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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

H6

[redacted]

DATE: JAN 2 6 2012 Office: TEGUCIGALPA 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:

[redacted]

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, Tegucigalpa, Honduras, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The record establishes that the applicant, a native and citizen of Honduras, entered the United States without authorization in May or August 2000 and did not depart the United States until September 2008. The applicant accrued unlawful presence during this entire period and was thus 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. The applicant does not contest this finding of inadmissibility. Rather, she is seeking a waiver of inadmissibility in order to reside in the United States with her U.S. citizen spouse and U.S. citizen daughter.

The field office director concluded that the applicant had failed to establish that extreme hardship would be imposed on a qualifying relative and, accordingly, denied the Application for Waiver of Ground of Inadmissibility (Form I-601). *Decision of the Field Office Director,* dated May 29, 2009.

In support of the appeal, the applicant's attorney submits statements from the applicant's husband and daughter, as well as from several of their relatives and neighbors. The record also contains documentation submitted in support of the original waiver request, including: an affidavit from the applicant's husband; a Hardship Evaluation; printed information from the U.S. Department of Health and Human Services regarding eczema; a U.S. Department of State report dated March 11, 2008 on human rights practices in Honduras; and several letters of support from friends and neighbors. The entire record was reviewed and considered in rendering this decision.

Section 212(a)(9)(B) of the Act provides, in pertinent part:

> Aliens Unlawfully Present.-
>
> (i) In general. - Any alien (other than an alien lawfully admitted for permanent residence) who-
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> . . . .
>
> (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...

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 children can be considered only insofar as it results in hardship to a qualifying relative. The applicant's U.S. citizen spouse 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-Moralez*, 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, although 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 U.S. citizen spouse contends that he will suffer emotional and financial hardship if the applicant is unable to reside in the United States. In his September 23, 2011 affidavit in support of this appeal, the applicant's husband states that the mental pain he discussed in a previous affidavit had in fact resulted from the separation from the applicant. The first statement detailed his history with the applicant, noted his distress at the prospect of prolonged separation from his wife, and the effects of separation on his daughter. In his second statement, he claims to feel helpless when facing their daughter's questions about when her mother will again live with them. *Affidavits of* [redacted] dated September 23, 2009 and September 11, 2008.

Regarding the claimed emotional hardship, the record contains a psychological assessment based on interviews with all three family members on two occasions before the applicant's departure. This report concluded that separation would have a serious, negative impact on the applicant's husband and daughter. The social worker observed that the applicant's husband stated he would feel "heartbroken" at being separated from his wife. The report also notes his fears that this situation would make it difficult for him to function at work. *Hardship Evaluation,* dated April 26, 2008. Although the record contains updated support letters addressing the sadness and loneliness the separation caused the applicant's husband, no psychological evaluation addresses his actual mental state after the applicant's departure, and the record is insufficient to establish that the applicant's husband is experiencing emotional hardship beyond the common results of removal.

In support of the financial hardship claim, there is no documentation showing the economic impact of the separation on the applicant's husband that the psychosocial evaluation reports as an area of concern before his wife's departure. *See Hardship Evaluation.* The applicant also states, without evidentiary support, that, due to the scarcity of jobs in the rural Honduran community where she grew up and to which she returned, she depends upon her husband's earnings to support both herself

and her child from a prior relationship. No documentation has been submitted establishing the applicant's spouse's current income, expenses, assets, and liabilities or overall financial situation to establish that without the applicant's physical presence in the United States, her husband is experiencing financial hardship. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *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)).

The record does not show that the cumulative effect of any emotional or financial hardships the applicant's spouse is experiencing due to his wife's inadmissibility goes beyond the hardship normally imposed by the separation from a family member or the need to support two households. The evidence on the record is insufficient to conclude that the applicant's spouse would suffer extreme hardship were the applicant's spouse to remain in the United States without the applicant due to her inadmissibility.

The qualifying relative asserts that he would experience extreme hardship if he relocates abroad to reside with the applicant due to her inadmissibility. Now 31 years old, he reports having lived in the United States since immigrating with his family from Honduras in 1992 at age 11. He says that his parents, siblings, and cousins all live in the United States, but that he still has a grandfather and several uncles in Honduras. Although he claims to have stable employment in northern Virginia and no viable employment prospects in Honduras, the record contains no employment or income records to support this claim, and little documentary evidence to support his claim to have integrated into the local community.

The applicant's husband expresses concern that moving to Honduras would aggravate his daughter's eczema, a skin condition for which he states she visits a dermatologist twice monthly, is treated with prescription ointments and shampoos, and requires special laundry soap. He claims that, not only will the climate cause her problems, but necessary medical treatments are unavailable. The AAO notes that the record contains no medical records or prescriptions to substantiate this claim, but only general information about this condition. We note that the qualifying relative has the same hometown as his wife and still has relatives in his native Honduras in addition to the applicant, which would mitigate the inconveniences he would experience if he chose to relocate abroad.

The applicant has therefore not met her burden of establishing that her husband would suffer extreme hardship were he to relocate abroad to reside with the applicant due to her inadmissibility.

The documentation in the record, when considered in its totality, reflects that the applicant has not established that her U.S. citizen spouse would suffer extreme hardship were the applicant unable to reside in the United States. The AAO recognizes that the applicant's spouse will endure hardship as a result of separation from the applicant. However, his situation, if he remains in the United States, is typical to individuals separated as a result of removal and does not rise to the level of extreme hardship based on the record. Regarding establishing extreme hardship in the event the qualifying relative relocates abroad based on the denial of the applicant's waiver request, the AAO notes that the applicant has not provided sufficient documentation to support this claim.

The record, reviewed in its entirety and in light of the *Cervantes-Gonzalez* factors, cited above, does not support a finding that the applicant's U.S. citizen spouse will face extreme hardship if the applicant is unable to reside in the United States. Rather, the record demonstrates that he will face no greater hardship than the unfortunate, but expected, disruptions, inconveniences, and difficulties arising whenever a spouse is removed from the United States and/or refused admission. Although the AAO is not insensitive to the applicant's spouse's situation, the record does not establish that the hardship he would face rises to the level of "extreme" as contemplated by statute and case law.

In proceedings for application for waiver of grounds of inadmissibility, the burden of establishing that the application merits approval remains entirely with the applicant. Section 291 of the Act, 8 U.S.C. § 1361. The applicant has not met that burden. Accordingly, this appeal will be dismissed.

ORDER: The appeal is dismissed. The waiver application is denied.