

identifying data deleted to  
prevent clearly unwarranted  
invasion of personal privacy  
**PUBLIC COPY**

U.S. Department of Homeland Security  
U.S. Citizenship and Immigration Services  
*Office of Administrative Appeals*  
20 Massachusetts Ave. N.W. MS 2090  
Washington, D.C. 20529-2090  
**U.S. Citizenship  
and Immigration  
Services**



H6

DATE: **FEB 24 2012** OFFICE: SANTO DOMINGO, D.R.

FILE:

IN RE: Applicant:

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) and Application for Permission to Reapply for Admission into the United States after Deportation or Removal under Section 212(a)(9)(A) of the Immigration and Nationality Act, 8 U.S.C. § 1182(a)(9)(A).

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 and request for permission to reapply for admission were denied by the Acting Field Office Director, Santo Domingo, Dominican Republic, and are 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 admission within 10 years of her last departure from the United States. The applicant also was found to be inadmissible under section 212(a)(9)(A)(ii) of the Act, 8 U.S.C. § 1182(a)(9)(A)(ii), for having been deported from the United States and seeking admission within the proscribed period after her deportation. The applicant is the daughter of a U.S. Citizen and is the beneficiary of two approved Petition for Alien Relative (Form I-130). The applicant through counsel does not contest these findings of inadmissibility. Rather, she 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 with her mother and children in the United States. However, counsel contends that the applicant does not have to submit an Application for Permission to Reapply for Admission into the United States after Deportation or Removal (Form I-212) given that legacy Immigration and Naturalization Service (INS) (now the United States Citizenship and Immigration Services) approved a prior I-212 application.

The Acting Field Office Director concluded that the applicant failed to establish that extreme hardship would be imposed on a qualifying relative and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) and Form I-212 accordingly. *See Decision of Field Office Director*, dated August 20, 2009.

On appeal, counsel asserts that the denial of the applicant's waiver application by USCIS was arbitrary, unreasonable, contrary to law, and did not properly weigh the evidence given that the applicant's qualifying relative will experience emotional loss and financial and physical hardship that in the aggregate rises to the level of extreme. *See Form I-290B, Notice of Appeal or Motion*, dated September 2, 2009. Counsel further asserts that the applicant's Form I-212 was already approved on August 22, 2001. *Id.*

The record includes, but is not limited to: letters of support; identity and medical documents; psychological evaluations; and student records. The entire record was reviewed and considered in rendering a decision on the appeal.

Section 212(a)(9) 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 Attorney General [now the Secretary of Homeland Security (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 Attorney General [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. No court shall have jurisdiction to review a decision or action by the Attorney General [Secretary] regarding a waiver under this clause.

The record establishes that the applicant entered the United States without inspection by U.S. immigration officials on or about March 10, 1986. She was apprehended by immigration officials on December 22, 1992, and placed in deportation proceedings pursuant to section 242 of the INA. She was granted voluntary departure by the Immigration Judge on April 29, 1993, which was ultimately to occur on or before November 10, 1996. However, the applicant did not timely depart. Rather, she remained until January 30, 2007, when she was removed by immigration officials and returned to the Dominican Republic. The applicant accrued unlawful presence from April 1, 1997, the effective date of the unlawful presence provisions in the Act, until January 23, 2007, a period in excess of one year. As the applicant is seeking admission within 10 years of departure, she is inadmissible pursuant to section 212(a)(9)(B)(i)(II) of the Act.

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 can be considered only insofar as it results in hardship to a qualifying relative. The applicant's parent 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.

family members of inadmissible individuals. The record indicates that the mother lives with two of her children and grandchildren, but there is no evidence in the record that the mother is unable to support her family and meet her financial obligations in the applicant's absence. Moreover, the record does not include any evidence of the economic conditions or employment opportunities in the Dominican Republic and the applicant's inability to provide financial support to hers and her mother's households.

The AAO recognizes the difficulties in rearing grandchildren without the support of the grandchildren's parent and that the applicant's parent may experience some hardships as a result of separation from the applicant. However, the AAO finds that even when these hardships are considered in the aggregate, the record fails to establish that the applicant's mother will suffer extreme hardship as a result of separation from the applicant.

Additionally, counsel contends that the applicant and her mother will suffer extreme hardship upon relocation to the Dominican Republic because of the applicant's immediate family ties in the United States and lack of immediate family ties in the Dominican Republic, as well as the mother's longtime residence in the United States. *See I-290B Brief in Support of Appeal, supra.*

The record contains sufficient evidence demonstrating that the applicant's mother maintains ties to the United States: she maintained lawful permanent residence from November 22, 1989, until she naturalized on October 31, 2005; and she has children and grandchildren who live with her. The mother may experience some hardship if she were to relocate to the Dominican Republic to be with the applicant and leave behind these family members. However, the record does not establish that the hardship that the mother may experience goes beyond what is normally experienced by qualified family members of inadmissible individuals. The record includes evidence that the mother maintains close family ties in the Dominican Republic: "Some time [sic] she feels scared and feels the need to call family in Santo Domingo to be reassured that they are OK." *Psychiatric Evaluation, supra.* Also, the record does not include any evidence of the economic, political, or social conditions in the Dominican Republic and how they would directly impact the mother.

Although the applicant's parent may experience some hardships as a result of relocation to the Dominican Republic with the applicant, the AAO finds that even when these hardships are considered in the aggregate, the record fails to establish that the applicant's mother will suffer extreme hardship as a result of relocation with the applicant.

In this case, the record does not contain sufficient evidence to show that the hardship faced by the qualifying relative, considered in the aggregate, rises 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 United States citizen parent 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.

The record contains references to hardship the applicant's children 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 parent is the only qualifying relative for the waiver under section 212(a)(9)(B)(v) of the Act, and hardship to the applicant's children will not be separately considered, except as it may affect the applicant's mother.

Counsel contends that the applicant's mother will suffer extreme medical hardship as a result of separation from the applicant because the mother is elderly and infirm and depends on the applicant for the care of the applicant's children. See *I-290B Brief in Support of Appeal*, dated September 29, 2009; see also *Letter of Support from [REDACTED]* dated May 7, 2009. Counsel submitted a psychological evaluation in which the psychiatrist discusses the mother's current symptoms, diagnoses, and prescriptions; medical conditions; biographic information; physical appearance; legal matters; and employment history. See *Psychiatric Evaluation, Issued by [REDACTED]* dated September 7, 2000. Additionally, the applicant's children contend that it has been difficult living with their grandmother due to her health issues and paying the rent and bills since the applicant's removal from the United States. See *Letter of Support from [REDACTED]* dated April 27, 2009; see also *medical records*. They also contend that they have been suffering emotionally and academically without the applicant's presence. *Id.*

The evidence in the record is sufficient to establish that the applicant's mother has been diagnosed with Obsessive Compulsive Disorder and Histrionic Personality Disorder and has experienced the following physical conditions: simple cysts, multiple nodules, hypertension, insomnia, high cholesterol, face hematoma, chronic neck pain, calf pain, hand numbness, and chest discomfort. And, because of the diagnoses and conditions, the mother may experience some emotional and medical hardship in the applicant's absence from the United States. However, the record does not establish that the hardship that the mother may experience goes beyond what is normally experienced by qualified family members of inadmissible individuals. The record is unclear concerning the number of visits for which the mother's mental health diagnoses are based as well as any required ongoing treatment and the necessity of the applicant's presence in that treatment. Moreover, the record does not include any evidence of the mother's inability to function without the applicant's presence. Also, the record contains copies of laboratory results and medical records, including hand-written progress notes containing medical terminology and abbreviations that are not easily understood. The documents submitted are otherwise illegible or indiscernible and do not contain a clear explanation of the current medical conditions of the applicant's mother. Absent an explanation in plain language from the treating physician of the exact nature and severity of any conditions and a description of any treatment or family assistance needed, the AAO is not in the position to reach conclusions concerning the severity of the applicant's mother's mental health and medical conditions or the treatments needed.

Additionally, the AAO notes that the applicant's mother may experience some financial hardship because of the applicant's absence from the United States. However, the record does not establish that the hardship that she may experience goes beyond what is normally experienced by qualified

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. Section 291 of the Act, 8 U.S.C. § 1361. Here, the applicant has not met that burden. Accordingly, the appeal will be dismissed.

The AAO notes that the Acting Field Office Director denied the applicant's Form I-212 in the same decision. *Matter of Martinez-Torres*, 10 I&N Dec. 776 (reg. Comm. 1964) held that an application for permission to reapply for admission is denied, in the exercise of discretion, to an alien who is mandatorily inadmissible to the United States under another section of the Act, and no purpose would be served in granting the application. As the applicant is inadmissible under section 212(a)(9)(B)(i)(II) of the Act, no purpose would be served in granting the applicant's Form I-212.

**ORDER:** The appeal is dismissed.