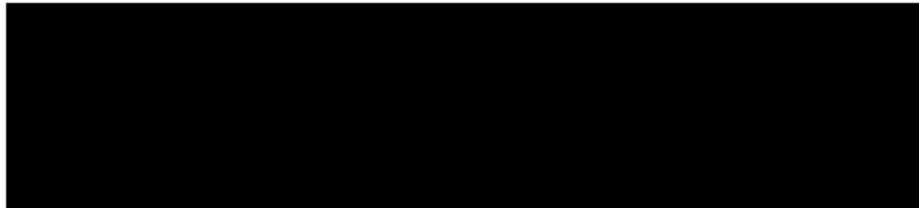


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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090
**U.S. Citizenship
and Immigration
Services**



H6

DATE: **JUL 16 2012**

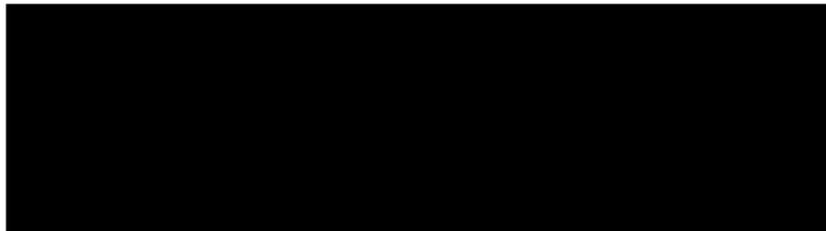
OFFICE: SANTO DOMINGO

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 (the Act), 8 U.S.C. § 1182(a)(9)(B)(v), and Application for Permission to Reapply for Admission under section 212(a)(9)(A)(iii) of the Act, 8 U.S.C. § 1182(a)(9)(A)(iii).

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, 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 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 under section 212(a)(9)(A)(ii) of the Act, 8 U.S.C. § 1182(a)(9)(A)(ii), for seeking admission to the United States within ten years of removal or deportation. The applicant does not contest these findings of inadmissibility. Rather, she is seeking a waiver of inadmissibility and permission to reapply for admission in order to reside in the United States with her U.S. citizen spouse. She is the beneficiary of an approved Petition for Alien Relative (Form I-130).

The field office director concluded the applicant had failed to establish that extreme hardship would be imposed on a qualifying relative and, accordingly, denied the Application for Waiver of Grounds of Inadmissibility (Form I-601). *Decision of the Field Office Director, May 5, 2010.*

In support of the appeal, the applicant's counsel submits a brief contending USCIS misapplied the legal standard for extreme hardship. Counsel provides documentation already on record, as well as new documentation, including, but not limited to: updated hardship statements and other support statements; a copy of a green card; marriage and birth certificates; a job letter and pay stub; copies of money transfers, rent receipts, and phone cards; medical prescriptions and medical records, including psychological referrals and evaluations; and country condition information. The record also contains documentation regarding prior removal proceedings. The entire record was reviewed and considered in rendering this decision.

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

(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...

A waiver of inadmissibility under sections 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 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-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 shows that the applicant lived in the United States from September 4, 1985, when she entered without inspection, until her removal on October 31, 2007, and she last entered the United States on January 7, 1990 as a parolee. On May 29, 2002, an Immigration Judge denied the applicant's request for cancellation of removal and issued a removal order that became final when affirmed by the Board of Immigration Appeals on December 23, 2003. On October 31, 2007 the applicant was removed from the United States and is therefore inadmissible for having been unlawfully present in the United States for a period of one year or more.

The applicant's counsel contends that the applicant's husband will suffer emotional and financial hardship if he remains in the United States while the applicant resides abroad due to her inadmissibility, and the record contains sufficient evidence to establish these claims.

To begin, the record contains documentation not available for consideration by the field office director concerning the emotional hardship claim. Supporting the qualifying relative's contention are his referral by a clinical psychologist to a psychiatrist for further investigation of symptoms of depression including insomnia, sadness/loneliness, low self-worth, and poor concentration. The psychiatrist confirms the diagnosis of depression and anxiety, attributes the applicant's husband's mental state to his wife's absence, and reports that, besides continuing with professional therapy, he is taking two prescription medications to stabilize him emotionally and help him sleep. The applicant's husband and adult son claim that the qualifying relative's emotional dependence is heightened by his learning disabilities, failure to finish elementary school, and poor reading ability. Without the applicant to take care of her husband and their household, her son reports his stepfather has become increasingly confused, forgetful, and discouraged. Documentation shows that the qualifying relative married the applicant less than two years after his first marriage ended and that they were together for nearly seven years before the applicant's removal. There is documentation that the couple communicates regularly by telephone, but the applicant's son states his stepfather cannot afford to visit the applicant to ease the pain of separation. Despite the absence of evidence of

the qualifying relative's learning disabilities, limited education, or living situation, the AAO notes that the psychological reports are consistent with the his claimed mental and emotional problems.

The applicant's husband contends that absence of his wife has harmed his ability to care for himself financially. He and his stepson explain that, due to his claimed learning challenges, his wife took care of financial matters, such as daily bill and monthly rent payments that now cause him concern. He and his stepson claim that, as the applicant has been unable to find work in the Dominican Republic and depends on their remittances to survive, he is burdened by the need to support a second household abroad. Documentation on record, including receipts for money transfers, supports these claims, while a job letter and a 2010 paystub establish that the qualifying relative earns a minimum hourly wage. Evidence of monthly rent and other expenses, together with that of the qualifying relative's income, reflects the burden imposed by removal of the applicant from the household. Based on the totality of the evidence, the applicant has met her burden of establishing a qualifying relative is suffering emotional and financial hardship beyond the common results of removal or inadmissibility.

As regards 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 record contains limited evidence of the applicant's husband's situation. While reflecting that the he has been a lawful permanent U.S. resident since 1990 who claims to have two daughters who are U.S. citizens, the record contains no documentation of their whereabouts or whether they have contact with their father, and no mention of parents or siblings. His primary connections to the United States appear to be his stepson and more than 20 years with the same employer. There is evidence he pays monthly rent, but no indication that he owns property. The record is silent regarding whether he has family ties in the Dominican Republic other than his wife, but shows that he and the applicant were born in the same town and speak Spanish as their first language. Regarding the qualifying relative's claim of poor employment prospects in his native country, his counsel provides a report that many families there depend on remittances from family members abroad. U.S. government sources confirm the significance of remittances and recognize that high unemployment and underemployment represent serious challenges, but observe that "[t]he growth of the Dominican Republic's economy rebounded in 2010-11 from the global recession, and [it] remains one of the fastest growing in the region." *See CIA World Factbook 2012—Dominican Republic*, June 20, 2012. While noting that the applicant's husband would be leaving a long-term job, the AAO notes that the record fails to show he is specially qualified for his current position or unable to procure similar work overseas. Diminution in earnings or the inconvenience of needing to pursue new employment do not constitute hardship that rises to the level of "extreme."

The applicant has not shown that the cumulative effect of her husband's ties to the United States and absence of ties to their native country, his residence here, and his loss of employment, were he to relocate, rises to the level of extreme. The AAO thus recognizes that, while the applicant's inability to reside in the United States due to her inadmissibility would represent some hardship to her husband, a qualifying relative would not suffer extreme hardship were he to relocate to his native Dominican Republic to reside with his wife.

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 remain in the United States and thereby suffer extreme hardship as a consequence of separation can easily be made for purposes of the waiver even where there is no intention to separate in reality. *See Matter of Ige*, 20 I&N Dec. 880, 886 (BIA 1994). Furthermore, to separate and suffer extreme hardship, where relocating abroad with the applicant would not result in extreme hardship, is a matter of choice and not the result of inadmissibility. *Id.*, *see also Matter of Pilch*, 21 I&N Dec. 627, 632-33 (BIA 1996). As the applicant has not demonstrated extreme hardship from relocation, we cannot find that refusal of admission would result in extreme hardship to the qualifying relative in this case.

The AAO notes that the field office director denied the applicant's Application for Permission to Reapply for Admission Into the United States After Deportation or Removal (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.

In proceedings for application for waiver of grounds of inadmissibility, 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.