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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

H6

[redacted]

DATE: SEP 1 1 2012 OFFICE: SANTO DOMINGO, D.R. 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)

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 Field Office Director, Santo Domingo, Dominican Republic and 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 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 and child.

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 December 14, 2010.

On appeal the applicant's spouse asserts extreme hardship of a financial, emotional/familial, and medical/health-related nature if the waiver is not granted. *See Form I-290B, Notice of Appeal or Motion*, received January 5, 2011.

The record contains, but is not limited to: Form I-290B; various immigration applications and petitions; two letters from the applicant's spouse; letters from a friend and a member of Congress; medical-related records; letters from the Social Security Administration and the Virgin Islands Government Employees Retirement System; marriage and birth certificates and family photos; and wire transfer receipts. The entire record was reviewed and considered in rendering this decision on 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 entered the United States without inspection in or about January 2003, was arrested by the Immigration and Customs Enforcement (ICE) in March 2006 for being unlawfully present in the United States, and was permitted to depart voluntarily to the Dominican Republic in June 2006. The applicant accrued unlawful presence in the United States from January 2003 to June 2006, a period in excess of one year. As the applicant is seeking admission within 10 years of her departure, she was found to be inadmissible pursuant to section

212(a)(9)(B)(i)(II) of the Act, 8 U.S.C. § 1182(a)(9)(B)(i)(II). The record supports this finding, the applicant does not contest inadmissibility, and the AAO concurs that the applicant is inadmissible under section 212(a)(9)(B)(i)(II) of the Act.

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 or her children 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-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 is a 63-year-old native and citizen of the United States who married the applicant in October 2008 in the Dominican Republic. They have one child together, a son born in August 2008 in the Dominican Republic. The applicant has another minor son from a previous relationship, born in the United States in June 2003. The applicant's spouse states that he misses the affections of his wife and son, and though he visits them occasionally, separation is an emotional stress for them all. He writes that he worries about them every day, worrying that he will not be there for them "if I must make a very important decision if health issues are to be made." It is unclear the type of decision to which the applicant's spouse refers and no further discussion is provided addressing the possibility of either traveling to the Dominican Republic under such circumstances or addressing such decisions over the telephone or by another means of communication. The applicant's spouse asserts that separation can cause a break down in the family structure and he believes it has also caused his own health to deteriorate.

The applicant's spouse indicates that he was diagnosed with chronic lower back pain in 2007. [redacted] M.D., writes in a letter dated August 10, 2006 that the applicant's spouse suffers chronic lower back pain and that examination reveals mild degenerative changes of the lumbar spine. In an undated letter the applicant's spouse is referred by [redacted] to "Dr. [redacted] for evaluation of a history of progressively worse low back pain which has not responded well to physical therapy. No records from Dr. [redacted] have been submitted. A December 2010 letter from the Social Security Administration, though not specifying for what condition, shows that the applicant's spouse has been receiving disability benefits since December 2009. A lab report dated June 14, 2010 shows that the applicant's spouse has "borderline high/elevated" levels of cholesterol and triglycerides which "[c]an be controlled by a low fat, low cholesterol diet and exercise." The applicant's spouse maintains that he needs the assistance of his wife to care and cook the proper meals so he can eat healthier and also to comfort him when he is

in pain. While the AAO recognizes that the applicant's desire to have his wife by his side to care for him is not insignificant, the evidence is insufficient to demonstrate that the difficulties described rise beyond those ordinarily associated with the inadmissibility of a loved one.

The applicant's spouse contends that it has been a financial burden to support two households as well as to pay the costs of immigration petitions and travel between the U.S. Virgin Islands and the Dominican Republic. He explains that he receives both Social Security disability income as well as a retirement pension from the Virgin Islands Police Department. A May 8, 2009 letter from the latter shows the applicant's spouse retired on April 29, 2000 after 20 years with the Police Department. A December 22, 2010 letter from the Social Security Administration shows he began receiving $1,894.50 in Social Security disability beginning in December 2009. Wire transfer receipts show that he sends funds to the applicant in the Dominican Republic. The record contains no discussion of or evidence demonstrating the applicant's current employment or housing status in the Dominican Republic, nor does it contain a delineation of the applicant's spouse's regular expenses versus his income from all sources. The AAO recognizes that being separated from the applicant, throughout the entire duration of their marriage, has resulted in some separation-related expenses for the applicant's spouse. However, the evidence is insufficient to demonstrate that he is unable to support himself during the remainder of the applicant's temporary period of inadmissibility.

The AAO acknowledges that separation from the applicant has and may continue to 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 the Dominican Republic has not been addressed in the record and the AAO may 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 the Dominican Republic 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 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.