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

U.S. Citizenship and Immigration Services

[redacted]

H6

DATE: AUG 1 9 2011 OFFICE: [redacted] FILE: [redacted]

IN RE: APPLICANT: [redacted]

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

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, [redacted] and 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 readmission within 10 years of her last departure from the United States. The applicant seeks a waiver of inadmissibility in order to reside in the United States with her U.S. Citizen spouse and daughter.

The Field Office Director concluded the applicant failed to establish that her qualifying relative would suffer extreme hardship if the waiver was not granted and denied the application accordingly. *See Decision of Field Office Director* dated March 31, 2009.

On appeal, counsel asserts that the Field Office Director cited incorrect facts when analyzing whether the applicant warranted a favorable exercise of discretion. Counsel further asserts that the applicant's spouse suffers from extreme hardship because he has to "leave his loved ones in one of the most dangerous cities in the world," when he crosses the border to go to work every day. *Brief in support of appeal,* April 26, 2009. In addition, counsel states that the applicant's spouse suffers from psychological conditions as a result of the conditions caused by the denial of the I-601 waiver. Lastly, counsel explains that as a result of the applicant's inadmissibility, the applicant's spouse suffers from financial problems.

The record includes, but is not limited to, counsel's brief in support of the appeal, the divorce decree between the applicant and her ex-husband, the marriage certificate between the applicant and her U.S. Citizen spouse, a copy of a life insurance policy, photographs, a letter from a physician in Tijuana, a psychiatric report and resumes of the evaluators, evidence of the applicant's U.S. Citizenship, declarations of the applicant's spouse, and letters of support from family and friends. The entire record was reviewed and considered in rendering a decision on the 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.

> (ii) Construction of unlawful presence.- For purposes of this paragraph, an alien is deemed to be unlawfully present in the United States if the alien is present in the United States after the expiration of the period of stay authorized by the Attorney General or is present in the United States without being admitted or paroled.
>
> . . . .
>
> (v) Waiver.-The Attorney General has sole discretion to waive clause (i) in the case of an immigrant who is the spouse or son or daughter of a United States citizen or of an alien lawfully admitted for permanent residence, if it is established to the satisfaction of the Attorney General 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. No court shall have jurisdiction to review a decision or action by the Attorney General regarding a waiver under this clause.

The record reflects the applicant was born on August 4, 1975 in [redacted] The record further reflects that the applicant entered the United States without inspection on or about November 1, 1999, accruing unlawful presence until her departure in September 2007. The applicant married her U.S. Citizen spouse in [redacted] California on October 30, 2001, and an I-130 Petition was filed on April 15, 2003. However, given that the applicant was still married to another person until November 25, 2002, the October 30, 2001 marriage was found invalid and the first I-130 Petition was denied. The couple married again on July 23, 2004 in [redacted] California, and filed another I-130 Petition on August 23, 2004, which was approved on October 6, 2004. The applicant's qualifying relative in this case is her U.S. Citizen spouse.

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.

Counsel first asserts that the Field Office Director "cited false facts which [led] him or her to an incorrect conclusion" in the analysis of whether a favorable exercise of discretion was warranted. *Brief in support of appeal,* April 26, 2009. Counsel is correct in that because the applicant married her U.S. citizen husband in the United States after she entered illegally, and at the time of her entry without inspection she was married to her ex-husband, a [redacted] national, she had no means to enter legally. The Field Office Director's error does not change the fact that the applicant is inadmissible for unlawful presence.

Counsel then asserts that *Matter of W-*, *Matter of Shaugnessy,* and *Matter of Ngai* are somewhat inapplicable because these cases involve inadmissibility based on criminal activity and not just entering without inspection and accruing unlawful presence of more than a year as in the case of the applicant. The AAO notes that *Matter of W-*, *Matter of Shaugnessy,* and *Matter of Ngai* are used in cases involving waivers of inadmissibility as guidance for what constitutes extreme hardship and this

cross application of standards is supported by the BIA. For example, in *Matter of Cervantes-Gonzalez,* 22 I & N Dec. 560, 565 (BIA 1999), the BIA, assessing a section 212(i) waiver of inadmissibility case, wrote:

> Although it is, for the most part, prudent to avoid cross application between different types of relief of particular principles or standards, we find the factors articulated in cases involving suspension of deportation and other waivers of inadmissibility to be helpful, given that both forms of relief require extreme hardship and the exercise of discretion . . . . [*S]ee . . . Hassan v. INS,* 927 F.2d 465, 467 (9th Cir. 1991) (noting that suspension cases interpreting extreme hardship are useful for interpreting extreme hardship in section 212(h) cases). These factors related to the level of extreme hardship which an alien's "qualifying relative," . . . would experience upon deportation of the respondent.

In, *In Re Monreal-Aguinaga,* 23 I&N Dec. 56 (BIA 2001), a section 240A(b) of the Act, 8 C.F.R. § 240.20, cancellation of removal case, the BIA states:

> We do find it appropriate and useful to look to the factors that we have considered in the past in assessing "extreme hardship" for purposes of adjudicating suspension of deportation applications, as set forth in our decision in *Matter of Anderson,* 16 I&N Dec. 596 (BIA 1978). That is, many of the factors that should be considered in assessing "exceptional and extremely unusual hardship" are essentially the same as those that have been considered for many years in assessing "extreme hardship," but they must be weighted according to the higher standard required for cancellation of removal. However, insofar as some of the factors set forth in *Matter of Anderson* may relate only to the applicant for relief, they cannot be considered under the cancellation statute, where only hardship to qualifying relatives, and not to the applicant, may be considered. Factors relating to the applicant himself or herself can only be considered insofar as they may affect the hardship to a qualifying relative.

In, *In Re Kao-Lin,* 23 I & N Dec. 45 (BIA 2001), a suspension of deportation case, the BIA referred to the factors listed in *Matter of Anderson, supra,* in making a determination of extreme hardship, stating in a footnote that:

> The standard for "extreme hardship" that we apply in the present case is the same as that applied in cases dealing with petitions for immigrant status under section 204(a)(1) of the Act, 8 U.S.C. § 1154(a)(1) . . . as well as in cases involving waivers of inadmissibility under section 212(i) of the Act, 8 U.S.C. § 1182(i).

Given that *Matter of W-, Matter of Shaugnessy,* and *Matter of Ngai* are cited in the Field Office Director's decision as general guidance for what constitutes extreme hardship, and such cross application is supported by BIA decisions as stated above, the Field Office Director's use of those decisions is not error.

Counsel explains that the applicant entered the United States without inspection before meeting and marrying her U.S. Citizen spouse, not after. *Id.* Counsel asserts that the applicant entered without inspection "with her eldest daughter to escape an abusive relationship with her then [redacted] husband." *Id.*

Counsel then describes the qualifying relative's emotional hardship. In the brief, counsel explains the applicant's spouse "does not have an extensive support system in [redacted] Instead, he gets to leave his loved ones in one of the most dangerous cities in the world every morning at 4:00 am. He gets to worry about them all day long while he works in the United States until he is able to return home at about 7:00 PM." *Id.* In support, the applicant submits a letter from a physician stating that the applicant's spouse "has a mental condition of anxiety dating back more than a year based upon the separation from his family... he presented with depression and anxiety." *Letter from Dr.* [redacted] April 18, 2009. In addition, the applicant submits a psychological report, which states that her spouse was "noticeably anxious about his wife's immigration situation. He was also obviously deeply concerned about the welfare of his wife and children. He was tearful at several points in the interview, primarily when discussing his extreme distress at his family being detained in [redacted] since September 11, 2007... Mr. [redacted] clearly communicated that his wife and daughters are the focus of his life. He reports being so distressed by their absence that he is unable [to] sleep and is experiencing a significant appetite reduction." *Psychological report,* September 25, 2007. The report confirms that the applicant's spouse "is working 40 hours per week at the [redacted] Casino as a traffic control officer" and that the applicant and her spouse "do not have an extended network of family and friends to rely on for support in [redacted]" *Id.* The report concludes that if the applicant "were not allowed to return [to the United States] it is likely that the emotional strain from losing his family will be overwhelming to him." *Id.*

The applicant's spouse then describes his financial hardship. The applicant's spouse states that the applicant's expenses in [redacted] make things "extremely hard" and that his "employment is in the United States, and if [he lost] this job [he] would be affected financially, emotionally, physically, and personally." *Declaration of applicant's spouse,* September 28, 2007. Counsel asserts that, because the applicant and her spouse live in [redacted] with the two children, the applicant's spouse "crosses the border in order to hold the job which can help him keep abreast of the bills he is struggling to pay." *Brief in support of appeal,* April 26, 2009.

The letters from family and friends confirm that "though a [redacted] national [the applicant] has lived in the United States as a productive citizen for many years." *Letter from* [redacted] September 15, 2007, *see also letter from* [redacted] September 18, 2007.

Despite the assertions of financial hardship, the applicant does not provide any evidence of her own or her spouse's employment, income, or household expenses to support those assertions. Without details of the family's expenses and income, the AAO is unable to assess the nature and extent of financial hardship, if any, the applicant's spouse will face. It is also noted that the record fails to demonstrate that the applicant will be unable to contribute to her family's financial well-being from a location outside of the United States.

The assertions regarding life in [redacted] are supported by the U.S. Department of State's travel warning. The applicant's spouse, however, has since relocated to [redacted] to join his spouse. *See brief in support of appeal,* April 26, 2009. The psychological report does not contemplate the emotional state caused by that relocation, only by the applicant moving to [redacted] without her spouse. Therefore, the only evidence to support any assertion of extreme hardship caused by separation is the more recent 2009 letter from the neuropsychiatrist. In that letter, the neuropsychiatrist explains that applicant's spouse "has a mental condition of anxiety dating back more than a year based upon the separation from his family... he presented with depression and anxiety." *Letter from Dr.* [redacted] April 18, 2009. The letter, however, states that "the health problem will only be able to be resolved definitely by means of family unification" which has, in fact, happened given that the applicant's spouse lives with his family in [redacted]. *Id.* That letter fails to describe how the applicant's spouse is adjusting to life in [redacted] as even it only addresses his "separation from his family." *Id.* The only mention of hardship from adjusting to life in [redacted] is made in counsel's brief. In his brief, counsel asserts that the applicant's spouse "gets to worry about them all day long while he works in the United States until he is able to return home at about 7:00pm" and that "[h]e crosses the border in order to hold the job which can help him keep abreast of the bills he is struggling to pay." *Brief in support of appeal,* April 26, 2009. The applicant does not submit any supporting evidence to show financial hardship, nor is there any other evidence to support the assertion that the applicant's spouse continues to suffer anxiety or other hardship given his relocation to [redacted] The evidence is actually to the contrary. The declaration of the applicant's spouse states that he has "lived all [his] life in the United States, [his] employment is [in] the United States and if [he were to] lose this job [he] would be affected financially, emotionally, physically, and personally." *Declaration of Applicant's spouse,* September 28, 2007. Even after his relocation to [redacted], the applicant's spouse continues to maintain his employment. *See brief in support of appeal,* April 26, 2009. The evidence also shows that the applicant does not have significant ties to the United States - in fact he does "not have an extended network of family and friends to rely on for support in [redacted]" *Psychological report,* September 25, 2007. In conclusion, there is insufficient evidence to show extreme hardship to the applicant's spouse if he remains in [redacted]

In this case, the record does not contain sufficient evidence to show that the hardships faced by the qualifying relative, considered in the aggregate, rise beyond the common results of removal or inadmissibility to the level of extreme hardship. 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. As the applicant has not established extreme hardship to a qualifying family member no purpose would be served in determining whether the applicant 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. 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.