

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

[REDACTED]
Date:
DEC 18 2012

Office: SAN SALVADOR, EL 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) and Application for Permission to Reapply for Admission into the United States after Deportation or Removal under Section 212(a)(9)(A) of the Immigration and Nationality Act, 8 U.S.C. § 1182(a)(9)(A).

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 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 in accordance with the instructions on 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,

Ron Rosenberg
Acting Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the 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 El Salvador 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 ten years of her last departure from the United States and under section 212(a)(6)(B) of the Act, 8 U.S.C. § 1182(a)(6)(B), for failing to attend her removal proceedings. The applicant has a U.S. citizen spouse and a U.S. citizen daughter. She seeks a waiver of inadmissibility in order to reside in the United States.

In a decision, dated July 12, 2011, the field office director found the applicant inadmissible under section 212(a)(6)(B) of the Act, for failing to attend her removal proceeding on October 27, 2005. The application was denied accordingly. The AAO notes that in this decision, the field office director also denied the applicant's Permission to Reapply for Admission (Form I-212).

On appeal, the applicant states that she did not attend her removal proceedings because she was fearful of being arrested. The applicant also submits a letter from her spouse.

Section 212(a)(6)(B) of the Act states:

Any alien who without reasonable cause fails or refuses to attend or remain in attendance at a proceeding to determine the alien's inadmissibility or deportability and who seeks admission to the United States within 5 years of such alien's subsequent departure or removal is inadmissible.

The record indicates that the applicant entered the United States without inspection on or around March 23, 2005. On March 25, 2005, the applicant was issued a notice to appear in front of an immigration judge. On October 27, 2005, the applicant failed to appear for her removal hearing and was ordered removed in abstentia. The applicant remained in the United States until November 29, 2007. Because it has now been more than five years since the applicant's departure from the United States, she is no longer inadmissible under section 212(a)(6)(B) of the Act. However, the applicant continues to be inadmissible under section 212(a)(9)(B) of the Act.

Section 212(a)(9)(B) 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.

The applicant accrued unlawful presence from when she entered the United States without inspection on March 23, 2005 until November 29, 2007, when she departed the United States. In applying for an immigrant visa, the applicant is seeking admission within ten years of her November 2007 departure from the United States. Therefore, the applicant is inadmissible to the United States under section 212(a)(9)(B)(II) of the Act for being unlawfully present for a period of more than one year.

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. Hardship to the applicant or her child can be considered only insofar as it results in hardship to a qualifying relative. The applicant's spouse 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-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-I-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 of hardship includes: two letters from the applicant's spouse, a brief submitted by prior counsel, financial documentation, letters of support from family members, and country condition information for El Salvador.

We find that the record fails to establish that the applicant's spouse would suffer extreme hardship as a result of separation or relocation.

The applicant's spouse claims that he would suffer hardship upon relocation because of the poor economy and violence in El Salvador. The applicant's spouse is also claiming emotional and financial hardship as a result of separation because he is very sad about being separated from his spouse and child and he sends them money in El Salvador on a monthly basis. The applicant's spouse asserts that he is fearful for his wife and child living in El Salvador because of the dangerous gangs and violence in the country. He states that he wants his U.S. citizen child to have the opportunities that living in the United States can provide.

Although the AAO recognizes that separation between a husband and wife is difficult, the record does not establish that the applicant's spouse's hardship as a result of separation is extreme. The record does not demonstrate that the applicant's spouse is suffering beyond what would normally be expected when a husband and wife are separated. The applicant has not submitted documentation to support the assertions of hardship.

Furthermore, the record is inconsistent in regards to the country conditions in El Salvador. The country conditions reports and articles submitted by counsel show that El Salvador is a developing country where poverty and violence are present. The record indicates that gang violence is a significant problem in El Salvador, which is hindering economic development, and that youth are at a greater risk of abuse. Counsel states further that El Salvador is a country which has been given a Temporary Protected Status (TPS) designation by U.S. Citizenship and Immigration Services (USCIS). The U.S. Citizenship and Immigration Services currently offers TPS to nationals of El Salvador residing in the United States. A TPS designation acknowledges that it is unsafe to return to a country because of ongoing armed conflict, an environmental disaster, or other extraordinary and temporary conditions. TPS for El Salvadorans has been designated through September 9, 2013. However, the record does not indicate that the applicant's family would be at risk of violence or poverty if they resided in El Salvador. Statements in the record support a finding that the applicant and her child are not at risk and that the applicant's spouse would not face extreme hardship as a result of relocation. The record indicates that the applicant's family resides in El Salvador, that she is currently living with her parents, and that the applicant's spouse is also from El Salvador and has family residing in the country. In his statement on appeal, the applicant asserts that he was consoled by the news that his wife was out of the detention center and with relatives in El Salvador, which he refers to as "our country". He also states that he visited El Salvador four times in five months and that he enjoyed his stay. These statements do not reflect that the applicant and/or her family are faced with violence while residing in El Salvador. Furthermore, the record indicates that the applicant's spouse installs doors and windows for employment and the record fails to show that someone with his work experience could not find

employment in El Salvador. It is incumbent upon the applicant to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the applicant submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). Therefore, we find that the applicant has not established that her spouse would suffer extreme hardship as a result her inadmissibility.

A review of the documentation in the record fails to establish the existence of extreme hardship to the applicant's spouse caused by the applicant's inadmissibility to the United States. Having found the applicant statutorily ineligible for relief, no purpose would be served in discussing whether she merits a waiver as a matter of discretion.

The AAO notes that the field office director denied the applicant's Form I-212 Application for Permission to Reapply for Admission into the United States After Deportation or Removal (Form I-212) in the same decision. *Matter of Martinez-Torres*, 10 I&N Dec. 776 (reg. Comm. 1964) held that an application for permission to reapply for admission is denied, in the exercise of discretion, to an alien who is mandatorily inadmissible to the United States under another section of the Act, and no purpose would be served in granting the application. As the applicant is inadmissible under section 212(a)(9)(B)(II) of the Act no purpose would be served in granting the applicant's Form I-212.

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.