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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

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Date: **MAY 17 2012** Office: SAN SALVADOR FILE: [REDACTED]

IN RE: [REDACTED]

APPLICATION: Application for Waiver of Grounds of Inadmissibility under section 212(a)(9)(B) of the Immigration and Nationality Act, 8 U.S.C. § 1182(a)(9)(B)

ON BEHALF OF APPLICANT:

SELF-REPRESENTED

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 Acting Field Office Director, San Salvador, El Salvador. 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 [REDACTED] 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 more than one year and again seeking admission within ten years of her last 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 and family.

The Acting Field Office Director found that the applicant failed to establish that her qualifying relative would experience extreme hardship as a consequence of her inadmissibility. The application was denied accordingly. *See Decision of the Acting Field Office Director* dated January 8, 2010.

On appeal, the applicant's qualifying spouse indicated in that he is suffering psychological, emotional and financial hardship as a result of his separation from the applicant.

The record contains an Application for Waiver of Grounds of Inadmissibility (Form I-601); a Notice of Appeal or Motion (Form I-290B); letters from the qualifying spouse and friends; a handwritten note from the qualifying spouse's doctor; relationship and identification documents for the applicant, qualifying spouse and qualifying spouse's two U.S. citizen children; an approved Petition for Alien Relative (Form I-130); financial documentation and other documentation submitted with the Application for Immigrant Visa and Alien Registration (Form DS-230). The entire record was reviewed and considered in rendering a decision on the appeal.

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

(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.

Section 212(a)(9)(B)(v) of the Act provides for a waiver of section 212(a)(9)(B)(i) inadmissibility as follows:

The Attorney General [now Secretary of Homeland Security] 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 . . . 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. The applicant's husband 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 hardship 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 hardship takes the case beyond those hardship 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 indicates that the applicant entered the United States in [REDACTED] or [REDACTED] without inspection and departed in September [REDACTED]. The applicant accrued over one year of unlawful presence before April [REDACTED] when the applicant was granted Temporary Protected Status. In applying for an immigrant visa, the applicant is seeking admission within ten years of her departure from the United States. Therefore, as a result of the applicant's unlawful presence, she is inadmissible to the United States under section 212(a)(9)(B)(i)(II) of the Act. The applicant has not disputed her inadmissibility.

The AAO finds that the applicant has failed to establish that her qualifying spouse is suffering extreme hardship as a consequence of being separated from her. The applicant's spouse asserts in his letters that he is experiencing emotional, psychological and health hardship due to his separation from the applicant. The letters from the qualifying spouse and his friends indicate that he is suffering from emotional and psychological issues, including depression and anxiety. One of his friends states that "his ability to work has been jeopardized," however he provides no detail describing how or why his ability to work has been jeopardized. A handwritten note from a doctor additionally indicates that the qualifying spouse is "being treated for a medical problem." The doctor's note, however, does not specify the medical problem for which he is being treated. Although it appears that the qualifying spouse is suffering emotionally due to his separation from the applicant, the record fails to demonstrate in sufficient detail that the qualifying spouse's experiences and hardship amount to hardship beyond that commonly experienced by other separated families. The qualifying spouse states that his children, who are in [REDACTED] with the applicant, are suffering from depression and would like to live in the United States. He further states that he wants his children to go to school in the United States because the schools are better. However, the qualifying spouse does not indicate how his children's depression or inability to attend school in the United States poses a hardship to him in the United States. It is noted that Congress did not include hardship to an alien's children as a factor to be considered in assessing extreme hardship under section 212(a)(9)(B)(v) of the Act. In the present case, the applicant's spouse is the only qualifying

¹¹ The date of the applicant's entry into the United States is unclear, because documents in the record, including the qualifying spouse's letter, Form DS-230, Form I-601 and the birth certificate for the applicant's U.S. citizen child, indicate as entry dates 1996, November 1997 and December 1997. These inconsistencies regarding entry dates, however, do not affect the determination that the applicant accrued over one year of unlawful presence.

relative for the waiver under section 212(a)(9)(B)(v) of the Act, and hardship to the applicant's children will not be separately considered, except as it may affect her spouse.

Further, the qualifying spouse indicates that he will suffer financially if his waiver application is not granted due to the expense of traveling to [REDACTED]. The AAO has also considered the expenses incurred by the qualifying spouse for having to maintain two households, which the qualifying spouse expresses poses him a financial hardship. The record contains financial documentation confirming the qualifying spouse's income. However, there no evidence in the record regarding the qualifying spouse's expenses that would support finding that his ability to maintain two households or travel to [REDACTED] is creating a financial hardship for him. The applicant failed to provide sufficient evidence to establish that the qualifying spouse is suffering emotional, psychological, health and financial hardship as a result of his separation from the applicant that, considered in the aggregate, are extreme.

The AAO finds that the applicant has not met her burden of showing that her qualifying spouse would suffer extreme hardship if he relocated to [REDACTED] to be with her. The record does not address whether the qualifying spouse would experience hardship upon relocation to [REDACTED]. Even were the AAO to take notice of general conditions in [REDACTED], the record lacks evidence demonstrating how the applicant's spouse would be affected specifically by any adverse conditions there. The current record does not establish that the applicant's spouse would experience extreme hardship upon relocating to [REDACTED].

In this case the record does not contain sufficient evidence to show that the hardship faced by qualifying relative, considered in the aggregate, rise 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 her qualifying spouse as required under section 212(a)(9)(B) 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) of the Act, the burden of proving eligibility remains entirely with the applicant. *See* 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.