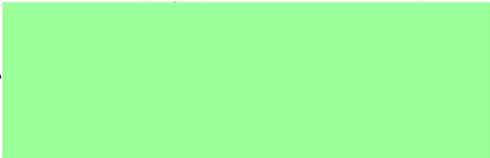
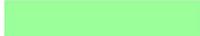
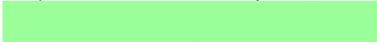


(b)(6)



DATE: **JAN 14 2013**

Office: KINGSTON FILE: 

IN RE: Applicant: 

APPLICATION: Application for Waiver of Grounds of Inadmissibility pursuant to 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 request 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

A handwritten signature in black ink, appearing to read "Ron Rosenberg".

Ron Rosenberg
Acting Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Field Office Director, Kingston, Jamaica, 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 Bahamas 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 seeking readmission within 10 years of his last departure from the United States. The applicant seeks a waiver of inadmissibility in order to reside in the United States with his U.S. citizen father.

The Field Office Director concluded that the applicant had failed to demonstrate extreme hardship to his U.S. citizen father and denied the application accordingly. *See Decision of Field Office Director*, dated March 27, 2012. The Field Office Director also concluded that the applicant had failed to demonstrate that he merited a favorable exercise of discretion. *Id.*

On appeal, the applicant's father indicates that he did not believe that the applicant was accruing unlawful presence in the United States because, as the son of a U.S. citizen, he was in the country for reasons of family unity. The applicant's father also asserts that he cannot return to the Bahamas for medical reasons and because he is a U.S. citizen. He also states that the applicant is not a criminal and therefore merits a favorable exercise of discretion.

The evidence includes, but is not limited to: statements from the applicant, his father, and the mother of his U.S. citizen daughter; financial records; medical records relating to the applicant's father; and criminal records relating to the applicant. 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.

.....
(v) Waiver.- The Attorney General 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 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. No court shall have jurisdiction to review a decision or action by the Attorney General regarding a waiver under this clause.

In the present case, the record reflects that the applicant entered the United States on September 21, 2007 with authorization to remain until March 20, 2008. He remained in the United States until February 21, 2011. Therefore, the applicant accrued more than one year of unlawful presence and is inadmissible under section 212(a)(9)(B)(i) of the Act for a period of 10 years from his last departure.

The applicant is eligible to apply for a waiver of inadmissibility under section 212(a)(9)(B)(v) of the Act as the son of a U.S. citizen. In order to qualify for this waiver, however, he must first prove that the refusal of his admission to the United States would result in extreme hardship to his qualifying relative. Hardship to the applicant or the applicant's U.S. citizen daughter is not directly relevant under the statute and will be considered only insofar as it results in hardship to the applicant's father. 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 U.S. 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 v. INS*, 138 F.3d 1292, 1293 (9th Cir. 1998) (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.

On appeal, the applicant’s father indicates that he has glaucoma for which he must receive regular treatment. He states that he would benefit from the applicant’s assistance in the United States and that he cannot relocate to the Bahamas. His doctor notes that the applicant’s father has permanently lost his peripheral vision due to glaucoma and that he will require eye drops as well as checkups three to four times per year to avoid further vision loss. *See Letter from* [REDACTED] *M.D.*, dated April 17, 2012.

The AAO finds that the applicant has failed to demonstrate that his father would suffer extreme hardship on separation from him if the waiver application were denied. Although the applicant’s father has glaucoma, there is no indication in the record that he requires the assistance of the applicant. Instead, the evidence indicates that the applicant’s father is receiving the necessary medical care, that he is able to live alone, and that his daughter lives in the United States. Although the applicant’s father may wish to have the company and assistance of the applicant, inconvenience and emotional hardship are common results of separation due to a family member’s inadmissibility and do not rise to the level of extreme hardship. *See Matter of Cervantes-Gonzalez*, 22 I&N Dec. at 568; *Matter of Pilch*, 21 I&N Dec. at 632-33.

Additionally, the AAO finds that the applicant has failed to demonstrate that his father would suffer extreme hardship upon relocation to the Bahamas. While the applicant's father must use eye drops and attend quarterly doctor's appointments to prevent vision loss, there is no evidence that he could not obtain the necessary care in the Bahamas. The applicant's father is also originally from the Bahamas. The evidence is insufficient to establish that the applicant's father would experience extreme hardship there.

The AAO also notes that the record contains a letter from the mother of the applicant's young U.S. citizen daughter. She states that her daughter misses the applicant and that the applicant's presence in the household and financial contributions would be very helpful. However, the applicant's daughter is not a qualifying relative for purposes of a waiver under section 212(a)(9)(B)(v), so hardship to her can only be considered insofar as it affects the applicant's father. There is no indication that the applicant's daughter is undergoing hardship so severe that it causes extreme hardship to the applicant's father.

In proceedings for an 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.