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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
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**U.S. Citizenship
and Immigration
Services**



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Date: **JUL 28 2011**

Office: PHILADELPHIA, PA

FILE: 

IN RE: Applicant: 

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

Thank you,

Perry Rhey
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 sustained.

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 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. The applicant is married to a U.S. citizen and 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 with her husband and children in the United States.

The field office director found that the applicant failed to establish extreme hardship to a qualifying relative and denied the application accordingly. *Decision of the Field Office Director*, dated March 5, 2009.

On appeal, counsel contends the field office director failed to properly apply the intent of section 212(a)(9)(B)(v) of the Act to the case. In addition, counsel contends the field office director inappropriately disregarded and discredited persuasive and relevant evidence of extreme hardship.

The record contains, *inter alia*: a copy of the marriage certificate of the applicant and her husband, Mr. ██████████, indicating they were married on September 29, 2005; copies of the birth certificates of the couple's two U.S. citizen children; a sworn statement and a letter from Mr. ██████████; a sworn statement from the couple's child; a psychological evaluation for Mr. ██████████, copies of the couple's son's medical records; letters from Mr. ██████████ employer; a letter from Mr. ██████████'s sister; letters of support; copies of tax records and other financial documents; a copy of the U.S. Department of State's Country Reports on Human Rights Practices for the Dominican Republic and other background material; and an approved Petition for Alien Relative (Form I-130). The entire record was reviewed and considered in rendering this decision on the appeal.

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 -

....

(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 Attorney General [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 this case, the record shows, and the applicant does not contest, that she entered the United States without inspection in November 1996 and remained until her departure on advance parole in May 2003. She was paroled into the United States on June 5, 2003. The applicant accrued unlawful presence from April 1, 1997, the date of enactment of the unlawful presence provisions of the Act, until her departure in May 2003, a period of over six years. She now seeks admission within ten years of her May 2003 departure from the United States. Accordingly, she is 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 one year or more and seeking admission to the United States within ten years of her last departure.

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.

In this case, the applicant’s husband, Mr. ██████ states that he gets paralyzed with fear whenever he thinks about the possibility of his wife not being able to stay in the United States. He states he suffers from panic and anxiety attacks, that he shakes and sweats profusely, and that he has been unable to sleep. He contends his work performance has suffered and that on one occasion, he drove fifty miles in the wrong direction on his way to a job. Mr. ██████ states that he sometimes feels like he would rather die than think of living in the United States without his wife and that although he loves his children too much to take his own life, he has contemplated hurting himself. He states he has never been this depressed before in his life and is worried his life is spinning out of control. He contends he finds himself drinking more frequently and is losing control of his emotions. He also states that his entire personality has changed and that he has been feeling more anger with his co-workers. In addition, Mr. ██████ states that his wife takes care of their two children while he works. He states that he would be forced to either miss work or hire a babysitter, but cannot afford childcare. He states he has cried with his son who continually asks him what is going to happen if his mother has to go back to the Dominican Republic. Furthermore, Mr. ██████ contends his entire family lives in the United States, including both of his parents, all of his twelve siblings, and all of his aunts, uncles, and cousins. He states that his children are close to their grandparents and cousins, and that if he relocated to the Dominican Republic, they would be separated from everyone they love. He states he has no contacts in the Dominican Republic and does not know anyone there who could help him get a job. He states that he has no idea where they would live if they moved to the Dominican Republic. *Sworn Statement of* ██████

dated August 22, 2008; *Letter from* [REDACTED] dated July 24, 2007 (stating that the couple's son, [REDACTED] had an accident and needs his mother's presence).

Letters from Mr. [REDACTED] employer state that Mr. [REDACTED] has worked as a supervisor since January of 2002. According to his employer, Mr. [REDACTED] has been a great asset because of his work ethic and leadership abilities. His employer further states that Mr. [REDACTED] performs his job beyond expectations and that his attendance and punctuality are exceptional. *Letters from* [REDACTED] dated July 29, 2008, and July 3, 2007. However, a more recent letter from his employer states that Mr. [REDACTED] is having problems at work and doing things he never did before, such as arguing with fellow employees and customers, and refusing extra work. His employer states that he is concerned Mr. [REDACTED]'s mental state will get worse if his wife's immigration situation does not work out. *Letter from* [REDACTED] dated March 25, 2009.

A letter from Mr. [REDACTED] sister states that she is concerned about her brother's physical and emotional health ever since the applicant's waiver application was denied. According to Mr. [REDACTED] sister, he has been devastated, has missed work, and does not go to weekly family reunions the way he used to. She states he is very depressed and refuses to talk to her. She states she is very concerned and does not know what to do to help him. *Letter from* [REDACTED], dated March 22, 2009. Several letters of support also express concern about Mr. [REDACTED] emotional state. *See, e.g., Letter from* [REDACTED] dated March 24, 2009 (stating Mr. [REDACTED] acts completely differently now, is so depressed that he does not laugh, and looks like he does not get enough sleep); *Letter from* [REDACTED] dated March 24, 2009 (stating Mr. [REDACTED] cannot talk about his wife's immigration situation without crying); *Letter from* [REDACTED], dated March 23, 2009 (stating Mr. [REDACTED] was a happy man, but is now depressed and is drinking); *Letter from* [REDACTED], dated March 22, 2009 (stating Mr. [REDACTED] depression is jeopardizing his work and his relationship with family and friends); *Letter from* [REDACTED] dated March 22, 2009 (stating Mr. [REDACTED] has been very sad, depressed, has a hard time sleeping, and can hardly concentrate).

A psychological evaluation of Mr. [REDACTED] states that he had a difficult childhood. According to the psychologist, Mr. [REDACTED] grew up in the Dominican Republic and lived with his twelve siblings in a one-room, roofless shack with no heating, plumbing, or running water. Mr. [REDACTED] and his siblings were purportedly malnourished and underweight, a situation that may explain why many of them suffer from profound neurodevelopmental and maturational delays. The psychologist states that Mr. [REDACTED] did not walk until he was five years old, suffered from "diffuse orthopedic problems, . . . undiagnosed and untreated case of scoliosis and disc herniation, and . . . contracted a serious facial virus that resulted in [the] need for surgical re-attachment of his ears to his head." Mr. [REDACTED] father reportedly left his family for the United States when Mr. [REDACTED] was nine years old and he mourned the loss of his father. According to the psychologist, Mr. [REDACTED] joined his father in the United States ten years later, although the unhealed emotional scars remained. The psychologist states that Mr. [REDACTED] first marriage ended in divorce, and that his current marriage to the applicant is the first time in his life that he has felt complete and at peace. The psychologist contends that Mr. [REDACTED] has experienced significant distress and shock since learning of his wife's possible departure from the United States, and witnessing his son's distress has triggered his own feelings of being left alone as a child. The

psychologist contends Mr. [REDACTED] has been experiencing numerous somatic symptoms, emotional symptoms, and cognitive symptoms related to his wife's immigration situation. In addition, the psychologist contends he "has been struggling with passive suicidal ideation," explaining that Mr. [REDACTED] would want to die without his wife by his side, but claiming that he would never attempt suicide because of his devotion to his children. The psychologist also states that Mr. [REDACTED] has been experiencing personality changes due to stress, including increased frustration intolerance, self-criticalness, and agitation, and has been consuming whiskey and beer more often. The psychologist diagnosed Mr. [REDACTED] with major depressive disorder, generalized anxiety disorder, and dependent personality disorder. The psychologist concludes that given Mr. [REDACTED] history, and due to his emotional vulnerabilities, he has an "eggshell personality" which renders him more susceptible to psychological problems compared to others in similar situations.

The psychological evaluation also noted that the couple's nine-year old son, [REDACTED] has been depressed, cries frequently, and has "preoccupation and generalized worry about separation, abandonment, and disconnection." The results of two different tests show that [REDACTED] is preoccupied with death, loss, illness, and disconnection. The psychologist states that there is evidence of extreme situational Dysthymia, putting [REDACTED] at risk for Major Depressive Disorder. According to the psychologist, [REDACTED] nearly died when he was three years old due to fluid in his lungs and loss of consciousness. In addition, [REDACTED] purportedly had a serious orthopedic injury a year ago, which resulted in a broken leg and the need for physical therapy. Furthermore, the psychologist states that the couple's daughter, [REDACTED] suffers from chronic ear infections and environmental allergies. *Psychological Evaluation*, dated May 29, 2008.

Copies of [REDACTED] medical records indicate that in April 2007, he had a left distal tibia shaft fracture that occurred while running and playing baseball. According to the medical records, [REDACTED] went to the emergency room, wore a cast on his leg for four weeks, and underwent an aggressive course of physical therapy.

Upon a complete review of the record, the AAO finds that the applicant's husband, Mr. [REDACTED], will suffer extreme hardship if the applicant's waiver application were denied. The record shows that Mr. [REDACTED] has been diagnosed with major depressive disorder, anxiety disorder, and dependent personality disorder. According to Mr. [REDACTED], he has experienced panic and anxiety attacks, has been unable to sleep, and has had problems at work due to his distress at the thought of his wife's departure from the United States. In addition, letters in the record and the psychological evaluation corroborate his claims that he has been drinking more, his personality has changed, and he has suicidal thoughts. According to the psychologist, Mr. [REDACTED] difficult childhood contributes to his "eggshell personality," making him more susceptible to psychological problems compared to others in similar situations. Considering Mr. [REDACTED] mental health issues, if the applicant returned to the Dominican Republic and he decided to stay in the United States, the AAO finds that the effect of separation from the applicant goes above and beyond the experience that is typical to individuals separated as a result of inadmissibility or exclusion and rises to the level of extreme hardship.

Moreover, moving to the Dominican Republic to avoid separation would be an extreme hardship for Mr. [REDACTED]. The record shows that Mr. [REDACTED] has two children who were born in the United States, one of whom the psychologist contends shows signs of extreme situational Dysthymia which could lead to Major Depressive Disorder if the stressors in his life remain prolonged and unremediated. In addition, the record shows that Mr. [REDACTED] entire family lives in the United States, including his parents, his twelve siblings, and his aunts, uncles, and cousins. According to Mr. [REDACTED] he has no contacts in the Dominican Republic and has no place to live in the Dominican Republic. The AAO recognizes that Mr. [REDACTED] has worked for the same employer for almost ten years and that he fears being unable to find employment in the Dominican Republic. Considering all of these factors cumulatively, the AAO finds that the hardship Mr. [REDACTED] would experience if he had to move back to the Dominican Republic is extreme, going well beyond those hardships ordinarily associated with inadmissibility or exclusion. The AAO therefore finds that the evidence of hardship, considered in the aggregate and in light of the *Cervantes-Gonzalez* factors cited above, supports a finding that Mr. [REDACTED] faces extreme hardship if the applicant is refused admission.

The AAO also finds that the applicant merits a waiver of inadmissibility as a matter of discretion.

In discretionary matters, the alien bears the burden of proving that positive factors are not outweighed by adverse factors. *See Matter of T-S-Y-*, 7 I&N Dec. 582 (BIA 1957). The adverse factor in the present case are the applicant's initial entry without inspection and periods of unlawful presence in the United States. The favorable and mitigating factors in the present case include: significant family ties in the United States including her U.S. citizen husband and two U.S. citizen children; the extreme hardship to the applicant's husband and children if she were refused admission; letters of support describing the applicant as an amazing and loving parent; and the fact that the applicant has not had any arrests or convictions in the United States.

The AAO finds that, although the applicant's immigration violation is serious and cannot be condoned, when taken together, the favorable factors in the present case outweigh the adverse factors, such that a favorable exercise of discretion is warranted. Accordingly, the appeal will be sustained.

ORDER: The appeal is sustained.