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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: MAY 1 0 2012 Office: HARTFORD 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); Application for Waiver of Grounds of Inadmissibility under section 212(i) of the Immigration and Nationality Act, 8 U.S.C. § 1182(i)

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, Hartford, Connecticut. 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 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. During an interview with USCIS on February 9, 2009, the applicant stated that he entered the United States in 1993 without inspection, and remained in the United States until August 12, 2003. Thus, the applicant was found to be inadmissible for unlawful presence in the United States for more than five years, from April 1, 1997, the effective date of section 212(a)(9)(B)(i)(II) of the Act, to August 12, 2003. In addition, the applicant was found to be inadmissible to the United States pursuant to section 212(a)(6)(C)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(6)(C)(i), for procuring a visa to the United States through fraud or misrepresentation. On May 23, 2007, the applicant applied for a non-immigrant visa at the U.S. Consulate in Santo Domingo, Dominican Republic, and indicated on his visa application that he had never been to the United States before and had never been unlawfully present in the United States. The applicant does not contest these findings of inadmissibility.[1] Rather, he seeks a waiver of inadmissibility under 212(a)(9)(B)(v) of the Act, 8 U.S.C. § 1182(a)(9)(B)(v), and under section 212(i) of the Act, 8 U.S.C. § 1182(i), in order to reside in the United States with his U.S. Citizen spouse.

In a decision dated November 30, 2009, the Field Office Director found that the applicant failed to establish that his qualifying relative would experience extreme hardship as a consequence of his inadmissibilities. The application was denied accordingly. *See Decision of the Field Office Director,* November 30, 2009.

On appeal, counsel for the applicant states that the petitioner disputes all negative findings reached by USCIS regarding the legitimacy of the hardship demonstrated, and contends that the USCIS officer used minor and inconsequential factors in support of the denial, misinterpreted evidence in testimony, and overlooked the hardship to the beneficiary. *Statement from Counsel on Form I-290B*, submitted December 16, 2009.[2]

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[1] The applicant was also found inadmissible under section 212(a)(1)(A)(i) of the Act, 8 U.S.C. § 1182(a)(1)(A)(i), for having tested positive for the Human Immunodeficiency Virus (HIV) infection. The Department of Health and Human Services (HHS), on Nov. 2, 2009, published a final rule in the Federal Register, removing HIV infection from the from the list of illnesses that make a foreign national inadmissible, effective January 4, 2010. Thus, the applicant is no longer inadmissible under this section of the statute.

[2] The Form I-290B, Notice of Appeal or Motion, indicated that the applicant would submit a brief and/or additional evidence to the AAO within 30 days. However, no brief or additional evidence was received by the AAO, thus the record is considered complete.

The record contains the following documentation: a statement by applicant's counsel on Form I-290B, Notice of Appeal or Motion; a statement from the applicant's spouse; a letter from the applicant's spouse's doctor; a consultation note for the applicant's spouse from a neuropsychologist; copies of prescriptions for the applicant's spouse; and financial documentation. 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:

> 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 [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...

Section 212(a)(6)(C) of the Act provides, in pertinent part:

> (i) Any alien who, by fraud or willfully misrepresenting a material fact, seeks to procure (or has sought to procure or has procured) a visa, other documentation, or admission into the United States or other benefit provided under this Act is inadmissible.

Section 212(i) of the Act provides, in pertinent part:

> The Attorney General [now the Secretary of Homeland Security (Secretary)] may, in the discretion of the Attorney General [Secretary], waive the application of clause (i) of subsection (a)(6)(C) in the case of an alien who is the spouse, 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 the United States of such immigrant alien would result in extreme hardship to the citizen or lawfully resident spouse or parent of such an alien....

A waiver of inadmissibility under sections 212(a)(9)(B)(v) and section 212(i) 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. The applicant's U.S. Citizen spouse is the 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, 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 applicant's spouse states that she takes medication for depression, and that she will suffer medical and emotional hardship if the waiver application is denied. *See Statement of* [redacted] undated. In support of these contentions, the applicant submitted a statement from a doctor, indicating that the doctor has been treating the applicant's wife for high blood pressure and depression, and that the applicant's spouse also presented symptoms of anxiety, insomnia, irritability, and change in character. The letter further indicates that the applicant's spouse is being treated for her depression with medications. *See Letter of* [redacted] undated. The record also contains a psychological consultation report from a neuropsychologist, which indicates that the applicant's spouse was diagnosed with Dysthymic Disorder, Adjustment Disorder with Anxious and Depressed Mood, and Emotional Factors Affecting Medical Condition. *See Consultation Note of* [redacted] dated March 9, 2009. The report of the neuropsychologist indicates that the applicant's spouse is suffering from anxiety and depression, and the AAO recognizes that the emotional and psychological hardship of separation would be difficult for the applicant's spouse if she chooses to remain in the United States without the applicant.

In addition, the applicant's spouse states that she will suffer financial hardship if the waiver application is denied, and that her income is insufficient to cover the household expenses of the family. *See Statement of* [redacted] undated. The applicant submitted an employment letter for the applicant's spouse, indicating that she earns $13.35 per hour. The applicant's spouse indicated that her monthly income is $935.60 ($233.90 per week), while her monthly expenses total $3,152.00. *See Statement of* [redacted] undated. The neuropsychologist states that, while the applicant's spouse is currently employed, she is emotionally vulnerable to stressors due to weak coping skills, and that her emotional state could compromise her capacity to maintain employment. *See Consultation Note of* [redacted] dated March 9, 2009.

The record reflects that the cumulative effect of the emotional, psychological, and financial hardships that the applicant's spouse is experiencing due to her husband's inadmissibility rises to the level of extreme. The AAO thus concludes that were the applicant's spouse to remain in the United

States without the applicant due to his inadmissibility, the applicant's spouse would suffer extreme hardship.

However, there is insufficient evidence to establish that the applicant's spouse is unable to relocate to the Dominican Republic should the applicant's waiver be denied. The record establishes that the applicant's spouse is originally from the Dominican Republic. The applicant's spouse states that she cannot leave her son behind. *See Statement of* undated. However, her son is no longer considered to be a minor, and there is no indication in the record that he would be unable to support himself. The applicant has not addressed whether he has family ties in the Dominican Republic, and thus the AAO is unable to ascertain whether and to what extent the applicant would receive assistance from family members for both himself and his family. However, as noted in the District Director's decision, the applicant possesses characteristics and skills that would enable him to support himself and his spouse, citing the fact that on the applicant's visa application form, he indicated he owned hostels and had thirteen employees working for him. Based on the evidence on the record, the applicant has not established that his spouse would suffer hardship beyond the common results of removal if she were to relocate to the Dominican Republic to reside with the applicant.

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.

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

ORDER: The appeal is dismissed.