

identifying data deleted to prevent clearly unwarranted invasion of personal privacy

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

PUBLIC COPY

[Redacted]

H6

Date: **JAN 19 2012** Office: SANTO DOMINGO FILE: [Redacted]

IN RE: Applicant: [Redacted]

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,

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Acting Field Office Director, Santo Domingo, Dominican Republic. The matter 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 again seeking admission within ten years of his last departure from the United States. The applicant is married to a U.S. citizen. He seeks a waiver of inadmissibility in order to reside in the United States with his spouse.

In a decision dated August 17, 2009, the Acting Field Office 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 Field Office Director* dated August 17, 2009.

On appeal, the qualifying spouse submitted an appeal brief detailing the hardships that she would suffer if the applicant's waiver of inadmissibility is denied. She asserted that she is suffering from emotional, psychological and health-related hardships due to her separation from the applicant. Further, she contends that she cannot relocate to the Dominican Republic because she is 52 years old and her medical conditions prevent her from permanently relocating.

The record contains an Application for Waiver of Grounds of Inadmissibility (Form I-601), a Notice of Appeal (Form I-290B); an appeal brief written by the qualifying spouse, a letter from the qualifying spouse's cardiologist, prescription and other medical documentation, a psychometric evaluation report, documentation regarding travel to the Dominican Republic, letters and statements from the qualifying spouse, an approved Petition for Alien Relative (Form I-130) and supporting documentation, a letter from a friend and photographs. 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:

(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. Hardship to the applicant or his child can be considered only insofar as it results in hardship to a qualifying relative. 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 record indicates that the applicant entered the United States without inspection on May 8, 2004 and voluntarily departed on April 13, 2008. As such, the applicant accrued unlawful presence from May 8, 2004 until April 13, 2008, a period in excess of one year. 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, as a result of the applicant’s unlawful presence, he is inadmissible to the United States under section 212(a)(9)(B)(i)(II) of the Act.

The documentation submitted relating to the potential hardships facing the applicant’s spouse includes Form I-601, Form I-290B, an appeal brief written by the qualifying spouse, a letter from the qualifying spouse’s cardiologist, prescription and other medical documentation, a psychometric evaluation report, documentation regarding travel to the Dominican Republic, letters and statements from the qualifying spouse and a letter from a friend. The entire record was reviewed and considered in rendering a decision on the appeal.

The AAO finds that the applicant has failed to establish that his qualifying spouse will suffer extreme hardship as a consequence of being separated from him. In the qualifying spouse’s appeal brief, she indicates that she would experience emotional and psychological hardships, as a result of her continued separation from the applicant. The record contains an appeal brief written by the qualifying spouse, letters and statements from the qualifying spouse, a psychometric evaluation regarding the qualifying spouse and copies of her prescriptions. The qualifying spouse’s appeal

brief states that the applicant has always been her support and has taken care of her. She further states that without his help, she has been suffering from depression, anxiety and sleeplessness and that she has had to take medications as a result. Further, she indicates that her life is now "empty." The psychometric evaluation report found that the qualifying spouse suffers from a moderate level of depression and also from anxiety. The recommendation from the report is that the qualifying spouse should start psychotherapy and consider a pharmacology therapist. The psychometric evaluation and other evidence in the record fails to provide sufficient detail to demonstrate how the qualifying spouse's emotional and psychological hardships are outside the ordinary consequences of removal. With regard to the qualifying spouse's medical and health-related hardships, the record contains a letter from her cardiologist, copies of her prescription medications and other medical records. The letter from the qualifying spouse's cardiologist confirms that she has been his patient since 2007, that she suffers from hypertension and hypertriglyceridemia, and that she is being treated with medications for such issues. The copies of the qualifying spouse's prescriptions also confirm her use of medications to treat her medical problems. In the qualifying spouse's appeal brief, she asserts that she regularly needs check-ups because if her problems are left untreated "it can lead to death." However, the nature and extent of her hypertension and hypertriglyceridemia were not supported by the doctor's letter or medical records that were submitted. Although the qualifying spouse asserts that her medical issues pose great hardship to her, there is no evidence confirming such assertions. Assertions are evidence and will be considered. However, 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)). As such, the applicant failed to provide sufficient documentation regarding the qualifying spouse's emotional, psychological and health-related hardships to demonstrate her hardships as a consequence of separation.

Likewise, the AAO finds that the applicant has not met his burden of showing that his spouse would suffer extreme hardship if she relocated to the Dominican Republic to be with the applicant. In her appeal brief, the qualifying spouse states her age and her inability to permanently relocate to the Dominican Republic because of her mental and medical issues. With regard to the qualifying spouse's inability to relocate to the Dominican Republic based upon her psychological and medical issues, the record does not provide any detail as to why it is necessary to obtain medical care in the United States and what prevents her from having her issues treated in the Dominican Republic. Further, while we acknowledge that her length of stay in the United States is a factor relating to the qualifying spouse's hardship, the record fails to sufficiently demonstrate the nature and extent of the ties she has to the United States, such as family, work or community ties. For example, the applicant provides very little information regarding the qualifying spouse's family ties to the United States or the nature of her relationship with her family in the United States. Moreover, even were the AAO to take notice of general conditions in the Dominican Republic, the record lacks evidence demonstrating how the applicant's spouse would be affected specifically by any adverse conditions there. The current record does not establish that the applicant's spouse would experience extreme hardship upon relocating abroad to reside 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 qualifying spouse as required under section 212(a)(9)(B) 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 appeal will be dismissed.

ORDER: The appeal is dismissed.