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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

#6

DATE: JUL 10 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)

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 AAO inappropriately applied the law in reaching its decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen in accordance with the instructions on Form I-290B, Notice of Appeal or Motion, with a fee of $630. The specific requirements for filing such a motion can be found at 8 C.F.R. § 103.5. **Do not file any motion directly with the AAO.** Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires any motion to 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, Santo Domingo, the Dominican Republic, 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 a 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 one year or more, and seeking admission within 10 years of his last departure from the United States. The applicant is the spouse of a U.S. citizen and is the beneficiary of an approved Petition for Alien Relative (Form I-130). The applicant, through counsel, does not contest the finding of inadmissibility. Rather, he 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 his wife in the United States.

The 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) accordingly. *See Decision of the Field Office Director,* dated July 14, 2010.

On appeal, counsel asserts that the documentary evidence submitted on appeal and current country conditions in the Dominical Republic show that the applicant's U.S. citizen spouse would suffer extreme hardship as a result of the applicant's inadmissibility. Thereby, the denial of the waiver application by the U.S. Citizenship and Immigration Services was in error. *See* Notice of Appeal or Motion (Form I-290B), dated July 30, 2010.

The record includes, but is not limited to: a brief from counsel; letters of support; identity, medical, employment, and financial documents; and Internet articles.[1] The entire record, with the exception of the Spanish-language documents, was reviewed and considered in rendering a decision on the appeal.

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

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[1] The AAO notes that the record contains some documents in the Spanish language. 8 C.F.R. § 103.2(b)(3) states:

> Translations. Any document containing foreign language submitted to USCIS shall be accompanied by a full English language translation which the translator has certified as complete and accurate, and by the translator's certification that he or she is competent to translate from the foreign language into English.

As certified translations have not been provided for all foreign-language documents, as required by 8 C.F.R. § 103.2(b)(3), the AAO will not consider these untranslated documents in support of the appeal.

(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 [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 around 2003 and remained until about November 25, 2008, when he voluntarily departed to the Dominican Republic.[2] The applicant accrued unlawful presence from 2003 until November 25, 2008, a period in excess of one year. As the applicant is seeking admission within 10 years of departure, he 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 U.S. citizen 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-Moralez*, 21 I&N Dec. 296, 301 (BIA 1996).

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[2] The AAO notes that the record includes additional evidence that the applicant may have entered the United States around 2001 or 2004. *See* Petition for Alien Relative (Form I-130); *see also* Application for Waiver of Grounds of Inadmissibility (Form I-601). However, the record indicates that the applicant testified during his Consular interview that he entered the United States around 2003.

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.

Counsel contends that the applicant's spouse has been suffering extreme emotional and financial hardship in the applicant's absence as the spouse has additional stressors because she must make due on her own, and no longer has the applicant's support in helping her with her expenses in New Jersey. Counsel also contends that the spouse depends on the applicant to supplement their fixed income, but given the applicant's age, lack of education and skills, and the poor labor market in the Dominican Republic, the possibilities of the applicant's support are limited. The spouse indicates that it is difficult to find a companion at her age, the applicant is the one happiness in her life, and she would lead a lonely and solitary life without him. The spouse also indicates it is very hard for her to make ends meet; pay the rent, utilities, car note, and to send money to the applicant as he is not making enough in the agricultural industry to support himself. The spouse further indicates that she does not have health insurance and must pay out-of-pocket expenses for her regular doctor visits and medications related to problems with her blood sugar level. Additionally, she indicates that the applicant has a job waiting for him upon his return to New Jersey and that she has visited him twice in the Dominican Republic.

The evidence on the record is sufficient to establish that the applicant's spouse has been undergoing treatment for bronchial asthma, diabetes mellitus Type II, and hyperlipidemia, and because of these conditions, she may experience some medical and emotional hardship in the applicant's absence. However, the AAO finds that the record does not establish that the hardship goes beyond what is normally experienced by qualifying relatives of inadmissible individuals. The medical documentation provided does not include any discussion concerning the necessity of the applicant's participation in the spouse's treatment for her medical conditions. Moreover, the record does not include any evidence of the spouse's current mental health, only counsel's general statement that the spouse "now has to make due on her own, which has given her additional stress." The record lacks an explanation in plain language from the treating physician of the exact nature and severity of the applicant's spouse's condition and a description of any treatment or family assistance needed, and the AAO is unable to reach conclusions concerning the severity of physical or mental health conditions or the treatment needed.

Additionally, the AAO notes that the applicant's spouse has worked as a Dietary Cook in a part-time capacity for the [redacted] since November 2, 2009. However, the evidence in the record is not sufficient to show that the spouse would be unable to support herself in the applicant's absence. The record only includes a copy of the spouse's residential lease agreement, indicating a monthly rent of $750, and what the spouse has self-reported as her additional financial obligations. Without specific evidence in the record, the AAO cannot conclude that the record establishes that the spouse's financial hardship would go beyond the normal consequences of inadmissibility.

The AAO notes the concerns regarding the applicant's spouse's emotional, medical, and financial hardship that she has experienced in the applicant's absence, but finds that even when this hardship is considered in the aggregate, the record fails to establish that the applicant's spouse will suffer extreme hardship as a result of separation from the applicant.

Further, counsel contends that the applicant's spouse would suffer extreme hardship if she were to relocate to the Dominican Republic to be with the applicant as the spouse is a U.S. citizen who has lived her entire life in Jersey City, she is middle-aged and lacks higher education and occupational skills, and she would suffer total economic deprivation given the labor conditions there. The spouse further indicates that her children and siblings are in the United States, she needs to be close to her doctor for medical care, and her son Jose depends on her for the care of his two children.

The record is sufficient to establish that the applicant's spouse would suffer hardship if she were to relocate to the Dominican Republic with the applicant. The spouse has lived continuously in the United States, she maintains a close relationship with her children and grandchildren, and she has steady employment on which she relies for income. In the aggregate, the AAO finds that the applicant's spouse would suffer extreme hardship if she were to relocate to the Dominican Republic because of her length of residence and strong family and social ties to the United States; her ongoing physical conditions; and labor conditions in the Dominican Republic, considered along with the normal hardships associated with relocation.

We can find extreme hardship warranting a waiver of inadmissibility only where an applicant has demonstrated extreme hardship to a qualifying relative in the scenario of separation *and* the scenario of relocation. A claim that a qualifying relative will relocate and thereby suffer extreme hardship can easily be made for purposes of the waiver even where there is no actual intention to relocate. *Cf. Matter of Ige*, 20 I&N Dec. 880, 886 (BIA 1994). Furthermore, to relocate and suffer extreme hardship, where remaining in the United States and being separated from the applicant would not result in extreme hardship, is a matter of choice and not the result of inadmissibility. *Id.*, *also cf. Matter of Pilch*, 21 I&N Dec. 627, 632-33 (BIA 1996). As the applicant has not demonstrated extreme hardship from separation, we cannot find that refusal of admission would result in extreme hardship to the qualifying relative in this case.

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 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 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.

ORDER: The appeal is dismissed.