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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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Date: NOV 17 2011

Office: SANTO DOMINGO FILE: 

IN RE: 

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,

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Perry Rhew  
Chief, Administrative Appeals Office

**DISCUSSION:** The waiver application was denied by the Field Office Director, Santo Domingo, Dominican Republic. 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 Trinidad and Tobago 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 again seeking admission within ten years of her last departure from the United States. The applicant is the spouse of a United States citizen. She seeks a waiver of inadmissibility in order to reside in the United States.

The Field Office Director concluded that the applicant failed to establish that a bar to her admission to the United States would result in extreme hardship to the qualifying relative. The Field Office Director denied the application accordingly. *See Decision of the Field Office Director* dated July 17, 2009.

On appeal, the applicant's spouse asserts in a letter that he is suffering emotional, financial and religious hardships as a result of his separation from the applicant. The qualifying spouse also indicates that he has lived in the United States since he was a child and has no friends or relatives in Trinidad and Tobago. Further, the qualifying spouse states that he cannot live with the applicant's parents because they do not approve of his marriage to their daughter. The qualifying spouse also states that he would be unable to continue his education if he relocated to Trinidad and Tobago.

The record contains the following documentation: the original Application for Waiver of Grounds of Inadmissibility (Form I-601), Notice of Appeal (Form I-290B), letters from the qualifying spouse, an approved Petition for Alien Relative (Form I-130), a death certificate for the applicant's father, proof that the qualifying spouse sent the applicant money, school records for the qualifying spouse and other materials submitted in conjunction with the application for immigrant visa. The entire record was reviewed and considered in rendering 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.

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. The applicant's husband 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).

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 qualifying relative in this case is her husband, who is a United States citizen. The record indicates that the applicant entered the United States in August 2003 and departed in May 2007. The applicant admitted to her overstaying her visa for over three years, thereby accruing unlawful presence in the United States. In applying for an immigrant visa, the applicant is seeking admission within ten years of her 2007 departure from the United States. The applicant has not disputed her inadmissibility. Therefore, the applicant is inadmissible to the United States under section 212(a)(9)(B)(i)(II) of the Act for having been unlawfully present in the United States for a period of more than one year.

The documentation provided that specifically relates to the qualifying spouse’s hardship includes Form I-601, Form I-290B, letters from the qualifying spouse, proof that the qualifying spouse sent the applicant money, school records for the qualifying spouse and materials submitted with the application for immigrant visa. The entire record was reviewed and considered in rendering a decision on the appeal.

As aforementioned, the applicant’s spouse asserts in a letter that he is suffering emotional, financial and religious hardships as a result of his separation from the applicant. The qualifying spouse also indicates that he has lived in the United States since he was a child and has no friends or relatives in Trinidad and Tobago. Further, the qualifying spouse states that he cannot live with the applicant’s parents because they do not approve of his marriage to their daughter. The qualifying spouse also states that he would be unable to continue his education if he relocated to Trinidad and Tobago for the applicant.

The AAO finds that the applicant has failed to establish that her qualifying spouse will suffer extreme hardship as a consequence of being separated from her. The applicant's spouse indicates that he is experiencing emotional hardships, as a result of the applicant's inadmissibility. In his most recent letter, he indicates that he "mentally [is] starting to crack" and that he "cannot survive without" the applicant. However, other than the letters provided by the qualifying spouse, there is no documentation to demonstrate the actual emotional and/or psychological hardships that the qualifying spouse is encountering. Further, the record fails to provide detail explaining how the qualifying spouse's emotional and psychological hardships are outside the ordinary consequences of removal. With regard to the qualifying spouse's financial hardships, he indicates in his letter that he is assisting the applicant financially and the record contains proof that he sent the applicant money on two separate occasions. However, there is no documentation confirming the qualifying spouse's income or expenses to demonstrate whether his financial support to the applicant is posing a hardship to him. Similarly, the applicant's husband indicates that he is living with the applicant's aunt because he is unable to afford an apartment by himself and asserts that he is unable to practice his religion in her home. The applicant's spouse contends that, if the applicant lived with him in the United States, they could afford an apartment together and practice their religion in their apartment. However, again, there is no documentation confirming the qualifying spouse's inability to afford his own apartment or to demonstrate that the applicant's aunt restricts his religious practices. Assertions are evidence and will be considered. However, going on record without supporting documentary evidence generally is not sufficient for purposes of meeting the burden of proof in these proceedings. 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 applicant also failed to establish that the qualifying spouse would experience hardship upon relocation to Trinidad and Tobago. The applicant's spouse indicates that he has lived in the United States since he was a child. Further, he indicates that he has no friends or relatives in Trinidad and Tobago. He also asserts that he cannot stay with his in-laws or the applicant's family because they disapprove of the marriage between himself and the applicant for racial and religious reasons. However, there was no documentation to support such assertions. Moreover, no explanation or evidence was provided as to whether the qualifying spouse and the applicant could live together on their own in Trinidad and Tobago, as the applicant has a job and the qualifying spouse did not indicate that he would be unable to find a job in Trinidad and Tobago. Further, the qualifying spouse indicates that he would be deprived of an education if he relocated to Trinidad and Tobago. The record contains proof of his enrollment in college. However, the record does not indicate when the qualifying spouse's education will be complete or any explanation or evidence as to whether he could continue or complete his schooling in Trinidad and Tobago. As previously stated, going on record without supporting documentary evidence generally is not sufficient for purposes of meeting the burden of proof in these proceedings. See *Matter of Soffici*, *supra*, at 165. As such, the applicant has not met her burden of demonstrating that her qualifying spouse will suffer extreme hardship in the event that he relocates to Trinidad and Tobago.

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 her qualifying spouse as required under section

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212(a)(9)(B) 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) 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.