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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**

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FILE: [REDACTED] Office: CHICAGO, ILLINOIS Date: MAR 15 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, Chicago, Illinois, 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 Philippines 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 his last departure from the United States. The applicant is the son of a lawful permanent resident of the United States and the beneficiary of an approved Immigrant Petition for Alien Worker (Form I-140). 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 lawful permanent resident mother.

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*, undated.

On appeal, the applicant, through counsel, contends that United States Citizenship and Immigration Services (USCIS) failed “to provide proper notice and specific details regarding the denial,” the denial “misinterprets case precedent on the subject [of economic hardship] and unfairly assesses the hardship issue to this specific case and circumstances,” and “[t]here is an obvious inconsistency within the denial notice; referencing case law on economic hardship and then speaking to medical hardship in the specific case matter.” *Form I-290B*, filed March 18, 2008.

The record includes, but is not limited to, counsel’s appeal brief, a statement from the applicant’s mother, medical documents for the applicant’s mother, insurance documents, tax documents, and school records for the applicant from the Philippines. 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.

....

- (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 record indicates that the applicant entered the United States on July 10, 1998 on an H-1B nonimmigrant visa with authorization to remain in the United States until October 14, 1999. On September 10, 2002, the applicant filed an Application to Register Permanent Resident or Adjust Status (Form I-485) based on a Form I-140 worker petition filed by his employer on his behalf. On December 15, 2002, the applicant departed the United States, and was paroled back into the United States on January 9, 2003.

The applicant accrued unlawful presence from October 14, 1999, the day after his authorization to remain in the United States expired, until September 10, 2002, the day he filed a Form I-485. The applicant is seeking admission into the United States within ten years of his December 15, 2002 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.

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 can be considered only insofar as it results in hardship to a qualifying relative. The applicant's mother 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).

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 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 first prong of the analysis addresses hardship to the applicant’s mother if she relocates to the Philippines. In an undated notice of intent to deny response, counsel states “relocation to the Philippines is not a viable option for [the applicant’s mother].” Counsel states the applicant’s mother is “currently receiving ongoing medical treatment” and “[s]he does not wish to compromise her health by returning to the Philippines.” The AAO notes that the record establishes that the applicant’s mother suffers from

sciatica, heart disease, and in September 2004, she had a heart attack. The AAO notes counsel's claims regarding the medical difficulties the applicant's mother would face in relocating to the Philippines.

The AAO acknowledges that the applicant's mother has resided in the United States for many years; however, she is a native of the Philippines and it has not been established that she does not speak the native language or have any family ties to the Philippines. Additionally, the AAO notes that the applicant's mother is suffering from various medical conditions; however, there is no evidence in the record that she cannot receive treatment for her medical conditions in the Philippines or has to remain in the United States to receive treatment. 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)). The AAO notes that other than counsel's claims regarding the applicant's mother's medical conditions, no other claims are made in regard to this prong of the analysis. In that the record does not include sufficient documentation of financial, medical, emotional or other types of hardship that the applicant's mother would experience if she joined the applicant in the Philippines, the AAO does not find the applicant to have established that his mother would suffer extreme hardship upon relocation.

The second prong addresses hardship to the applicant's mother upon remaining in the United States. In counsel's appeal brief dated March 31, 2008, counsel claims that the applicant's mother "would suffer irreparable harm to her health if she is unable to rely on the health care and continuous care provided to her by [the applicant]." Counsel states the applicant's mother "suffers from a severe cardiac condition." As noted above, the record establishes that the applicant's mother suffers from sciatica, heart disease, and in September 2004, she had a heart attack. Additionally, in a letter dated November 22, 2004, Dr. [REDACTED] states the applicant's mother has "very typical lumbar spinal stenosis with neurogenic claudication" and she "can walk only a block or two without pain." In a letter dated February 15, 2008, Dr. [REDACTED] states the applicant "needs to take care of his mother...who requires ongoing medical assistance due to illness." The AAO notes that Dr. [REDACTED] does not indicate what medical conditions he is treating the applicant's mother for or how the applicant specifically provides assistance to his mother. The AAO notes the medical concerns of the applicant's mother.

Counsel states that the applicant "is the son and sole care provider to his mother" and he "provides financial and medical support to his mother." In a statement dated September 21, 2004, the applicant's mother states that without the applicant "nobody could do and supply [her] needs, like going to the hospital, to doctors appointment quarterly, going to church and running daily errands." The AAO notes that Dr. [REDACTED] indicated that the applicant's sister accompanied her mother to his appointment in November 2004. Counsel states the applicant's mother "receives a mere \$500 in income monthly as a result of babysitting." The applicant's mother states she has part-time income of \$500 but she will "have to give [it] up because of [her] heart disease and failing health at age 71." Counsel claims that the applicant "supplements his mother's income by purchasing groceries, paying utilities and rent as needed." Counsel states that if the applicant's mother "is required to independently maintain her household and finance her medical care and medications, she will be facing more than extreme financial hardship that are

[sic] well beyond a simple lifestyle change.” The AAO notes the concerns of the applicant’s mother regarding her care and financial needs.

Counsel claims that the applicant’s mother “who relies [on] a very limited income, would be required to seek professional home care services and would have extremely high costs associated with her health care.” The AAO notes that the record establishes that the applicant’s sister resides in the same area as their mother. Counsel states that the applicant’s sister “is married with her own family.” Counsel claims that “USCIS never provided an opportunity for [the applicant] to provide information to demonstrate the inability of his sister to provide the same level of required care that he is able to provide.” However, the AAO notes that even on appeal, the applicant still failed to provide any documentary evidence establishing that his sister cannot help care for their mother in his absence.

Counsel claims that the applicant’s mother’s “financial and medical hardships could expose her to severe emotional problems, including extreme depression that could further aggravate her cardiac condition.” The AAO acknowledges that the applicant’s mother may suffer some emotional hardship in being separated from the applicant; however, the applicant has not provided sufficient documentary evidence to show that his mother’s conditions will be significantly exacerbated by his absence.

The AAO acknowledges that the applicant’s mother may experience some financial hardship in being separated from the applicant; however, the AAO notes that the applicant has not provided sufficient documentation to establish his mother’s financial situation. Further, the AAO notes that the applicant has submitted no evidence to establish that he will be unable to obtain employment in the Philippines and, thereby, financially assist his mother from outside the United States. In that the record does not include sufficient documentation of financial, medical, or other types of hardship that the applicant’s mother would experience, the AAO finds that the applicant failed to establish that his mother would suffer extreme hardship if his waiver application is denied and she remains in the United States.

As the record does not establish that the applicant’s mother would experience extreme hardship as a result of his inadmissibility, he is not eligible for a waiver under section 212(a)(9)(B)(v) of the Act. Having found the applicant statutorily ineligible for relief, the AAO finds no purpose would be served in discussing whether he 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.