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

PUBLIC COPY



H6

DATE: JAN 11 2012 OFFICE: NEW YORK, NY

FILE:

IN RE: APPLICANT:

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:



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 District Director, New York, New York, 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 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 10 years of his last departure from the United States. The applicant seeks a waiver of inadmissibility in order to reside in the United States with his U.S. Citizen spouse.

The District Director found that the applicant failed to establish extreme hardship to his U.S. Citizen spouse and denied the Form I-601 application for a waiver accordingly. *Decision of the District Director*, dated July 10, 2009.

On appeal, counsel for the applicant submits a letter from a physician as well as two pages of medical records.

The record includes, but is not limited to, the documents listed above, an affidavit from the applicant's spouse, evidence of departures and re-entries into the United States, other applications and petitions filed on behalf of the applicant, evidence of birth, marriage, and citizenship, and U.S. Federal income tax returns. 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.

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

....

(v) 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 the applicant first entered the United States without inspection on January 24, 1996. The applicant filed a Form I-485 application to register permanent residence or adjust status on October 7, 1996, which was denied on September 10, 2002. The applicant then filed another Form I-485 application on September 5, 2005, which was denied on April 21, 2008. The applicant left the United States on several occasions, and was paroled back into the country on May 7, 2003, September 10, 2003, March 31, 2004, March 6, 2007, and September 12, 2007. *See Forms I-94*. The proper filing of an affirmative application for adjustment of status has been designated by the Attorney General [Secretary] as an authorized period of stay for purposes of determining bars to admission under section 212 (a)(9)(B)(i)(I) and (II) of the Act. *See Memorandum by Donald Neufeld, Acting Associate Director, Domestic Operations Directorate; Lori Scialabba, Associate Director, Refugee, Asylum and International Operations Directorate; Pearl Chang, Acting Chief, Office of Policy and Strategy*, dated May 6, 2009. Therefore, the applicant accrued more than one year of unlawful presence, beginning on September 10, 2002, when his first I-485 application was denied until September 5, 2005, when he filed his second I-485 application. Moreover, even though the applicant was granted advance parole, he triggered inadmissibility under section 212(a)(9)(B)(i)(II) by leaving the United States in 2003. *Id.* The applicant's last departure was in 2007, prior to his September 12, 2007 re-entry into the United States. The applicant's qualifying relative for a waiver in this case is his U.S. Citizen spouse.

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 spouse contends she will experience hardship upon separation from the applicant because he is her emotional and economic caregiver. *Affidavit of applicant's spouse*, May 8, 2008. She explains that his income supports and maintains the household. *Id.* Furthermore, the applicant's spouse asserts that if she had to relocate to the Dominican Republic to be with the applicant, they would not be able to earn enough money to meet their expenses, and she would have to request public assistance. *Id.* U.S. Federal income tax forms W-2 and 1099-MISC show the applicant's yearly income was \$9000.00, and his spouse's yearly income was \$18,762.52.

A letter from licensed mental health counselor [REDACTED] is submitted on appeal. Therein, [REDACTED] indicates the applicant's spouse has had three forty-minute long individual therapy sessions for anxiety and depression disorder due to her stress over the applicant's immigration situation. *Letter from [REDACTED] August 29, 2009.* [REDACTED] states the applicant's spouse has reported she suffers from insomnia which has impacted her cognitive thinking process and her short term memory. *Id.* Two pages of medical records show an assessment of anxiety and insomnia, a prescription for Ambien, and a recommendation for consultation with a psychologist. *Medical records, August 25, 2009.*

The record does not contain sufficient evidence of the spouse's or the applicant's household expenses to support assertions of financial hardship, nor is there any evidence to support the spouse's assertions that she and the applicant would be unable to earn sufficient income in the Dominican Republic to support the household. Without details of the family's expenses and income, the AAO is unable to assess the nature and extent of financial hardship, if any, the applicant's spouse will face.

The letter from the licensed mental health counselor as well as the medical records show the applicant's spouse is being treated for anxiety and depression, and also experiences insomnia. Although the AAO notes the applicant's spouse experiences some psychological difficulties, nothing in the record shows that her emotional / psychological hardship goes beyond that normally experienced by family members of inadmissible aliens.

While the AAO acknowledges that the applicant's spouse would face difficulties as a result of the applicant's inadmissibility, we do not find evidence of record to demonstrate that her hardship would rise above the distress normally created when families are separated as a result of inadmissibility or removal. In that the record fails to provide sufficient evidence to establish the financial, emotional or other impacts of separation on the applicant's spouse are cumulatively above and beyond the hardships commonly experienced, the AAO cannot conclude that she would suffer extreme hardship if the waiver application is denied and the applicant returns to the Dominican Republic without his spouse.

The record also lacks sufficient evidence of hardship to the applicant's spouse upon relocation to the Dominican Republic. The record reflects the spouse is a native of the Dominican Republic, and became a U.S. Citizen in 2005. There is no indication in the record that the applicant is unfamiliar with Spanish, or would otherwise have extreme difficulties adjusting to life in the Dominican Republic. Moreover, her assertions of financial hardship in the Dominican Republic are unsupported by evidence, as discussed *supra*. Given the evidence of record, the AAO cannot find the applicant's spouse would experience extreme hardship if she returned to the Dominican Republic with the applicant.

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 his U.S. Citizen spouse 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 a 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.

ORDER: The appeal is dismissed.