relocating to [REDACTED]. However, she has not demonstrated the extent of these hardships. She has not indicated that she would be unable to find gainful employment in [REDACTED]. Nor has she described the applicant’s current living conditions. The applicant’s spouse has stated that she has a number of health conditions, which AAO acknowledges could result in financial hardship if she relocated to [REDACTED] without employment or health insurance. However, she has not presented evidence of those conditions in plain language from a medical professional stating her diagnosis, treatment plan, and prognosis. Without such information, the AAO cannot make a determination on the extent of the financial hardship the applicant’s spouse would suffer if she relocated to [REDACTED].

Finally, the applicant’s spouse has stated that she would suffer emotional hardship from severing family ties with her three adult children. The statement from the applicant’s spouse demonstrates her strong family bond with her children. As stated, 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*, 12 I&N Dec. 810, 813 (BIA 1968), 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. Here, the applicant's spouse has stated that her children are adults, ages 22, 20 and 19 years old. *Statement from* [REDACTED] dated December 19, 2010. She has explained that her children no longer reside with her. *Id.* The AAO will give some weight to his hardship factor, but it is limited by the fact that her children no longer reside with her and are adults.

All elements of hardship to the applicant's spouse, should she relocate to her native country of [REDACTED] to maintain family unity with the applicant, have been considered in the aggregate. As stated, the record does not demonstrate where the applicant's resides in [REDACTED] or the extent of the financial hardship the applicant's spouse would suffer if she relocated there. While we will give some consideration to the hardship the applicant's spouse would suffer from severing family ties, this hardship factor does not alone rise above the common results of inadmissibility to the level of extreme hardship.

Accordingly, the applicant has not established that denial of the present waiver application would result in extreme hardship to his spouse, as required for a waiver 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 he 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 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. The waiver application is denied.