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

U.S. Citizenship and Immigration Services

DATE: MAY 08 2014 OFFICE: NEBRASKA SERVICE CENTER FILE:

IN RE:

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 (AAO) in your case.

This is a non-precedent decision. The AAO does not announce new constructions of law nor establish agency policy through non-precedent decisions. If you believe the AAO incorrectly applied current law or policy to your case or if you seek to present new facts for consideration, you may file a motion to reconsider or a motion to reopen, respectively. Any motion must be filed on a Notice of Appeal or Motion (Form I-290B) within 33 days of the date of this decision. **Please review the Form I-290B instructions at http://www.uscis.gov/forms for the latest information on fee, filing location, and other requirements.** *See also* 8 C.F.R. § 103.5. **Do not file a motion directly with the AAO.**

Thank you,

Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Nebraska Service Center Director and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native and citizen of Honduras 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 country for more than one year and seeking readmission within ten years of her departure from the United States. She seeks a waiver of inadmissibility pursuant to section 212(a)(9)(B)(v) of the Act, 8 U.S.C. § 1182(a)(9)(B)(v), in order to live in the United States with her U.S. citizen husband.

The 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 Director,* dated October 5, 2013.

On appeal, the applicant's spouse states that he cannot afford to support his daughters in the United States while also supporting the applicant and their son in Honduras.[1] *See Form I-290B, Notice of Appeal or Motion* (Form I-290B), filed November 5, 2013.

The record contains, but is not limited to: Form I-290B; Form I-601; statements by the applicant's spouse; birth and naturalization certificates; the applicant's spouse's lease; a letter from the applicant's spouse's employer; an earnings statement; tax documents; a health insurance card; and tuition expenses for his children. 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:

> (i) [A]ny alien (other than an alien lawfully admitted for permanent residence) who-
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> . . .
>
> (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 2003 and departed on December 30, 2012.[2] She is thus inadmissible under section 212(a)(9)(B)(i)(II) of the

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[1] The applicant's spouse also asserts that he never received a request for evidence and asks to reopen the case; however, the applicant's spouse does not need to ask to reopen a case on appeal. The AAO conducts appellate review on a *de novo* basis. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004).

Act, 8 U.S.C. §1182(a)(9)(B)(i)(II) for having been unlawfully present in the United States for over a year. The applicant does not contest the finding of inadmissibility.

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

> Waiver.-The Attorney General [now Secretary, Department 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 [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)(9)(B)(v) of the Act provides that a waiver of the bar to admission is dependent first upon a showing that the bar imposes an extreme hardship on a qualifying family member, which includes the United States citizen or lawful permanent 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 U.S. Citizenship and Immigration Services 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

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[2] While the director's decision and consular records indicate that the applicant entered the United States in 2003, the applicant's Form I-601 indicates she entered the United States without inspection on September 10, 2004. This difference in entry dates, however, does not affect the outcome of her waiver application or appeal.

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. I.N.S.*, 138 F.3d 1292 (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.

The record contains references to hardship the applicant's son would experience if the waiver application were denied. 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 relative for the waiver under section 212(a)(9)(B)(v) of the Act, and hardship to the applicant's child will not be separately considered, except as it may affect the applicant's spouse.

The applicant's spouse is a 44 year-old native of Honduras who became a naturalized citizen of the United States on November 5, 1999. He states that he needs the applicant, with whom he has been in a relationship with for more than 25 years and married in 1999, for emotional support. The applicant's spouse explains that he cannot imagine his life without the applicant and he has sleepless nights and anxiety due to the stress caused by her absence. He states that the applicant always took interest in his work and kept a comfortable and clean home. He explains that the applicant not only raised their young son but also his two daughters from a prior marriage who are under their care.

The applicant's spouse asserts that he is straining financially to provide for himself, his two daughters and the applicant and their son in Honduras. He indicates that he has spent over $4,000 over a few months on travel and phone expenses to see and remain in contact with the applicant and their son. He states that he has "a good job" and finds it difficult to take leave to visit her and their son. Employment letters, an earnings statement from October 2013, and taxes show that he is a master mechanic, receives $22.10 per hour and earned approximately $65,600 in 2012. His claim that he currently works 55 to 70 hours per week to support the applicant and his children is corroborated by an earnings statement from October 2013 referencing overtime and double time work. His apartment lease indicates he pays $1,075 rent per month or $12,912 per year. He states that he also pays for health insurance for the applicant, their son and his two daughters, as shown by his health insurance card, which includes their names. The tuition expenses for his two daughters include approximately $2,000 per semester for his elder daughter and $460 for his younger daughter. A tuition statement submitted with his 2012 taxes totals $3,832. His taxes from 2012 also show $7,640 in expenses for work and miscellaneous deductions. Although the applicant's spouse provides evidence of some of his expenses, the record lacks evidence to support the applicant's spouse's assertions of financial strain. For example, the applicant's spouse has not provided airline ticket receipts, international phone and other utility bills, proof of remittances to the applicant, evidence of medical payments, and proof of expenses he covers for his daughters and other family members, in addition to any other costs he may regularly incur. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)).

The AAO has considered all assertions of separation-related hardship to the applicant's spouse, including his emotional and financial hardship. Considered cumulatively, the AAO finds that the evidence is not sufficient to demonstrate that the applicant's spouse suffers extreme hardship without the applicant that is distinguished from those hardships ordinarily associated with a loved one's removal.

The applicant's spouse states that he cannot relocate to Honduras, because he would forfeit his employment in the United States, without which he could not financially support himself, his three children and the applicant. He indicates that leaving his work would jeopardize the educational opportunities and medical care of his children because of his potential inability to pay these expenses. A letter from his employer indicates that he has been employed by the same company since February 2006. He believes that due to the lack of employment opportunities and economic depression in Honduras, he would not be able to secure employment and afford trips and international phone calls necessary to stay in touch with his daughters in the United States.

The applicant also explains that Honduras is a dangerous and violent place. He states that the applicant lives in San Pedro Sula and lives in constant fear of gangs or other criminals harming, kidnapping, robbing or killing her. The U.S. Department of State's Travel Warning for Honduras, dated December 24, 2013, states that Honduras has had the highest murder rate in the world since 2010, and the Honduran government lacks resources to address the issues of crime and violence. The travel warning specifically notes that criminals acting individually and in gangs commit murders,

kidnappings, rapes, robbery and other violent crimes in the applicant's hometown of San Pedro Sula; moreover, as of December 2013, major cities like San Pedro Sula had higher homicide rates than the 2013 national average. See http://travel.state.gov/content/passports/english/alertswarnings/honduras-travel-warning.html [accessed May 7, 2014].

The AAO considers cumulatively all assertions and evidence of relocation-related hardship to the applicant's spouse, including his length of residence in the United States, his loss of employment and the potential negative financial impact of living in Honduras, the strain on his relationship to his daughters in the United States and his security concerns about living in San Pedro Sula. The AAO finds that the evidence is sufficient to establish that the applicant's spouse would suffer extreme hardship were he to relocate to Honduras to live with the applicant.

The AAO 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 relocate and thereby suffer extreme hardship can easily be made for purposes of the waiver even where there is no actual intention to relocate. *Cf. Matter of Ige*, 20 I&N Dec. 880, 886 (BIA 1994). Furthermore, to relocate and suffer extreme hardship, where remaining the United States and being separated from the applicant would not result in extreme hardship, is a matter of choice and not the result of inadmissibility. *Id.*, *also cf. Matter of Pilch*, 21 I&N Dec. 627, 632-33 (BIA 1996). As the applicant has not demonstrated extreme hardship from separation, we cannot find that refusal of admission would result in extreme hardship to the qualifying relative in this case.

As the applicant has not established extreme hardship to a qualifying family member in the case of both separation from the applicant and relocation to Honduras, no purpose would be served in determining whether she merits a waiver as a matter of discretion.

In application proceedings, it is the applicant's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361. Here, that burden has not been met.

ORDER: The appeal is dismissed.