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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals
20 Massachusetts Ave. NW MS 2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services

[REDACTED]

H6

DATE: JUL 27 2012

OFFICE: DETROIT, MICHIGAN

File: [REDACTED]

IN RE: Applicant: [REDACTED]

APPLICATION: Application for Waiver of Grounds of Inadmissibility under Section 212(9)(B)(v) of the Immigration and Nationality Act, 8 U.S.C. § 1182(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 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 with the field office or service center that originally decided your case by filing a 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, Detroit, Michigan and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native and citizen of Australia who was found to be inadmissible to the United States under 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 her departure from the United States. The applicant seeks a waiver of inadmissibility in order to reside in the United States with her U.S. citizen spouse.

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 22, 2010.

On appeal, counsel asserts that while the applicant is clearly inadmissible, “the circumstances of her violation were not factored or recognized in the evaluation of hardship,” and that separation from the applicant will cause extreme hardship to the applicant’s spouse. *See Form I-290B, Notice of Appeal or Motion*, received March 4, 2010.

The record contains, but is not limited to Form I-290B; numerous immigration applications, petitions and supporting documents; a hardship affidavit; a psychological evaluation; medical records and related medical journal articles; and birth, marriage and biographical documents. The entire record was reviewed and considered in rendering this decision on the appeal.

Section 212(a)(9) of the Act provides:

(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.

The record reflects that the applicant first entered the United States under the visa waiver program in October 1999 when she was 15-years-old. The applicant remained in the United States beyond the 90-day period of authorized stay, departing voluntarily in July 2002 when she was 18-years-old. The applicant next entered the United States under the visa waiver program in April 2003 and again overstayed the 90-day authorized period. She departed the United States voluntarily in June 2005. The applicant most recently entered the United States under the visa waiver program on August 28, 2007 with an authorized period of stay not to exceed November 27, 2007. She has not,

however, departed the United States since that entry. The applicant has accrued unlawful presence in the United States in excess of one year and she seeks admission as a lawful permanent resident. Accordingly, the applicant has been found inadmissible pursuant to section 212(a)(9)(B)(i)(II) of the Act.

Counsel admits that the applicant is inadmissible under section 212(a)(9)(B)(i)(II) of the Act, but asserts that the hardship evaluation should have included circumstances surrounding her July 2002 departure and subsequent April 2003 re-entry. The applicant asserts on Form I-601, *Application for Waiver of Grounds of Inadmissibility*, that she and her mother spent those months in Lebanon during which her father refused to divorce her mother, abused her mother physically and sexually, that “the government of Lebanon said this was his right as her husband,” and that when she and her mother entered the United States in April 2003 it was to escape her father and reside with her brother in California. The record contains no documentary evidence corroborating these assertions and counsel fails to demonstrate that these events create hardship for the applicant’s U.S. citizen spouse.

A waiver of inadmissibility under section 212(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. In the present case, the applicant’s spouse is the only qualifying relative. 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 reflects that the applicant’s spouse is a 35-year-old native of Lebanon and citizen of the United States who has been married to the applicant since November 2007. He writes that before meeting the applicant, his life was full of difficulties primarily from a dysfunctional family that ostracized him due to his obesity and psoriasis. The applicant’s spouse indicates that the applicant, too, comes from a dysfunctional family and she was obese before undergoing gastric bypass surgery. He explains that with her in his life he has finally found acceptance. The applicant’s spouse states that his psoriasis treatment has improved, he and the applicant have begun fertility-related treatment to start a family, and that the possibility of her removal has caused him to panic and experience more vulnerability than ever before. Medical documents in the record confirm that the applicant suffers from chronic plaque psoriasis, morbid obesity, and zero sperm count secondary to obesity.

Following a single interview with the applicant and her spouse, a 1 ½ page letter was prepared and signed by [REDACTED] and [REDACTED]. In it, it

is relayed from the applicant's spouse that psoriasis is exacerbated by stress and he has a significant need for the applicant to apply ointments to affected areas. [REDACTED] and [REDACTED] report that the applicant's spouse feels his life will be empty without his wife, his desire to start a family will be impossible without her, and he suffered physical and mental abuse as a teenager and young adult by family members. [REDACTED] and [REDACTED] contend that the applicant's spouse is severely depressed and anxious and that his overall profile suggests characteristics of Schizoaffective disorder including disruptive thoughts and social withdrawal due to feelings of worthlessness, anxiety, depression and tearfulness, and that he often keeps people at a distance and is afraid of emotional involvement and losing control. [REDACTED] and [REDACTED] note that the applicant's spouse has a pre-existing history of mental health difficulties and physical trauma and they recommend ongoing psychological treatment for his pre-existing feelings of sadness and depression. Evidence of such treatment has not been submitted on appeal.

The AAO recognizes that the applicant's spouse has experienced a history of physical and psychological health challenges and has found love and acceptance with the applicant. While the AAO recognizes that the applicant's spouse has a number of health-related conditions, the record does not establish the severity of these conditions or the impact they have on his daily life. Nor does the record establish the impact that separation from the applicant, during her temporary period of inadmissibility, will have on her spouse's health or that the difficulties are beyond those normally associated with a loved one's inadmissibility or removal.

The AAO acknowledges that separation from the applicant may cause various difficulties for the applicant's spouse. However, it finds the evidence in the record insufficient to demonstrate that the challenges encountered by the qualifying relative, when considered cumulatively, meet the extreme hardship standard.

The possibility of the applicant's spouse relocating to Australia has not been addressed in the record and the AAO will not speculate in this regard. Accordingly, the AAO finds the evidence insufficient to demonstrate that the applicant's U.S. citizen spouse would suffer extreme hardship were he to relocate to Australia to be with the applicant.

The applicant has, therefore, failed to demonstrate that the challenges her spouse faces are unusual or beyond the common results of removal or inadmissibility to the level of extreme hardship. Accordingly, the AAO finds that the applicant has failed to demonstrate extreme hardship to a qualifying relative. 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.