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U.S. Department of Homeland Security
U. S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
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Washington, DC 20529-2090

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**U.S. Citizenship
and Immigration
Services**



H6

Date: **SEP 07 2011**

Office: MEXICO CITY
(SANTO DOMINGO)

FILE: 

IN RE: 

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:

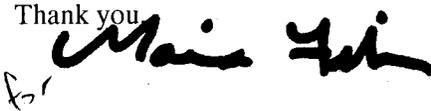


INSTRUCTIONS:

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 District Director, Mexico City, Mexico. The Administrative Appeals Office (AAO) dismissed the applicant's appeal of that decision on December 18, 2008. The applicant thereafter filed a motion to reopen, and, rather than forwarding the matter to the AAO, the Field Office Director, Santo Domingo, Dominican Republic, reopened the matter to address certain issues before ultimately denying the motion.¹ The matter is now before the AAO on motion to reopen. The motion will be denied.

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 again seeking admission within ten years of his last departure from the United States. He seeks a waiver of inadmissibility in order to reside in the United States with his United States citizen spouse.

In a decision dated August 28, 2008, the Acting District Director found that the applicant failed to establish that his qualifying relative would experience extreme hardship as a consequence of his inadmissibility. The application was denied accordingly. *See Decision of the Acting District Director* dated August 28, 2008. The AAO also found that the applicant failed to establish the requisite extreme hardship, and dismissed the applicant's appeal on December 18, 2008.

On motion, the applicant's attorney provided a brief in support of the applicant's waiver application. The applicant's attorney contends that the qualifying spouse has suffered financial, psychological and health-related hardships due to her separation from the applicant. The applicant's attorney also asserts that, if the qualifying spouse relocated to the Dominican Republic, she would be deprived of her family. In addition, the applicant's attorney contends that the qualifying spouse would face an extreme impact in her lifestyle and would have a difficult time finding a job in the Dominican Republic.

The record contains an Application for Waiver of Grounds of Inadmissibility (Form I-601), Notices of Appeal (Form I-290B), a handwritten letter from a social worker, a letter from the qualifying relative, the qualifying spouse's prescription and pharmacy information regarding her medication, two letters from the qualifying spouse's doctor, briefs written on behalf of the applicant, country condition materials, financial documentation, medical documentation regarding the applicant, a letter from the applicant's ex-wife, an approved Petition for Alien Relative (Form I-130), a naturalization

¹ In a decision dated February 9, 2009 denying the applicant's motion to reopen, the Field Office Director states, "This office has reviewed and considered the Notice of Appeal or Motion (Form I-290B) and is reopening the case to address certain pertinent issues of concern as stated in the counsel's brief . . ." However, the Field Office Director did not have jurisdiction to reopen the applicant's case, as the official having jurisdiction over a motion is the official who made the latest decision in the proceeding, in this case the AAO. *See* 8 C.F.R. § 103.5(a)(1)(ii). As the Field Office Director improperly reopened the case and issued a new decision when the matter was under the jurisdiction of the AAO, the decision will be withdrawn and the AAO will now consider the motion to reopen.

certificate for the qualifying spouse and divorce documentation regarding the applicant's prior marriage.

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 wife 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 his wife, who is a United States citizen. The record indicates that the applicant entered the United States without inspection on October 26, 1999, and remained until 2002, when he departed. The applicant thus accrued unlawful presence from October

26, 1999 until 2002, a period in excess of one year.² In applying for an immigrant visa, the applicant is seeking admission within ten years of his departure from the United States. The applicant has not disputed his 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 submitted relating to the potential hardships facing the applicant's spouse includes Form I-601, Form I-290B, a handwritten letter from a social worker, a letter from the qualifying relative, a copy of the qualifying spouse's prescription and pharmacy information regarding her medication, two letters from the qualifying spouse's doctor, briefs written on behalf of the applicant, country condition materials and financial documentation. The entire record was reviewed and considered in rendering a decision on the appeal.

As previously stated, the applicant's attorney contends that the qualifying spouse has suffered financial, psychological and health-related hardships due to her separation from the applicant. The applicant's attorney also asserts that, if the qualifying spouse relocated to the Dominican Republic, she would be deprived of her family. In addition, the applicant's attorney contends that the relocation to the Dominican Republic would have an extreme impact on her lifestyle and she would have a difficult time finding a job in the Dominican Republic.

Although the qualifying spouse's separation from the applicant may be causing her financial, psychological and health related hardships, there is very little detail in the evidence provided to demonstrate the hardships that she may be encountering. With regard to her psychological and health-related hardships, the record contains two letters from the qualifying spouse's doctor, a handwritten letter from a social worker, a prescription and a letter from the qualifying spouse. The letters from the qualifying spouse's doctor confirm that the qualifying spouse is under treatment for "severe" depression, anxiety, insomnia and palpitations and that she is taking medications for these conditions, but provides no further detail. Further, the letter from a social worker indicates that the qualifying spouse has been seen for counseling. However, as the letter was handwritten and difficult to read, no other information could be gleaned from it. In the qualifying spouse's letter, she asserts that "without the knowledge that [her] family will be intact [she] fears [her] life will go completely dark." The AAO noted in the decision dismissing the applicant's appeal that there was no short or long term treatment plan for the qualifying spouse's mental issues or a detailed outline of the severity of the qualifying spouse's condition. *See Decision of the Administrative Appeals Office* dated December 18, 2008. Moreover, the applicant failed to provide any additional information or evidence with the motion to reopen to demonstrate the nature and extent of the qualifying spouse's psychological conditions. On appeal, the applicant's attorney does contend that the qualifying doctor refers to the qualifying spouse's conditions as "severe," that she has been prescribed medication, and that these psychological hardships aggregated with her other hardships amounts to extreme hardship. Nonetheless, the AAO does not find that the evidence on record is sufficient to

² The AAO notes that the applicant was ordered removed on June 9, 2000, and failed to depart until 2002. As it has not been more than 10 years since his departure, he is also inadmissible under section 212(a)(9)(A) of the Act and therefore also requires permission to reapply for admission (Form I-212).

establish that the qualifying relative's mental health condition is severe or would result in hardship beyond the common results of inadmissibility.

Further, the applicant's attorney asserts that the qualifying spouse has been suffering financially as a result of her separation from the applicant. The record contains a statement from the qualifying spouse, wherein she lists her expenses, a pay stub from the qualifying spouse, and some of the qualifying spouse's expenses. The record contains no documentation to demonstrate the income of the applicant prior to his departure, such as tax returns. Further, only one pay stub for the qualifying spouse was provided, which failed to sufficiently document her income. Although the qualifying spouse provided a statement indicating her income and expenses, there was no documentary evidence other than the one paystub to support the assertions regarding her income. Assertions made by the applicant's spouse regarding her financial hardships are evidence and have been considered. However, assertions cannot be given great weight absent supporting evidence. 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)). Further, although the record contains some of the qualifying spouse's bills, such as credit card statements, the evidence does not establish that she will be unable to pay for her expenses without the applicant's income. As such, the applicant failed to demonstrate that his wife will suffer extreme hardship as a result of her separation from him.

The AAO likewise finds that the applicant has not demonstrated that his spouse would suffer extreme hardship if she relocated to the Dominican Republic. The applicant has not addressed whether he has family ties in the Dominican Republic, and the AAO is thus unable to ascertain whether and to what the extent he would receive assistance from family members for both himself and his spouse. The applicant has also not addressed the specific family ties that the qualifying spouse has to the United States. Although the applicant's attorney indicated that the qualifying spouse lives with and solely supports her mother and if she relocated to the Dominican Republic, she would be deprived of her family, there was no documentary evidence to support these assertions. Further, in her letter, the qualifying spouse failed to mention that she lives with and cares for her mother, nor did she name any family member who lives in the United States. Although the record contains a document from the qualifying spouse that lists her expenses and notes that her mother pays her for rent, there is nothing else in the record that details the extent of the qualifying spouse's relationship with her mother or her family ties in the United States, and the potential hardships that would result in her relocation. The assertions made by the qualifying spouse are evidence and have been considered. However, as aforementioned, assertions cannot be given great weight absent supporting evidence. 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* at 165.

Moreover, the applicant's counsel contends that the applicant's spouse will face an extreme impact in her lifestyle and will have difficulties getting a reliable job. The record contained a Congress Research Service Report updated on March 8, 2005, which generally discussed the economic conditions in the Dominican Republic from the 1990's through 2005. Further, the applicant

submitted a Department of State country report for 2007, which indicated the general work conditions in the Dominican Republic including the minimum wage levels and the standard work period. The record does not contain any specific information to demonstrate that the qualifying spouse would have difficulties finding a job upon relocation to the Dominican Republic. Further, the applicant also failed to show how his spouse's standard of living would change as a result of relocation to the Dominican Republic as there is little documentation regarding the income of the qualifying spouse and no evidence regarding any contributions by the applicant. Courts considering the impact of financial detriment on a finding of extreme hardship have repeatedly held that, while it must be considered in the overall determination, "[e]conomic disadvantage alone does not constitute "extreme hardship." *Ramirez-Durazo v. INS*, 794 F.2d 491, 497 (9th Cir. 1986) (holding that "lower standard of living in Mexico and the difficulties of readjustment to that culture and environment . . . simply are not sufficient.") As such, the record lacks evidence demonstrating how the applicant's spouse would be affected specifically by any adverse conditions in the Dominican Republic and the current record does not establish that the applicant's spouse would experience extreme hardship upon relocating there.

In sum, although the record indicates that the applicant's wife may be encountering hardships based on separation, it does not support a finding that the difficulties, considered in the aggregate, would rise 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 spouse 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. The AAO therefore finds that the applicant has failed to establish extreme hardship to his spouse, as required for a waiver of inadmissibility 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) 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 motion will be denied.

ORDER: The motion is denied.