U.S. Department of Homeland Security
Citizenship and Immigration Services
Administrative Appeals Office (AAO)
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Washington, DC 20529-2090

U.S. Citizenship and Immigration Services

identifying data deleted to prevent clearly unwarranted invasion of personal privacy

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DATE: DEC 0 8 2011 Office: GUATEMALA CITY, GUATEMALA FILE: [redacted]

IN RE: [redacted]

APPLICATION: Application for Waiver of Ground 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 law was inappropriately applied by us in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of $630. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

for Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Field Office Director, Guatemala City, Guatemala, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The record reflects that the applicant is a native and citizen of Guatemala 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 admission within ten years of his last departure. The applicant is the spouse of a United States citizen. He 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 reside in the United States.

The Field Office Director found that the applicant had failed to establish extreme hardship to a qualifying relative and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601), accordingly. He further determined that the applicant was not eligible for a favorable exercise of discretion. *Decision of the Field Office Director*, dated August 6, 2009.

On appeal, the applicant's spouse asserts she has submitted documents that establish she would experience extreme hardship if the applicant continues to remain in Guatemala due to his inadmissibility. *Form I-290B, Notice of Appeal or Motion*, dated August 17, 2009.

The record includes, but is not limited to, statements from the applicant's spouse; statements from the applicant's former business associates, customers and friends; and a psychological report relating to the applicant's spouse. The entire record was reviewed and all relevant evidence considered in reaching a decision on appeal.[1]

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- . . . .

[1] A Spanish-language newspaper article relating to the applicant's and his spouse's restaurant business in Connecticut was not considered by the AAO as it is not accompanied by English-language translations. 8 CFR § 103.2(b)(3) provides that any document in a foreign language submitted to United States Citizenship and Immigration Services (USCIS) shall be accompanied by a full English-language translation, which the translator has certified as complete and accurate, and by the translator's certification that he or she is competent to translate from the foreign language into English.

> (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, on January 29, 2009, the applicant testified to a Department of State consular officer in Guatemala City, Guatemala, that he had entered the United States without inspection in January 1997 and remained until he voluntarily departed to Guatemala in January 2009. Based on this history, the AAO finds that the applicant accrued unlawful presence from April 1, 1997, the effective date of the unlawful presence provisions under the Act, until he departed the United States in January 2009. As the applicant is seeking admission within ten years of his 2009 departure, he is inadmissible pursuant to section 212(a)(9)(B)(i)(II) of the Act for having accrued more than one year of unlawful presence in the United States.

Section 212(a)(9)(B)(v) of the Act provides for a waiver of section 212(a)(9)(B)(i)(II) 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 an applicant or other family members 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 United States 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 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 AAO now turns to the question of whether the applicant in the present case has established that his U.S. citizen spouse would experience extreme hardship as a result of his inadmissibility.

On appeal, the applicant's spouse asserts that if the applicant is not admitted to the United States, she would suffer extreme and unusual hardship. She states she has been depressed since the applicant left for Guatemala. She also states that she has been experiencing shortness of breath, severe palpitations and insomnia over the past year, and that her doctor has concluded that her symptoms are indicative of anxiety attacks from stress. If she cannot eliminate the stress, the applicant's spouse asserts, the

attacks will worsen leading to anxiety disorder and depression. The applicant's spouse further states that she and the applicant love each other very much, that the applicant is the only person who is able to provide her with emotional, psychological and financial support, and that she does not know how long she can remain strong in his absence. The applicant's spouse asserts that she and the applicant own a restaurant business, that the business is their only source of income, and that she has been "going crazy without [the applicant] here."

In support of these hardship claims, the record contains a letter from [redacted] dated August 19, 2009. [redacted] states that she met with the applicant's spouse on August 18, 2009, and that at the time of their meeting, she appeared "very weepy." She indicates that the applicant's spouse reported that she had been experiencing panic attacks and extreme anxiety, that she had not been sleeping well, and that she had been experiencing stress headaches on a daily basis. Based on her interview, [redacted] finds the applicant's spouse to be starting "the downward spiral of depression."

[redacted] also asserts that the applicant's spouse has been experiencing financial difficulties since the applicant's departure to Guatemala. She states that the applicant and his spouse own a restaurant business, which they previously operated together, but that with the departure of the applicant, his spouse has had difficulty operating the business alone and she cannot afford to hire any help. [redacted] indicates that the applicant's spouse's two adult children are emotionally supportive of her but are unable to financially support her. She states that while the applicant's spouse's daughter loaned her money to pay property taxes on the family home, the applicant's spouse does not know how she will pay the next installment. [redacted] further reports that much of the needed repairs at the restaurant remain outstanding, and that the applicant's spouse is behind in the rent for the restaurant. [redacted] contends that the applicant's spouse's physical symptoms are related to her financial concerns.

The AAO acknowledges the claims made by the applicant's spouse on the impact of her separation from the applicant, but finds the claims to be insufficiently supported by the record. Although the input of any health professional is respected and valued, we do not find the evaluation prepared by [redacted] to provide the type of detailed mental analysis normally associated with a psychological evaluation. Moreover, we note that [redacted] bases her conclusions about the applicant's spouse's circumstances on information that is not documented in the record.

While [redacted] reports that the applicant's spouse is experiencing financial difficulties in the applicant's absence, the record does not contain evidence that demonstrates her financial circumstances. The record offers no documentary evidence to establish her income from the restaurant or her expenses, including proof that she is three months behind in her rent. The record also fails to establish that the applicant's spouse has had to borrow money from one of her children to pay property taxes. Going on record without supporting documentation is not sufficient to meet the applicant's burden of proof in this proceeding. *See 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 record also fails to support [redacted] and the applicant's spouse's claims regarding her health problems and their underlying cause. Although the applicant's spouse indicates on appeal that she consulted her doctor regarding her shortness of breath, severe palpitations and insomnia and was told that her symptoms are the result of stress, there is nothing in the record in the way of medical documentation from her doctor. We therefore find the evaluation to be of limited value to a determination of extreme hardship and, further, for the same reasons, we do not find the record to contain sufficient evidence to establish the applicant's spouse's financial situation or the status of her mental or physical health.

Accordingly, the AAO finds that the hardship factors addressed in the record, even when considered in the aggregate, fail to demonstrate that the applicant's spouse would experience extreme hardship if the applicant's waiver application is denied and she remains in the United States without him.

The applicant's spouse states that she does not want to relocate to Guatemala because she has been residing in the United States for a long period of time, has significant familial and economic ties to the United States, and is concerned about her safety in Guatemala due to the strained economic and turbulent political situation there. She asserts that she has taken the Holmes-Rahe Social Readjustment Rating Scale, which was administered to her assuming she relocates to Guatemala and which showed that she would have an 80 percent chance of serious physical illness within two years of her return. She also asserts that she would not be able to obtain adequate medical care in Guatemala for her depression. The applicant's spouse states that relocating to Guatemala will force her to liquidate her business with no prospect of being able to open a restaurant in Guatemala or of getting a good job in Guatemala due to the high unemployment and low wages there.

While the AAO notes the preceding claims regarding the impact of relocation on the applicant's spouse, we do not find the record to support them. The AAO notes that the record does not contain published materials on Guatemala's economy and employment situation and its health care system that establish the applicant and his spouse would not be able to obtain employment that would allow them to support themselves or that the applicant's spouse would be unable to obtain adequate medical care for her depression and anxiety or for any other medical problems she might have in the future. The record also fails to offer proof that the applicant's spouse would be at risk in Guatemala or to include the results of the Holmes-Rahe Social Readjustment Rating Scale. Going on record without supporting documentation is not sufficient to meet the applicant's burden of proof in this proceeding. *See 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)).

Based on our review of the evidence of record, the AAO finds insufficient proof to demonstrate that the applicant's spouse would experience extreme hardship if she relocated to Guatemala with the applicant.

As the record does not establish that a qualifying relative would suffer extreme hardship as a result of the applicant's inadmissibility, he has failed to establish eligibility for a waiver under section 212(a)(9)(B)(v) of the Act. Having found the applicant statutorily ineligible for relief, no purpose would be served in discussing whether he merits a waiver as a matter of discretion.

In proceedings for 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. *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.