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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: **APR 25 2012** Office: ROME, ITALY FILE:

IN RE: Applicant:

APPLICATIONS: 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 Field Office Director, Rome, Italy, 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 Italy 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 her last departure from the United States. The record indicates that the applicant is married to a lawful permanent resident of the United States and is the mother of a United States citizen child. She is the beneficiary of an approved 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 reside in the United States with her spouse and child.

The Field Office Director found that the applicant had failed to establish that extreme hardship would be imposed on the applicant's qualifying relative and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) accordingly. *Decision of the Field Office Director*, dated December 31, 2009. The AAO notes that the Field Office Director also denied the applicant's Application for Permission to Reapply for Admission After Deportation or Removal (Form I-212) in the same decision, though no Notice of Appeal or Motion (Form I-290B) was filed for that application.

On appeal, the applicant, through counsel, asserts that United States Citizenship and Immigration Services (USCIS) erred in denying the applicant's Form I-601 and Form I-212, in that USCIS did not "properly consider the extreme hardship to" to the applicant's spouse. *Form I-290B*, filed February 3, 2010.

The record includes, but is not limited to, counsel's appeal brief, statements from the applicant and her husband, a letter of support, psychological documentation for the applicant's husband and son, financial documents, photographs, and documents pertaining to the applicant's removal from the United States. 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 [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 application, the record indicates that on December 6, 1998, the applicant entered the United States on the Visa Waiver Program with authorization to remain in the United States until March 5, 1999. On January 16, 1999, the applicant married her lawful permanent resident husband in New Jersey. On May 2, 2005, the applicant filed an Application to Register Permanent Residence or Adjust Status (Form I-485). On May 9, 2006, the applicant's Form I-485 was denied, and she was ordered removed from the United States. On May 15, 2006, the applicant was removed from the United States.

The applicant accrued unlawful presence from March 6, 1999, the day after her authorization to remain in the United States expired, until May 2, 2005, the day she filed her Form I-485. The applicant is attempting to seek admission into the United States within ten years of her May 15, 2006 removal from the United States. 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 and seeking admission within 10 years of her departure from the United States.¹ The applicant does not contest her inadmissibility.

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 or her child can be considered only insofar as it results in hardship to a qualifying relative. 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 of Immigration Appeals (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

¹ The AAO notes that it appears that the applicant may also be inadmissible to the United States pursuant to section 212(a)(6)(C)(i) of the Act, for entering the United States on December 6, 1998 under the Visa Waiver Program, and failing to disclose her true intent to remain in the United States permanently. However, the Field Office Director did not identify this ground of inadmissibility in the initial decision; therefore, the AAO will not address it in this decision.

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 record contains references to hardship the applicant's child would experience if the waiver application were denied. It is noted that Congress did not include hardship to an alien's children as a factor to be considered in assessing extreme hardship. In the present case, the applicant's spouse is the

only qualifying relative for the waiver under section 212(a)(9)(B)(v) of the Act, and hardship to the applicant's child will not be separately considered, except as it may affect the applicant's spouse.

In her appeal brief, counsel states the applicant's husband has resided in the United States for many years, he is accustomed to the United States, all of his family resides in the United States, he has significant business and community ties to the United States, and except for the applicant and their son, he has no immediate family members in Italy. In a statement dated April 16, 2009, the applicant's husband claims that he would not be able to find employment in Italy because of the economic recession.

The AAO acknowledges that the applicant's husband is a lawful permanent resident of the United States and that he has resided in the United States for many years. However, the applicant's husband is a citizen of Italy, and it is presumed that he would be able to adapt to the culture and language of Italy. Additionally, the AAO notes that although the applicant's husband is employed in the United States and would be required to give up his employment if he relocated to Italy to live with the applicant, the applicant has not submitted objective documentary evidence that demonstrates that he will experience financial hardship in Italy. 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)). Therefore, based on the record before it, the AAO finds that, considering the potential hardships in the aggregate, the applicant has failed to establish that her husband would suffer extreme hardship if he returned to Italy.

In addition, the record fails to establish extreme hardship to the applicant's husband if he remains in the United States. Counsel states the applicant's husband is suffering financial hardship by having to maintain two households, one in Italy and one in the United States, and having to travel to Italy to visit his family. In an undated statement, the applicant states that in the United States, she took care of their son and the home, while her husband worked. The applicant's husband states that he works long hours, so he would be unable to raise his son alone.

The applicant's husband is concerned that when their son returns to the United States, he will suffer because of his lack English language skills, and he wants him to attend school in the United States. Additionally, he states the applicant and their son are depressed in Italy. He claims that the separation is worse "on [their] son because of his tender age." In a statement dated September 7, 2009, the applicant states their son is traumatized by the family's separation. In a psychological evaluation dated October 20, 2009, licensed social worker [REDACTED] reports that according the applicant's husband, their son is suffering "from behavioral and emotional issues," and he and the applicant are under the care of a psychologist in Italy. In a statement dated February 17, 2009, [REDACTED] a doctor in Italy, states the applicant's son is displaying anxiety and uneasiness, and shows signs of "psychological discomfort." Additionally, [REDACTED] reports that the applicant's son "is in a special education program at school." The AAO acknowledges that the applicant's son may be suffering some hardship in Italy; however, he is not a qualifying relative, and the applicant has not shown that hardship to their son has elevated her husband's challenges to an extreme level.

The applicant's husband also states the separation is taking "a serious toll" on the marriage. He states it is hard "to come home...to an empty bed," and that the separation from the applicant and their son "is like being in prison." He worries so much that it is affecting his daily functioning. [REDACTED] reports that the applicant's husband is often distracted at work, and he feels that he has abandoned his son. [REDACTED] concludes that on the basis of the interview, she cannot make a formal diagnosis but the applicant's husband's symptoms "are consistent with those of persons suffering from Post-Traumatic Stress Disorder and/or Major Depressive Disorder." Additionally, the applicant's husband asserts he was admitted into the hospital because of the physical, emotional and mental stress caused by the applicant's absence. The record does not contain medical documentation showing that the applicant's husband was admitted into the hospital.

The AAO acknowledges that the applicant's husband may be experiencing emotional difficulties in being separated from the applicant. However, the AAO notes that while it is understood that the separation of spouses often results in significant psychological challenges, the applicant has not distinguished her husband's emotional hardship upon separation from that which is typically faced by the spouses of those deemed inadmissible. The AAO finds the record to include some documentation of the applicant and her husband's income and expenses; however, this material offers insufficient proof that the applicant's husband has been unable to support himself in the applicant's absence. Additionally, the applicant has not distinguished her husband's financial challenges from those commonly experienced when a family member remains in the United States alone. Further, the AAO notes that the applicant has submitted no evidence to establish that she has been unable to obtain employment in Italy and, thereby, financially assist her husband from outside the United States. Based on the record before it, the AAO finds that the applicant has failed to establish that her husband would suffer extreme hardship if her waiver application is denied and he remains in the United States.

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 lawful permanent resident spouse as required 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 she 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.