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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

[redacted]

H6

FEB 01 2011

FILE: [redacted] Office: MEXICO DISTRICT (SANTO DOMINGO) Date:

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: SELF-REPRESENTED

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 Acting Mexico District Director, Santo Domingo, 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 the Dominican Republic 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 record indicates that the applicant is married to a United States citizen and she is the beneficiary of an approved Petition for Alien Relative (Form I-130). The applicant seeks a waiver of inadmissibility pursuant to section 212(a)(9)(B)(v) of the Act, 8 U.S.C. § 1182(a)(9)(B)(v), in order to reside in the United States with her United States citizen husband.

The Acting District Director found that the applicant failed to establish 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 District Director*, dated July 24, 2008.

On appeal, the applicant requests reconsideration and states that the spouse suffers emotional, medical, and financial hardships as a result of separation from the applicant and their child. The applicant submits additional evidence. *See Form I-290B and attachments.*

The record includes two statements from the applicant's spouse describing the hardship claimed; a psychological report describing the impact of separation on the applicant's spouse, a medical letter stating that the applicant's infant child suffers from seasonal allergies; letters from the applicant's spouse's employer and co-workers describing the impact of the applicant's separation on the applicant's spouse; and, a lease and receipts. *See letter submitted with the Form I-601, and with the appeal, respectively, from* [redacted] *Psychological report from* [redacted] *a medical letter, in Spanish with an English translation, from* [redacted] *a medical letter from* [redacted] *a letter from* [redacted] *and* [redacted]*, the applicant's spouse's employer; and, letters from the applicant's spouse's co-workers,* [redacted] *and* [redacted] *and, a lease and various receipts.* The entire record was reviewed and considered in arriving at a decision on the appeal.

In the present application, the record indicates that the applicant entered the United States in January 2006, as a non-immigrant visitor, with authorization to stay until July 23, 2006. The applicant married her husband on May 25, 2006. On October 10, 2006, the applicant's spouse filed a Form I-130 on behalf of the applicant. On January 4, 2007, the applicant's Form I-130 was approved. The applicant remained in an unlawful status until March 9, 2008, when she departed the United States for the Dominican Republic. On June 9, 2008, the applicant filed a Form I-601. On July 24, 2008, the Acting District Director denied the Form I-601, finding that the applicant accrued more than a year of unlawful presence and failed to demonstrate extreme hardship to her United States citizen spouse.

The applicant accrued unlawful presence from July 23, 2006, the date her authorized stay expired, until March 9, 2008, when she departed the United States. The applicant does not dispute that she accrued

over one year of unlawful presence. The applicant is attempting to seek admission into the United States within 10 years of her March 9, 2008 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 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 her children 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.

The applicant's spouse states his family needs to be together in the United States because the applicant's absence causes emotional and financial hardship, and impacts the health of their infant child who suffers from hay fever related allergies; that as a result of separation from the applicant and his son "[he has] had to resort to professional help because [he is] not sleeping... he cannot concentrate on [his] work, and [he] collapsed in a massive depression that has affected [his] physical and emotional stability;" and, "if [he is] unable to live [with his wife] and [his] son, even greater hardship would be expected." In their letters, [redacted] the applicant's spouse's employers, and [redacted] the applicant's spouse's coworkers, state that they have noticed that the applicant's spouse exhibits emotional problems and has been distracted in his work at [redacted] where he has been employed as a golf cart mechanic. A psychological evaluation report from [redacted] states that "Emotionally, [the applicant's spouse] is clinically depressed;" that he exhibits psychomotor retardation... and there are indications that he is experiencing considerable underlying anxiety, as well as hostility. These emotions seems to be [a] product of feelings of impotency to solve his present problems and feeling overwhelm [ed] about family separation and financial problems;" that symptoms of depression "started

when [his] wife was mandated to go back to live in [the] Dominican Republic, leaving him alone, without his wife and child, his emotional support system."
Though the input of any mental health professional is respected and valuable, the AAO notes that the submitted evaluation is based on a single interview between the applicant's spouse and the counselor. The record fails to reflect an ongoing relationship between a mental health professional and the applicant's spouse or any treatment plan for the conditions noted in the evaluation, to further support the gravity of the situation. Moreover, the conclusions reached in the submitted evaluation, being based on a single interview, do not reflect the insight and elaboration commensurate with an established relationship with a mental health professional, thereby rendering the findings speculative and diminishing the evaluation's value to a determination of exceptional hardship.

The applicant's spouse states that since his wife departed to the Dominican Republic it "has been financially stressful" and, "[he has] worked long hard hours to replace the amount of money spent on immigration fees;" that his telephone bills to call his wife daily are expensive; and that if his wife was here with him she could help financially by working part-time. The applicant submits rental expense information and some invoices, including T-Mobile cellular phone invoices. However, the applicant's spouse does not provide a breakdown of the family's income and expenses. The applicant's spouse does not indicate whether his wife is employed and her earnings, nor does he specify the household bills for their home in the United States, and the expenses he will incur to maintain a separate household in the Dominican Republic. Without these details, the AAO is unable to assess the nature and extent of hardship the applicant's spouse would experience were he to relocate abroad to reside with the applicant due to her inadmissibility. It is noted that the record fails to demonstrate that the applicant will be unable to contribute to her family's financial wellbeing from a location outside of the United States.

The AAO notes that the applicant's spouse may experience some hardships. However, it has not been demonstrated that the hardships the applicant's spouse experiences are beyond what would normally be experienced as a result of separation. Therefore, the applicant has failed to establish that her United States citizen spouse would suffer extreme hardship in the United States as a result of her inadmissibility.

The applicant's spouse states that if he relocates and joins his wife and child in the Dominican Republic he will suffer financial hardship. He states that his family "would not have a good living standard," and that the employment he could get there, as a mechanic, would not provide "comparable opportunities," the income he would earn there as a mechanic would not be sufficient for the things his family needs; that they will not be able to afford to pay for doctor's visits for their son, buy clothes for their son, or save; and, "[there would] be no retirement, [and] nothing but survival." The applicant's points to high unemployment levels in the Dominican Republic. As noted above, however, the record does not include sufficient details of the family's income and expenses. Therefore, the AAO cannot make an assessment of the extent of financial hardship the applicant's spouse would experience if he relocates to the Dominican Republic to join the applicant there.

The applicant's spouse states that his infant child requires frequent medical care as he suffers from hay fever allergies and has been hospitalized on two occasions. In support, the applicant submits a medical letter from [redacted] issued on August 11, 2008, stating that the child had been treated for allergic symptoms. A letter from [redacted] dated November 8, 2007, states that the

applicant's son had a urinary tract infection and had Renal Ultrasound. recommended that a "followup ultrasound in one year may be helpful for further evaluation." It is noted that the doctors do not indicate that the child's condition is severe. The applicant points to poor health conditions in the Dominican Republic, including incidents of diseases, such as maleria, in certain parts of the country. The AAO notes that the applicant's spouse would suffer some hardship as a result of his concern for his family's health in the Dominican Republic. However, it has not been demonstrated that these hardships are beyond what would normally be experienced as a result inadmissibility.

Therefore, the applicant has failed to establish that her U.S. citizen spouse will suffer extreme hardship in the Dominican Republic if he joins her there due to her inadmissibility.

A review of the documentation in the record fails to establish the existence of extreme hardship to the applicant's spouse caused by the applicant's inadmissibility to the United States. 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) 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.