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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals
20 Massachusetts Ave. NW MS 2090
Washington, DC 20529-2090
U.S. Citizenship
and Immigration
Services



PUBLIC COPY



tlb

DATE: OFFICE: SANTO DOMINGO

FILE:

NOV 17 2011

IN RE: APPLICANT:

APPLICATION: Application for Waiver of Grounds of Inadmissibility under section 212(a)(9)(B) of the Immigration and Nationality Act, 8 U.S.C. § 1182(a)(9)(B)

ON BEHALF OF APPLICANT:

SELF-REPRESENTED

INSTRUCTIONS:

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

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

Thank you,

Perry Rhew, Chief
Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Acting Field Office Director, Santo Domingo, the Dominican Republic, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native and citizen of the Dominican Republic who was found to be inadmissible to the United States pursuant to section 212(a)(9)(B)(i)(II) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(9)(B)(i)(II), for having been unlawfully present in the United States for more than one year and seeking readmission within 10 years of his last departure from the United States. The applicant seeks a waiver of inadmissibility in order to reside in the United States with his U.S. Citizen spouse.

The Acting Field Office Director concluded that the adverse effect on the applicant's family was no greater than one would expect from a prolonged absence of a loved one and denied the application accordingly. *See Decision of Acting Field Office Director* dated July 31, 2009.

On appeal, the applicant's spouse contends she suffers from financial, medical, and emotional hardship as a result of her current separation from the applicant. *Letter from applicant's spouse*, August 24, 2009. The applicant's spouse explains she suffers from herpes [REDACTED] which she asserts has been exacerbated by the stress of the applicant's immigration situation. *Id.* The applicant's spouse additionally contends she would not be able to find employment or obtain medical insurance in the Dominican Republic, and that she sends money to the applicant to assist with his medical bills. *Id.*

The record includes, but is not limited to, letters from the applicant's spouse, letters from employers and a landlord, evidence of health insurance, letters from physicians, medical records, evidence of birth, marriage, divorce and naturalization, and copies of money transfers. The entire record was reviewed and considered in rendering a decision on the appeal.

Section 212(a)(9) of the Act provides:

(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.

(ii) Construction of unlawful presence. - For purposes of this paragraph, an alien is deemed to be unlawfully present in the United States if the alien is present in the United States after the expiration of the period of stay authorized

by the Attorney General or is present in the United States without being admitted or paroled.

....

(v) Waiver.-The Attorney General 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 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. No court shall have jurisdiction to review a decision or action by the Attorney General regarding a waiver under this clause.

The applicant admitted he entered the United States without inspection in 1992, and remained until February 2008 when he returned to the Dominican Republic. The applicant therefore accrued unlawful presence from April 1, 1997, the date the unlawful presence provisions of the Act became effective, until his departure from the United States in February 2008. As such, the applicant accrued over one year of unlawful presence, and is inadmissible under section 212(a)(9)(B)(i)(II) of the Act. The applicant's qualifying relative in this case is his U.S. Citizen spouse.

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.

The applicant’s spouse contends she suffers from financial difficulties. *Letter from applicant’s spouse*, August 24, 2009. She explains: “We share joint financial responsibility for us and all of our household expenses... without his income I do not make enough to cover our current monthly expenses.” *Id.* The applicant’s spouse states she “earn[s] more than the average wage for the United States. [She is] very accomplished in [her] field of employment and [has] an excellent work reputation that allows for substantial pay increases on a regular basis.” *Id.* In support, the spouse submits a letter from her employer in Spanish. *See letter from [REDACTED]* August 20, 2009. The applicant’s spouse contends: “it would not be possible for me to find comparable work in Dominican Republic.” *Letter from applicant’s spouse*, August 24, 2009. With respect to the applicant’s employment, the record contains a letter from [REDACTED] of [REDACTED]. Therein, [REDACTED] indicates: “For your effort and overall evaluation working as a mechanic and for your excellent references, on behalf of our company we offer you the position of Mechanic. This position offers a monthly wage of 1,500.00. This position that we are offering you will be available for you once you [submit] the required documents and you are legally entitle[d] to work in the United States of America.” *Letter from [REDACTED]* April 8, 2009. The applicant’s spouse claims even though the applicant has a job offer in Puerto Rico, he has been unable to make ends

meet in the Dominican Republic due to his medical bills. To corroborate, the applicant submits several receipts as evidence of money transfers in 2008 and 2009. *See money transfers.*

The applicant's spouse also explains she and the applicant suffer from medical hardship. She states: "I have suffered from herpes zoster... and to [control] this condition I have been always... treat[ed] by my Doctor... Since my marriage I have been able to successfully control this condition... I have been successful for several years without medication and feel very fortunate that I have found ways to control this on my own." *Letter from applicant's spouse*, August 24, 2009. In support, the applicant's spouse submits medical records as well as a letter from Dr. [REDACTED]. Therein, [REDACTED] reports: "[the spouse] developed Herpes Zoster on February 9, 2009, with severe involvement of several dermatones including parietal scalp, neck, and chest. This situation was complicated by Post Herpetic Neuralgia for which she was medicated with Neurontin 300mg p.o. qd and intramuscular injections with vitamin B-12 for three months. She persists with pain and numbness of the involved area so she was referred to a pain management doctor." *Letter from [REDACTED]* undated. Another note from [REDACTED] indicates the spouse "needs treatment for 3 months." *Note from [REDACTED]* February 23, 2009. The applicant's spouse moreover contends the applicant "had an operation here in Puerto Rico on April 18, 2008" and had a non-functioning kidney removed. *Letter from applicant's spouse*, August 24, 2009. The applicant submits medical records, in Spanish, to substantiate these assertions.

The applicant's spouse submits some evidence of her herpes zoster. However, the spouse admits she has been able to manage this condition for "several years without medication" and has "found ways to control this on [her] own." *Letter from applicant's spouse*, August 24, 2009. A note from the spouse's physician confirms that treatment was needed for only three months in 2009. *Note from [REDACTED]* February 23, 2009. As such, although the AAO acknowledges the applicant's spouse may continue to have some symptoms with respect to her medical condition, there is no evidence of record to show the condition is objectively severe, that the applicant's spouse needs continued treatment, or that she requires any family assistance.

The applicant's spouse also claims the applicant has medical conditions which cause her to send money to the applicant in the Dominican Republic. In support of these assertions the applicant submits laboratory results and physician's "progress notes" for medical care, which are in Spanish and without certified English translations. 8 C.F.R. § 103.2(b)(3) states:

- (3) Translations. Any document containing foreign language submitted to USCIS shall be accompanied by a full English language translation which the translator has certified as complete and accurate, and by the translator's certification that he or she is competent to translate from the foreign language into English.

Without certified English translations, the AAO cannot consider these documents in adjudication of the appeal. The only other evidence of the applicant's medical condition consists of handwritten physician's notes. Those documents were prepared for review by medical

professionals and are otherwise illegible or indiscernible and do not contain a clear explanation of the current medical condition of the applicant.

Even though the applicant has not provided sufficient evidence of his own medical condition, the applicant's spouse has shown she regularly sends money to the applicant. The record contains copies of over 15 money transfers from 2008 to 2009 in varying amounts. *See money transfers*. Despite this, the applicant has failed to submit sufficient evidence of financial hardship. A letter, presumably from the spouse's employer, is in Spanish, and is not accompanied by an English translation. Again, without a certified English translation the AAO cannot consider this document in adjudicating the appeal. The record also lacks evidence of the applicant's and spouse's household expenses. As such, the record does not contain sufficient evidence of the spouse's or the applicant's household income or expenses to support assertions of financial hardship. The applicant further fails to provide any evidence regarding his own employment and earnings, although there is some evidence of his ability to contribute financially while in the United States. *See letter from [REDACTED] April 8, 2009*. Without details of the family's expenses and income, the AAO is unable to assess the nature and extent of financial hardship, if any, the applicant's spouse will face.

The applicant's spouse asserts without the applicant, she had to move apartments, sell her possessions, and send money for the applicant's medical treatment. *Letter from applicant's spouse, August 24, 2009*. Moreover, the spouse explains separation has caused emotional suffering on her part. *Id.* While the AAO acknowledges that the applicant's spouse would face difficulties as a result of the applicant's inadmissibility, we do not find evidence of record to demonstrate that her hardship would rise above the distress normally created when families are separated as a result of inadmissibility or removal. In that the record fails to provide sufficient evidence to establish the financial, medical, emotional or other impacts of separation on the applicant's spouse are cumulatively above and beyond the hardships commonly experienced, the AAO cannot conclude that she would suffer extreme hardship if the waiver application is denied and the applicant remains in the Dominican Republic without his spouse.

The applicant's spouse claims she will be unable to find similar employment in the Dominican Republic, and that she will not have access to good medical care and health insurance in that country. *Letter from applicant's spouse, August 24, 2009*. The record does not contain any evidence to support the spouse's assertions. Although the applicant's spouse's assertions are relevant and have been taken into consideration, little weight can be afforded them in the absence of supporting evidence. *See Matter of Kwan, 14 I&N Dec. 175 (BIA 1972)* ("Information in an affidavit should not be disregarded simply because it appears to be hearsay; in administrative proceedings, that fact merely affects the weight to be afforded it."). Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *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)*). Given the lack of evidence, the applicant has not shown his spouse would suffer extreme hardship upon relocation to the Dominican Republic.

In this case, the record does not contain sufficient evidence to show that the hardships faced by the qualifying relative, considered in the aggregate, rise beyond the common results of removal or inadmissibility to the level of extreme hardship. 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. 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 a 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.