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



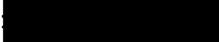
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DATE: **SEP 15 2011**

Office: SANTO DOMINGO,
DOMINICAN REPUBLIC

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:

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,

for Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The Form I-601, Application for Waiver of Grounds of Inadmissibility was denied by the Field Office Director, Santo Domingo, 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 resided in the United States from March 16, 1995 (when she was admitted into the U.S. with a B1 visitor visa) until July 5, 2004 (when she was removed from the United States). The applicant was found to be inadmissible to the United States under 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 her removal from the U.S. The applicant is married to a U.S. citizen, and she is the beneficiary of an approved Form I-130, Petition for Alien Relative (Form I-130). 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 live in the United States with her U.S. citizen spouse.

In a decision dated May 5, 2009, the director concluded the applicant had failed to establish that her husband would experience extreme hardship if she were denied admission into the United States. The waiver application was denied accordingly. The director additionally found that, even if the applicant had established extreme hardship to a qualifying relative, she is statutorily ineligible for an immigration benefit under section 204(c) of the Act, 8 U.S.C. §1154(c) because she had committed marriage fraud with regard to her first marriage.

Section 204(c) of the Act states:

Notwithstanding the provisions of subsection (b), no petition shall be approved if (1) the alien has previously been accorded, or has sought to be accorded, an immediate relative or preference status as the spouse of a citizen of the United States or the spouse of an alien lawfully admitted for permanent residence, by reason of a marriage determined by the Attorney General to have been entered into for the purpose of evading the immigration laws, or (2) the Attorney General has determined that the alien has attempted or conspired to enter into a marriage for the purpose of evading the immigration laws.

Federal Regulations state at 8 C.F.R. Section 1003.10(a) that:

[I]mmigration judges are attorneys whom the Attorney General appoints as administrative judges within the Office of the Chief Immigration Judge to conduct specified classes of proceedings, including hearings under section 240 of the Act. Immigration judges shall act as the Attorney General's delegates in the cases that come before them.

A review of the record reflects that the applicant was placed into removal proceedings after her marriage-based conditional permanent resident status was terminated by the USCIS office in St. Croix, U.S. Virgin Islands. An immigration judge ordered the applicant's conditional resident

status terminated on May 30, 2000, based on her failure to meet her burden of establishing her marriage (to former husband S [REDACTED]) was entered into in good faith. See Oral Decision of the Immigration Judge at 25, 29 (May 30, 2000). The immigration judge specifically states on page 28 of her decision that:

The Court is not at this point in time claiming that there was marriage fraud or fraud as such as direct evidence of fraud, just that the respondent has totally failed t [sic] provide documentation evidence that would have placed the Court in a position to be able to make an assessment that there in fact was a commitment by both parties to the marital relationship.

Id. at 28. The above language reflects that the immigration judge did not make a finding of marriage fraud in the applicant's case. It is noted further that the immigration judge went on to grant the applicant voluntary departure, which required a finding of good moral character for at least five years. *Id.* at 29-30. In addition, USCIS approved two subsequent Form I-130s on the applicant's behalf, demonstrating further that no finding of marriage fraud has been made against the applicant.¹ Accordingly, we do not find that the applicant is subject to the prohibitions contained in section 204(c) of the Act.

The applicant asserts on appeal that her U.S. citizen husband will experience extreme emotional and financial hardship if she is denied admission into the United States. To support her assertion, the applicant submits a letter written by her husband. 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:

(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

¹ The applicant obtained a divorce from [REDACTED] on July 30, 1999. She married U.S. citizen, [REDACTED] on March 20, 2002. He filed a Form I-130 on her behalf on April 10, 2002, and the petition was approved on July 26, 2002. The applicant divorced [REDACTED] on January 16, 2004. She married her current husband, [REDACTED], in the Dominican Republic on July 22, 2004. [REDACTED] filed a Form I-130 on the applicant's behalf on November 9, 2004. The petition was approved on September 16, 2005. On this basis, the applicant filed an immigrant visa application in the Dominican Republic on or about February 7, 2006.

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

The record reflects the applicant was admitted into the United States with a B1 visa on March 16, 1995. The B1 visa was valid through April 15, 1995. The applicant married a U.S. citizen [REDACTED] on April 12, 1995, and he filed a Form I-130 on her behalf on May 4, 1995. The applicant filed a Form I-485, Application to Register Permanent Residence or Adjust Status on May 4, 1995. The applicant's Form I-485 was approved, and her immigration status was adjusted to that of a conditional permanent resident on September 22, 1995. The applicant's Form I-751, Petition to Remove the Conditions on Residence (Form I-751) was denied on June 4, 1999, however, based on her separation from the applicant, and her failure to establish that she entered into the marriage in good faith. The applicant was placed into removal proceedings, and on May 30, 2000, an immigration judge terminated her conditional resident status. The applicant was granted voluntary departure, through July 31, 2000. The applicant did not depart, and she filed a series of appeals and motions related to her case. All were denied, and on July 5, 2004, the applicant was removed from the United States. The applicant was unlawfully present in the U.S. for almost 4 years between August 1, 2000 and July 5, 2004.

Because the applicant was unlawfully present in the U.S. for more than one year, and she is seeking readmission into the U.S. within 10 years of her removal from the United States, she is inadmissible under section 212(a)(9)(B)(i)(II) of the Act.

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

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 record reflects that the applicant married a U.S. citizen ([REDACTED]) on July 22, 2004. The applicant's spouse is a qualifying relative under section 212(a)(9)(B)(v) of the Act. Section 212(a)(9)(B)(v) of the Act provides that a waiver of the bar to admission is dependent first upon a showing that the bar imposes an extreme hardship on a qualifying family member. Once extreme hardship is established, it is but one favorable factor to be considered in the determination of whether the Secretary should exercise discretion. *See Matter of Mendez*, 21 I&N Dec. 296 (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*, 22 I&N Dec. 560, 565 (BIA 1999), the Board of Immigration Appeals (BIA) provided a list of factors it deemed relevant in determining whether an alien has established extreme hardship to a qualifying relative. 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 BIA 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 BIA 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, supra* 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).

Though hardships may not be extreme when considered abstractly or individually, the BIA 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 the present case, the record contains a letter written by the applicant's husband. He states that it is emotionally painful to be separated from his wife; that he is suffering from depression because his wife is not by his side; and that he worries about his wife being alone in the Dominican Republic. The applicant's husband states that he underwent prostate surgery in Puerto Rico, and he indicates that he must travel from the Virgin Islands to Puerto Rico every three months for medical observation and follow-up reasons. The applicant's husband states that he needs his wife's support to make these trips, and he states that his wife gives him the support, love and affection he needs to continue living. In addition, the applicant's husband indicates that he frequently travels to the Dominican Republic to see his wife, and that this has caused him financial hardship. The applicant submits no medical, psychological, financial or other evidence to corroborate the assertions made on appeal, and the record contains no other evidence relating to hardship the applicant's husband would experience if the applicant's waiver application is denied.

Although the applicant's uncorroborated 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. *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)).

Upon review of the totality of the evidence, the AAO finds that the applicant failed to establish that her husband would experience extreme hardship if she were denied admission into the United States, 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 an 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.²

² The record reflects the director also denied the applicant's Form I-212 Application for Permission to Reapply for Admission into the United States after Deportation or Removal (Form I-212). The record does not contain a separate denial decision for the Form I-212, and the denial is not mentioned in the director's Form I-601 denial decision. It is noted, however, that the BIA found in *Matter of Martinez-Torres*, 10 I&N Dec. 776 (reg. Comm. 1964), that a Form I-212 should be denied in the exercise of discretion, to an alien who is mandatorily inadmissible to the United States under another section of the Act, as no purpose would be served in granting the application. In this case the applicant is inadmissible under section 212(a)(9)(B)(II) of the Act; thus, no purpose would be served in granting her Form I-212.



ORDER: The appeal is dismissed.