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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



FILE: [REDACTED]

Office: PHILADELPHIA, PA

Date: FEB 18 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 (the Act), 8 U.S.C. section 1182(a)(9)(B)(v).

ON BEHALF OF APPLICANT:



INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

If you believe the law was inappropriately applied by us in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion. The fee for a Form I-290B is currently \$585, but will increase to \$630 on November 23, 2010. Any appeal or motion filed on or after November 23, 2010 must be filed with the \$630 fee. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

Perry Rhew
Chief, Administrative Appeals Office



DISCUSSION: The waiver application was denied by the Field Office Director, Philadelphia, Pennsylvania. 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 Cameroon. She was found to be inadmissible to the United States pursuant to section 212(a)(9)(B)(i)(I) of the Act, 8 U.S.C. § 1182(a)(9)(B)(i)(I), for having been unlawfully present in the United States for more than 180 days, but less than one year, and seeking admission within three years of her last departure. She is married to a United States citizen and has one United States citizen son. She seeks a waiver of inadmissibility pursuant to section 212(a)(9)(B)(v) of the Act, 8 U.S.C. § 1182(a)(9)(B)(v).

The Field Office Director concluded that the applicant had failed to establish that the bar to her admission would impose extreme hardship on a qualifying relative, her U.S. citizen spouse, and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) on August 19, 2009.

On appeal, counsel for the applicant asserts that the Field Office Director did not evaluate hardship in aggregate, failed to consider the facts and circumstances of this particular case and failed to provide a reasoned explanation for the denial. *Form I-290B*, received on September 23, 2009.

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-

....

(I) was unlawfully present in the United States for a period of more than 180 days but less than 1 year, voluntarily departed the United States (whether or not pursuant to section 1254a(e) of this title) prior to the commencement of proceedings under section 1225(b)(1) or section 1229(a) of this title, and again seeks admission within 3 years of the date of such alien's departure or removal, or

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

....

The record indicates that the applicant entered the United States in 1995 as a visitor. On May 17, 1996, the applicant filed a Form I-485 based on a previous marriage. That application was denied on March 25, 2002. The applicant filed a second Form I-485 on September 30, 2002, which was subsequently denied on December 11, 2003. The applicant then filed a third Form I-485 on February 9, 2004, which was denied on November 30, 2007. The applicant filed a fourth Form I-485 on October 27, 2008. Based on her Forms I-485, the applicant received numerous advance parole travel documents which she used to travel and return to the United States. The record shows that she was paroled into the United States on March 29, 2002, four days after her first Form I-485 application was denied. Thus, she began accruing unlawful presence, as the denial of her application ended the purpose for which she was paroled. She continued to accrue unlawful presence until she filed her second Form I-485 on September 30, 2002. The applicant subsequently departed and re-entered the United States on multiple occasions. This period of unlawful presence is greater than 180 days, but less than one year. As the applicant has resided unlawfully in the United States for over 180 days but less than a year, and is now seeking admission within three years of her last departure from the United States, she is inadmissible under section 212(a)(9)(B)(i)(I) of the Act.

The record includes, but is not limited to, counsel's brief; a statement from the applicant; a statement from the applicant's spouse; a statement of congressional interest from [REDACTED]; [REDACTED] medical records for a cardiac catheterization for the applicant's spouse; statements from [REDACTED]; a statement from the applicant's daughter; copies of medical records relating to a medication condition of the applicant; a copy of a mortgage record in the applicant's name; copies of educational records for the applicant's daughter; copies of business records for the applicant's business; copies of tax returns for the applicant; a statement from the [REDACTED] member of a Mayor's Commission in Philadelphia, Pennsylvania; business records related to [REDACTED] for which the applicant works; a statement from [REDACTED] regarding the medical condition of the applicant's aunt, currently residing in Cameroon; a statement from [REDACTED] of Wildcat High School in South Bronx regarding the applicant's daughter; statements from friends and associates of the applicant attesting to her moral character; a statement from [REDACTED] discussing the applicant's spouse's contributions to humanitarian efforts in Cameroon; documentation regarding charitable contributions of the applicant and her spouse; photographs of the applicant, her spouse and the applicant's business; and a copy of the applicant's daughter's naturalization certificate.

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

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 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 AAO will first examine hardship upon relocation. On appeal the applicant asserts that her spouse suffers from heart problems and had to have surgery on September 2, 2010. She explains that he needs to remain in the United States in order to maintain his continuity of medical care. She further explains that his children reside in the United States and that he has resided in the United States for over 40 years. She states that they own several properties and businesses in the United States, representing business and community ties in several states and that she and William West, President of Americam, have invested significant money in that corporation.

Counsel asserts that the applicant’s spouse would be unable to find employment in Cameroon, does not speak French and would be unable to adjust to the living conditions in the country. While the AAO can accept that the applicant’s spouse does not speak French, it would note that the applicant stated in her October 13, 2010, statement that he owns property in the country. There are no country conditions materials which establish the socio-economic conditions in the country or that the applicant’s spouse would be unable to find employment. Nonetheless, the AAO takes note of the applicant’s spouse’s age and retirement status and the hardship that would result from relocating under these conditions.

Finally, the applicant asserts that she has as daughter and grandmother in Cameroon who depend on financial remuneration provided by her employment in the United States. The AAO would note that

the applicant's daughter and grandmother in Cameroon are not qualifying relatives and the applicant has not shown that challenges they may face will create additional hardship for her spouse.

The record contains a statement from the applicant's spouse detailing his long-term residence in the United States, as well as his family and community ties in the United States. In addition, the record contains evidence corroborating that he has a serious heart condition. Disrupting the continuity of his medical care in the United States would present a significant hardship to the applicant's spouse. There is also sufficient evidence to establish that the applicant's spouse has substantial financial investments and property in the United States, representing a significant financial impact if he were to relocate to Cameroon.

When these hardship factors are considered in the aggregate they are sufficient to establish that the applicant's spouse would experience uncommon challenges upon relocation and as such they rise to the level of extreme hardship.

With regard to hardship upon separation, the applicant has submitted a statement explaining that her spouse has significant health issues and needs her presence for physical support. She narrates her history of humanitarian efforts in Cameroon and in establishing [REDACTED] and her tribal art gallery in New York, but fails to relate these facts to hardship on her qualifying relative if she is removed.

Statements from [REDACTED] assert that the humanitarian efforts of his company are impacted by the applicant's inability to travel back and forth between Cameroon and the United States. While the AAO acknowledges the valuable efforts of this company and others for their work in Cameroon, it is not clearly related to any hardship impact on the applicant's spouse.

On appeal counsel asserts that the applicant's spouse would experience emotional hardship if the applicant were removed. While the AAO acknowledges the applicant's spouse will experience emotional hardship due to the applicant's inadmissibility, there is no documentary evidence in the record that the emotional impact on him rises above that commonly experienced by the relatives of inadmissible aliens, and as such the applicant has not shown that it constitutes an uncommon hardship factor.

Counsel also asserts on appeal that the applicant's son relies on the applicant for financial assistance. However, it is noted that the applicant has not provided documentation to support that she earns an income that is sufficient to fund her son's mortgage and tuition as claimed. Nor has she established that any disruption or reduction in her son's economic support will create hardship for her spouse.

Counsel asserts on appeal that the applicant has been diagnosed with uterine fibroids and may have to have surgery to correct the condition. The record does not contain clear medical documentation to show whether she requires surgery or a continued course of treatment. Without documentary evidence to support the claim, the assertions of counsel will not satisfy the petitioner's burden of proof. The unsupported assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19

I&N Dec. 533, 534 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980). Nor has the applicant related her physical health to hardship her spouse may experience.

The record contains sufficient evidence to establish that the applicant's spouse suffers from a significant health condition. However, the record does not show that the applicant provides physical care or economic support for her spouse, or that his continued treatment is otherwise dependent upon her continued presence in the United States. The record does not establish that the applicant's spouse will experience financial or emotional hardship which rises above that commonly experienced by the relatives of inadmissible aliens. Even when the hardship factors asserted in this case are considered in the aggregate, there is insufficient evidence to establish that they rise to a degree of extreme hardship.

The AAO acknowledges the humanitarian efforts of the applicant, but the record fails to establish that the impacts on her spouse rise above the common impacts associated with separation due to the inadmissibility of a family member. U.S. court decisions have repeatedly held that the common results of removal or inadmissibility are insufficient to prove extreme hardship. *See Hassan v. INS*, 927 F.2d 465, 468 (9th Cir. 1991). In addition, *Perez v. INS*, 96 F.3d 390 (9th Cir. 1996), held that the common results of deportation are insufficient to prove extreme hardship and defined extreme hardship as hardship that was unusual or beyond that which would normally be expected upon deportation. The AAO therefore finds that the applicant has failed to establish extreme hardship to his U.S. citizen spouse as required under section 212(a)(9)(B)(v) of the Act. Having found the applicant statutorily ineligible for relief, no purpose would be served in discussing whether she merits a waiver as a matter of discretion.

In proceedings for application for waiver of grounds of inadmissibility under section 212(a)(9)(B)(v) of the Act, the burden of proving eligibility rests with the applicant. *See* section 291 of the Act, 8 U.S.C. § 1361. Here, the applicant has not met that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.