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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]

46

FILE: [redacted] Office: NEW YORK CITY, NEW YORK Date: JAN 24 2011

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 District Director, New York City, New York. The decision 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 Guyana who was found to be inadmissible to the United States pursuant to section 212(a)(9)(B)(i)(II) of the Act, 8 U.S.C. § 1182(a)(9)(B)(i)(II), for having been unlawfully present in the United States for a period of more than one year and is seeking admission into the country within ten years of her last departure from the United States. The applicant is married to a United States citizen (USC) and is the beneficiary of an approved Petition for Alien Relative (Form I-130) filed on her behalf by her adult son, Arvind Persaud. The applicant seeks a waiver of inadmissibility pursuant to section 212(a)(9)(B)(v) of the Act, in order to reside in the United States with her United States citizen spouse and children.

The District Director found that the applicant failed to establish that extreme hardship would be imposed on a qualifying relative and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) accordingly. *Decision of the District Director*, dated June 19, 2008.

On appeal, counsel asserts that the District Director erred in denying the applicant's waiver request because the applicant has submitted sufficient evidence to demonstrate that her spouse and children would suffer extreme hardship if she is removed from the United States. See *Form I-290B* dated July 16, 2008 and the accompanying brief in support of the appeal dated July 21, 2008.

The record includes, but is not limited to, counsel's brief in support of the appeal, an affidavit from the applicant's husband, a copy of a psychosocial evaluation of the applicant's family by [redacted] a letter from [redacted] regarding the applicant's medical condition, letters from the applicant and her spouse's employers, copies of financial and tax documents, a copy of a U.S. Department of State Country Report on Human Rights Practices on Guyana for 2003 and a copy of a U.S. Department of State Consular Information Sheet on Guyana dated March 7, 2005. The entire record was reviewed and considered in rendering this 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.
>
> . . . .

(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.

In the present case, the applicant states that she first entered the United States in September 1995 without being inspected and admitted or paroled. The record reflects that on March 12, 2001, the applicant's spouse filed a Petition for Alien Relative (Form I-130) on the applicant's behalf. On the same date, the applicant filed an Application to Register Permanent Resident Status and an Application for Travel Document (Form I-131). The applicant's Form I-131 was approved on July 8, 2002, and the applicant subsequently traveled outside the United States pursuant to the Advance Parole and reentered the country on September 16, 2002. The applicant's last entry into the United States pursuant to Advance Parole was on April 24, 2003. On March 26, 2004, the District Director denied the Form I-130 and the Form I-485 finding that the applicant failed to submit requested evidence in support of the applications. On March 22, 2005, the applicant's United States citizen son filed a new Form I-130 on the applicant's behalf. On the same date, the applicant filed a new Form I-485 and a Form I-601. On November 22, 2005, the applicant's Form I-130 was approved. On June 19, 2008, the District Director denied the Form I-485 and Form I-601, finding that the applicant had accrued more than one year of unlawful presence and had not demonstrated extreme hardship to a qualifying relative.

The applicant accumulated unlawful presence from April 1, 1997, the effective date of the Unlawful Presence Law under the Act until March 22, 2005, the date of the proper filing of a Form I-485. The fact that the applicant re-entered the United States pursuant to advance parole in 2002 and 2003, does not cure her prior unlawful presence from 1997 through March 22, 2005. The applicant is seeking readmission into the United States within 10 years of March 22, 2005. Thus, the AAO agrees with the District Director that the applicant is inadmissible to the United States under section 212(a)(9)(B)(i)(II) of the Act.

Section 212(a)(9)(C)(i) of the Act states, in pertinent part:

(C) Aliens unlawfully present after previous immigration violations.-

(i) In general.-Any alien who-

(I) has been unlawfully present in the United States for an aggregate period of more than 1 year, or

> (II) has been ordered removed under section 235(b)(1), section 240, or any other provision of law,
>
> and who enters or attempts to reenter the United States without being admitted is inadmissible.
>
> (ii) Exception.—Clause (i) shall not apply to an alien seeking admission more than 10 years after the date of the alien's last departure from the United States if . . . the Attorney General [now the Secretary of Homeland Security] has consented to the alien's reapplying for admission....

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.

In this case, the record reflects that the applicant's spouse, [redacted], is a 51-year-old native of Guyana and citizen of the United States. The applicant and her spouse have two children. The record reflects that their son, [redacted] is an adult, and their daughter [redacted] is 14 years old. The applicant's spouse asserts that he and his daughter will suffer extreme emotional and financial hardship if the applicant's waiver request is denied and the applicant is removed from the United States.

Regarding the emotional and financial hardship of separation, the applicant's spouse asserts that he needs the applicant to remain in the United States to help raise their daughter. The applicant's spouse asserts that he and his daughter depend on the applicant for moral and emotional support, that the applicant is the "bedrock" of the family, that their daughter, [redacted], needs the applicant to take care of her because of her age, and that if the applicant is removed from the United States, he would

have no relative who can help him with [redacted], and he would have to "leave" his job in order to take care of [redacted] because he cannot afford to hire a babysitter for her and he knows that [redacted] will not be happy with a babysitter. *See Affidavit by* [redacted] sworn to on February 25, 2005. The applicant's spouse also asserts that he and the applicant share all their financial responsibilities together, that they own a house and that he cannot manage without the applicant. *Id.*

Counsel asserts that the applicant and her husband have been married for more than seven years, that they have a healthy and loving relationship with each other and with their children and that the applicant is the primary caretaker for their daughter, [redacted], while her spouse is the primary financial provider for the family. Counsel asserts that if the applicant is removed from the United States, their relationship will end, the applicant's spouse will assume the role of both primary caretaker for [redacted] and the primary financial provider for the family, and that [redacted] would no longer have the applicant in her life. *See Counsel's Brief in Support of the Appeal,* dated July 21, 2008. In an evaluation of the applicant's spouse by [redacted], [redacted] states that the applicant's spouse has a history of Posttraumatic Stress Disorder and he now has a Major Depressive Disorder and Adjustment Disorder with Mixed Anxiety and Depressed Mood. [redacted] concludes that if the applicant is removed from the United States, the applicant's spouse and his children would be left with no one to attend to their physical, emotional, financial, informational, and instructional needs, and that the family would be devastated beyond words and their lives would be very much ruined. *See Psychosocial Report by* [redacted], dated February 6, 2006.

The AAO acknowledges that separation from the applicant may cause some hardship to the applicant's spouse, however, the evidence in the record is insufficient to demonstrate that the challenges the applicant's spouse faces, meet the extreme hardship standard. While the input of any mental health professional is respected and valuable, the AAO notes that the submitted assessment by [redacted] is based on one interview with the applicant's family. In that the conclusions reached in the submitted assessment is based solely on a single interview of the applicant's family, the AAO does not find the report to reflect the insight and elaboration commensurate with an established relationship with a mental health professional, thereby rendering the report speculative and diminishing its value to a determination of extreme hardship. As to the financial hardship claim by the applicant's spouse, the record does not contain current information on the family's income and expenses. Thus, without the financial documentation, the AAO cannot conclude that family separation will cause extreme financial hardship to the applicant's spouse.

The AAO notes that hardships faced by the applicant's children as a result of family separation are not considered in the extreme hardship analysis, except as it may cause hardship to the applicant's spouse. In this case, [redacted] asserts that "the loss of [the applicant] would be devastating at this stage of the children's growth and development they would become totally and completely overwhelmed, frightened and alone," and that the applicant and her spouse fear the extreme hardships they and their children will face if the family is torn apart or if they are all forced to leave the United States. It is to be noted that the applicant's son, [redacted], is an adult and any hardship to him will not be considered in this case. Although [redacted] asserts that the applicant's husband will suffer extreme hardship because of the impact that the departure of the applicant will have on [redacted], neither [redacted] nor the applicant submitted any evidence in support of [redacted]s claim. Going

on record without supporting documentation is not sufficient to meet the applicant's burden of proof in this proceeding. *See Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)). Accordingly, the AAO finds that the applicant has failed to establish that the challenges her spouse would face as a result of family separation rise beyond the common results of removal or inadmissibility to the level of extreme hardship.

Regarding relocation, the applicant' spouse asserts that he does not want to relocate to Guyana because he cannot find a job there at his age. *See Affidavit by* [redacted], sworn to on February 25, 2005. Counsel asserts that the applicant's spouse does not want to go to Guyana because it is an economically unstable country, and that it would be extremely difficult for him to find employment and be able to financially provide for his family there. *See Counsel's Brief in Support of the Appeal,* dated July 21, 2008. The record contains a copy of a U.S. Department of State Country Report on Human Rights Practices in Guyana for 2003 and a copy of a U.S. Department of State Consular Information Sheet on Guyana, dated March 7, 2005.

The AAO acknowledges the claim made by the applicant's spouse, however, it does not find the evidence in the record to support that the applicant's spouse will suffer extreme hardship if he relocates to Guyana to be with the applicant. The country report information in the record provides a general overview of conditions in Guyana, but does not demonstrate that the applicant's spouse would be unable to obtain employment there. The AAO notes that other than the statement from the applicant's spouse and counsel, the record does not contain any evidence of financial, medical, emotional or other types of hardship that the applicant's spouse would experience if he relocates to Guyana with the applicant. Additionally, the AAO notes that the applicant's spouse is a native of Guyana, who has spent most of his life there. He has not addressed any family ties he has there who could help him adjust to conditions in Guyana. Accordingly, the AAO finds that the applicant has failed to demonstrate that her spouse will suffer extreme hardship upon relocation to Guyana.

In this case, although the applicant's spouse claims hardship due to family separation, the evidence in the record does not support a finding that the challenges he faces as a result of the applicant's inadmissibility when considered in the aggregate, rises beyond the common results of removal or inadmissibility to the level of extreme hardship. *See Perez,* 96 F. 3d at 392; *Matter of Pilch,* 21 I&N Dec. at 631. Although the distress caused by separation from one's family is not in question, a waiver of inadmissibility is only available where the resulting hardship would be unusual or beyond that which would normally be expected upon removal. *See id.* The AAO therefore finds that the applicant has failed to establish extreme hardship to her 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.