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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

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U.S. Citizenship
and Immigration
Services

[REDACTED]

H6

DATE: DEC 01 2011 OFFICE: SANTA ANA, CA [REDACTED]

IN RE: Applicant: [REDACTED]

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

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, Santa Ana, California, 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 El Salvador 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 record indicates that the applicant is married to a United States citizen and 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 his United States citizen spouse.

The Field Office Director found that the applicant had failed to establish that extreme hardship would be imposed on the applicant's spouse and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) accordingly. *Decision of the Field Office Director*, dated May 20, 2009.

On appeal, counsel asserts that the Field Office Director failed to address the merits of the hardship evidence and that the applicant has established extreme hardship to her United States citizen spouse. *See Form I-290B and counsel's brief and attachments.*

The record includes, but is not limited to, statements from the applicant and his spouse describing the hardships claimed; a medical statement and records pertaining to the applicant; a psychological evaluation of the applicant's spouse; letters from the applicant's supervisor and friends; a 2007 income tax return and a 2007 Form W-2 for the applicant's spouse; documentation regarding registration and insurance for the applicant's spouse's truck and an educational certificate for the applicant; child support billing statements; a renters insurance invoice; and counsel's briefs and attachments. The entire record was reviewed and considered in arriving at a decision on the appeal.

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

(B) Aliens Unlawfully Present.-

(i) In general.-Any alien (other than an alien lawfully admitted for permanent residence) who-

....

(II) has been unlawfully present in the United States for one year or more, and who again seeks admission within 10 years of the date of such alien's departure or removal from the United States, is inadmissible.

In the present application, the record indicates that the applicant entered the United States on February 26, 1999 without inspection. She applied for Temporary Protected Status (TPS) on March 9, 2001. She was granted TPS and has since re-registered for and maintained TPS status. In 2004 the applicant departed the United States and re-entered pursuant to Advance Parole.

Based on the evidence of record, the applicant accrued unlawful presence from February 26, 1999 when she entered the United States without inspection, until March 9, 2001, the date she filed for TPS. The applicant is seeking admission to the United States within ten years of her last departure. The applicant is, therefore, inadmissible to the United States under section 212(a)(9)(B)(i)(II) of the Act for being unlawfully present in the United States for a period of more than one year.

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

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 his child 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-Morales*, 21 I&N Dec. 296, 301 (BIA 1996).

Extreme hardship is "not a definable term of fixed and inflexible content or meaning," but "necessarily depends upon the facts and circumstances peculiar to each case." *Matter of Hwang*, 10 I&N Dec. 448, 451 (BIA 1964). In *Matter of Cervantes-Gonzalez*, the Board provided a list of factors it deemed relevant in determining whether an alien has established extreme hardship to a qualifying relative. 22 I&N Dec. 560, 565 (BIA 1999). The factors include the presence of a lawful permanent resident or United States citizen spouse or parent in this country; the qualifying relative's family ties outside the United States; the conditions in the country or countries to which the qualifying relative would relocate and the extent of the qualifying relative's ties in such countries; the financial impact of departure from this country; and significant conditions of health, particularly when tied to an unavailability of suitable medical care in the country to which the qualifying relative would relocate. *Id.* The Board added that not all of the foregoing factors need be analyzed in any given case and emphasized that the list of factors was not exclusive. *Id.* at 566.

The Board has also held that the common or typical results of removal and inadmissibility do not constitute extreme hardship, and has listed certain individual hardship factors considered common

rather than extreme. These factors include: economic disadvantage, loss of current employment, inability to maintain one's present standard of living, inability to pursue a chosen profession, separation from family members, severing community ties, cultural readjustment after living in the United States for many years, cultural adjustment of qualifying relatives who have never lived outside the United States, inferior economic and educational opportunities in the foreign country, or inferior medical facilities in the foreign country. *See generally Matter of Cervantes-Gonzalez*, 22 I&N Dec. at 568; *Matter of Pilch*, 21 I&N Dec. 627, 632-33 (BIA 1996); *Matter of Ige*, 20 I&N Dec. 880, 883 (BIA 1994); *Matter of Ngai*, 19 I&N Dec. 245, 246-47 (Comm'r 1984); *Matter of Kim*, 15 I&N Dec. 88, 89-90 (BIA 1974); *Matter of Shaughnessy*, 12 I&N Dec. 810, 813 (BIA 1968).

However, though hardships may not be extreme when considered abstractly or individually, the Board has made it clear that "[r]elevant factors, though not extreme in themselves, must be considered in the aggregate in determining whether extreme hardship exists." *Matter of O-J-O-*, 21 I&N Dec. 381, 383 (BIA 1996) (quoting *Matter of Ige*, 20 I&N Dec. at 882). The adjudicator "must consider the entire range of factors concerning hardship in their totality and determine whether the combination of hardships takes the case beyond those hardships ordinarily associated with deportation." *Id.*

The actual hardship associated with an abstract hardship factor such as family separation, economic disadvantage, cultural readjustment, et cetera, differs in nature and severity depending on the unique circumstances of each case, as does the cumulative hardship a qualifying relative experiences as a result of aggregated individual hardships. *See, e.g., Matter of Bing Chih Kao and Mei Tsui Lin*, 23 I&N Dec. 45, 51 (BIA 2001) (distinguishing *Matter of Pilch* regarding hardship faced by qualifying relatives on the basis of variations in the length of residence in the United States and the ability to speak the language of the country to which they would relocate). For example, though family separation has been found to be a common result of inadmissibility or removal, separation from family living in the United States can also be the most important single hardship factor in considering hardship in the aggregate. *See Salcido-Salcido*, 138 F.3d at 1293 (quoting *Contreras-Buenfil v. INS*, 712 F.2d 401, 403 (9th Cir. 1983)); *but see Matter of Ngai*, 19 I&N Dec. at 247 (separation of spouse and children from applicant not extreme hardship due to conflicting evidence in the record and because applicant and spouse had been voluntarily separated from one another for 28 years). Therefore, we consider the totality of the circumstances in determining whether denial of admission would result in extreme hardship to a qualifying relative.

On appeal, counsel asserts that the applicant's spouse depends on the applicant for emotional and moral support and that separation would cause him emotional hardship. Counsel asserts that the applicant's spouse experiences a lot of job-related stress and looks to his spouse for support and encouragement. Counsel also asserts that the applicant's immigration problems cause her spouse to worry, to have problems sleeping, to have difficulty concentrating at work and to experience nervousness, and tension. Counsel further asserts that the applicant's spouse worries that the applicant will spend the rest of her days in a country with extensive poverty, and that he also worries about her safety as she would be a young women alone in El Salvador. In addition, counsel asserts, that the applicant suffers from elevated cholesterol and that her spouse worries that she will not have

access to proper healthcare and will not be able to afford doctors' visits and medication in El Salvador. Counsel also states that the applicant's spouse would not be able to visit the applicant in El Salvador often as it would be difficult for him to take time off his job as a truck driver since he gets paid only when he works.

Counsel also asserts that the applicant's spouse will suffer financial hardship in the applicant's absence. Counsel states that the applicant has invested time and money in his trucking career, and makes monthly payments of \$530 for insurance and \$180 for vehicle registration and would likely lose his business if the waiver application is denied. Counsel also states that the applicant's spouse has a monthly child support obligation of \$560. Counsel contends that the applicant will not be able to obtain employment in El Salvador because of the poor economy and her lack of any employment history there, and that she will require her spouse's support. Counsel also notes the applicant's health conditions and states that it would be difficult for her spouse to pay for her health care costs in El Salvador. She also contends that without the applicant, her spouse would not be able to meet his child support obligations and pay his business costs because he would have to send money to support the applicant in El Salvador.

The applicant and her spouse state that the applicant's financial contribution is needed to support the household. They state that the applicant's spouse earns an average of \$1,200 - \$1,500 weekly and that the applicant earns about \$300 weekly, and reports the following monthly expenses: approximately \$700 in job related expenses, \$1,400 in rent, \$1,400 in car payments, \$200 for car insurance, and \$560 in child support payments. The applicant's spouse states that he would have to send money to support the applicant in El Salvador because she would not be able to find a job there.

The record includes an April 8, 2009 letter from [REDACTED] stating that the applicant is under her care and requires treatment with Gemfibrozil due to elevated cholesterol, and medical records, dated in May 2008, for the applicant from Kaiser Permanente which indicate that the applicant has been diagnosed with eczema and polycystic ovaries.

In an April 11, 2009 psychological evaluation, psychologist [REDACTED] reports that the applicant's spouse expressed concern that his wife would be deported to El Salvador and stated that he had been feeling anxious and nervous. [REDACTED] also indicates that the applicant stated that he worries frequently, feels lonely, cries, has decreased energy, is sad and experiencing decreased motivation. [REDACTED] concludes that the applicant's spouse is experiencing symptoms of depression and anxiety, and that he has difficulty coping with stressful situations. [REDACTED] also concludes that if the applicant is removed, the applicant's spouse's anxiety and depressive symptoms could develop into a disorder, such as Major Depression, especially since he does not demonstrate significant coping strategies or resources to support him through such a traumatic event.

While [REDACTED] discusses the applicant's spouse's increased levels of depression and anxiety, she does not conclude that they are impairing his ability to function. It is noted that the standardized tests administered by the evaluator do not indicate that the applicant's spouse's anxiety or depression

is severe. It is also noted that [REDACTED] finds only that the applicant's spouse's symptoms could "possibly" lead to the development of a disorder such as "Major Depression."

The financial documentation in the record includes a monthly billing statement from the California Department of Child Support Services indicating a \$560 monthly support payment obligation, and evidence of payments of \$560 for commercial vehicle insurance and \$180 for commercial vehicle registration, and a checking account statement for the period January 9 through February 9, 2009. Counsel states that evidence has been provided to establish that the applicant's spouse needs her income to support the household. However, besides the documents described above, the record does not include additional financial documentation that would establish her needs and a range of the applicant's obligations, such as her monthly rent payment. Accordingly, the AAO finds the record to lack sufficient evidence to establish the financial situation of the applicant's spouse and hardship he would experience. Without documentation to establish the applicant's spouse's financial circumstances, the AAO is unable to assess the nature and extent of financial hardship he would face if the waiver application is denied.

The AAO finds that the applicant's spouse may suffer emotional hardship. However, even when this hardship is considered with the normal hardships created by separation, the record fails to establish extreme hardship to the applicant's qualifying relative.

Counsel asserts that if applicant's spouse relocates to El Salvador due to the applicant's inadmissibility, he will experience extreme hardship there. Counsel asserts that the applicant's spouse would experience cultural hardship in El Salvador, that he does not have any ties to El Salvador and that his family is in the United States, including his two children from a prior marriage.

The applicant's spouse states that he cannot join the applicant in El Salvador. He states that he has child support obligations and he cannot avoid his responsibility to pay child support and that he would not earn sufficient wages in El Salvador to be able to make these payments. He also states that he would not be able to maintain his parental relationship with his children. The applicant's spouse also states that he would have to give up his dream of being a truck driver because he does not believe that he could get a job as a truck driver in El Salvador. Further, he additionally claims that he does not have any ties to El Salvador, that it would be hard for him to leave his two children and other family members in the United States; and that El Salvador does not have a government and that there is corruption.

In relocating to El Salvador, the applicant's spouse would have to give up his employment as a truck driver, leaving his two children behind, and move to a country where he has no family or ties. The AAO notes that El Salvador has been designated as a Temporary Protected Status (TPS) country based on extensive damage to the country caused by natural disasters, and its designation as such does not expire until March 9, 2012. Based on the specific hardship factors just noted, the designation of TPS for El Salvador and the normal hardships created by relocation, the AAO finds the applicant to have demonstrated that her spouse would experience extreme hardship upon relocation.

It has thus been established that the applicant's spouse would suffer extreme hardship were he to relocate abroad to reside with the applicant due to her inadmissibility.

Although the applicant has demonstrated that his spouse, the qualifying relative, would experience extreme hardship if he relocated abroad to reside with the applicant, we can find extreme hardship warranting a waiver of inadmissibility only where an applicant has shown extreme hardship to a qualifying relative in the scenario of relocation *and* the scenario of separation. The AAO has long interpreted the waiver provisions of the Act to require a showing of extreme hardship in both possible scenarios, as a claim that a qualifying relative will relocate and thereby suffer extreme hardship can easily be made for purposes of the waiver even where there is no actual intention to relocate. *Cf. Matter of Ige*, 20 I&N Dec. 880, 886 (BIA 1994). Furthermore, to relocate and suffer extreme hardship, where remaining in the United States and being separated from the applicant would not result in extreme hardship, is a matter of choice and not the result of inadmissibility. *Id.*, also *cf. Matter of Pilch*, 21 I&N Dec. 627, 632-33 (BIA 1996). As the applicant has not demonstrated extreme hardship from separation, we cannot find that refusal of admission would result in extreme hardship to the qualifying relative in this case.

As discussed above, the applicant has not demonstrated that her qualifying relative would experience extreme hardship as a result of her inadmissibility. Therefore, she has not established eligibility 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 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 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.