

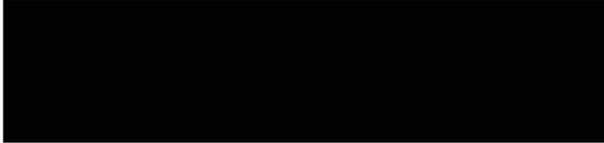
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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services

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H6 #2

FILE: [REDACTED] Office: GUATEMALA CITY, GUATEMALA

Date DEC 03 2009

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)

ON BEHALF OF APPLICANT:

SELF-REPRESENTED

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. Please refer to 8 C.F.R. § 103.5 for the specific requirements. 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 \$585. Any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen, as required by 8 C.F.R. § 103.5(a)(1)(i).

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Field Office Director, Guatemala City, Guatemala. 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 Guatemala who was found to be inadmissible to the United States under section 212(a)(9)(B)(i)(II) of 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 his last departure from the United States. The applicant is married to a United States citizen. He seeks a waiver of inadmissibility in order to reside in the United States with his spouse and their child.

The Field Office Director found both that the applicant had accrued unlawful presence in excess of one year in the United States and was inadmissible under section 212(a)(9)(B)(i)(II) of the Act and that the applicant had failed to attend removal proceedings and was therefore also inadmissible to the United States under section 212(a)(6)(B) of the Act. As such, the Field Office Director denied the Form I-601 application. *Decisions of the Field Office Director*, dated August 29, 2008.

On appeal, the applicant and his spouse assert that they would suffer extreme hardship if the waiver application is denied. *Form I-290B, Notice of Appeal to the Administrative Appeals Office (AAO) and attached statements from the applicant and his spouse*, dated September 19, 2008 and September 7, 2008.

In support of these assertions the record includes, but is not limited to, a statement from the applicant; statements from the applicant's spouse; medical records for the applicant's child; and media articles and country conditions reports on Guatemala. The entire record was reviewed and considered in rendering a decision on the appeal.

In the present case, the record indicates that the applicant entered the United States in February 1998 and was ordered deported *in absentia* on November 13, 1998. *Consular Memorandum, American Consulate General, Guatemala City, Guatemala*, dated February 26, 2008. He departed in November 2007. *Id.*

The Field Office Director found the applicant inadmissible under section 212(a)(6)(B) of the Act, which states:

(B) Failure to Attend Removal Proceeding.-

- (i) 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 Immigration and Naturalization Service (now U.S. Citizenship and Immigration Services (USCIS)) has provided the following guidance on this provision:

Aliens placed in proceedings on or after April 1, 1997, who can establish that failure to attend or remain in attendance at a removal proceeding was for reasonable cause are not inadmissible under section 212(a)(6)(B) of the Act. The alien would establish reasonable cause before the immigration judge, if seeking to reopen the proceeding; to the consular officer, if applying for a visa; to the inspecting officer, if applying for admission; or to the Service's adjudicating officer, if applying for adjustment of status before the Service. The burden rests with the alien to establish there was reasonable cause for not attending or remaining at the removal hearing. *INS Memo on Unlawful Presence, Subject: Additional Guidance for Implementing Sections 212(a)(6)(B) and 212(a)(9)(B) of the Immigration and Nationality Act (the Act)*, dated June 17, 1997.

There is no indication that the consular officer who interviewed the applicant found him to be inadmissible under this section of the Act or requested that he provide evidence of reasonable cause for failing to attend his removal hearing. Accordingly, the AAO finds that the record before it does not establish that the applicant is inadmissible under section 212(a)(6)(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.

....

(v) Waiver. - The Attorney General [now the Secretary 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 Attorney General [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.

In that the applicant accrued unlawful presence from February 1998 until he departed the United States in November 2007 and is applying for an immigrant visa within ten years of his November 2007 departure from the United States, he is inadmissible to the United States under section 212(a)(9)(B)(i)(II) of the Act.

A section 212(a)(9)(B)(v) waiver of the bar to admission resulting from a violation of section 212(a)(9)(B)(i)(II) of the Act are dependent first upon a showing that the bar imposes an extreme hardship to the citizen or lawfully resident spouse or parent of the applicant. The plain language of the statute indicates that hardship that the applicant or his child would experience as a result of his inadmissibility is not directly relevant to the determination as to whether he is eligible for a waiver. The only directly relevant hardship in the present case is hardship suffered by the applicant's spouse if the applicant is found to be inadmissible. Hardship to a non-qualifying relative will be considered to the extent that it affects the applicant's spouse. If extreme hardship is established, it is but one favorable factor to be considered in the determination of whether the Secretary should exercise discretion. See *Matter of Mendez*, 21 I&N Dec. 296 (BIA 1996).

Matter of Cervantes-Gonzalez, 22 I&N Dec. 560 (BIA 1999) provides a list of factors the Board of Immigration Appeals deems relevant in determining whether an alien has established extreme hardship pursuant to section 212(i) of the Act. These factors include the presence of a lawful permanent resident or United States citizen family ties to 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.

The AAO notes that extreme hardship to the applicant's spouse must be established whether she resides in Guatemala or the United States, as she is not required to reside outside the United States based on the denial of the applicant's waiver request. The AAO will consider the relevant factors in adjudication of this case.

If the applicant's spouse joins the applicant in Guatemala, the applicant needs to establish that his spouse will suffer extreme hardship. The record does not address whether the applicant's spouse has any familial or cultural ties to Guatemala, nor does the record address her language abilities and how that may affect her adjustment to Guatemala. Although the applicant's spouse does not specify Guatemala, she does state that she went "there" because her daughter missed the applicant a lot and they returned because of the violence and the lack of employment. *Statement from the applicant's spouse*, dated September 22, 2009. The record includes media articles and country conditions reports that note the poverty levels in Guatemala. See *Guatemala declares calamity as food crisis grows*, <http://www.cnn.com/2009/WORLD/americas/09/09/guatemala.calamity/index.html>, dated September 9, 2009. While the AAO acknowledges this documentation, it notes that the record fails

to address the specifics of how the applicant's spouse would be affected by the violence and lack of employment opportunities in Guatemala. Although the AAO notes that the applicant currently resides in Guatemala City, the record does not indicate where the applicant's spouse would live if she relocated to Guatemala and whether the violence and lack of employment are pervasive throughout the country or limited to particular areas. The AAO notes that the record includes a statement issued by the Embassy of the United States in Guatemala noting incidents of violence throughout Guatemala City, but confirming that there is no wide-spread instability in the city. *See Statement issued by the Embassy of the United States of America, Guatemala City, Guatemala*, dated March 24, 2009. The AAO also notes the medical conditions relating to the applicant's child's hand as documented by medical records. *Medical records*. The record, however, fails to establish that the applicant's daughter could not receive adequate medical care in Guatemala as it does not provide documentation, such as published reports, regarding the availability and quality of medical care in Guatemala. The record also fails to specify how her child's medical condition would affect the applicant's spouse, the only qualifying relative in this case, if she were to reside in Guatemala. When looking at the record before it, the AAO does not find that the applicant has demonstrated extreme hardship to his spouse if she were to reside in Guatemala.

If the applicant's spouse resides in the United States, the applicant needs to establish that his spouse will suffer extreme hardship. The applicant's spouse indicates that her mother resides in the United States, but has to work and has her own responsibilities. *Statement from the applicant's spouse*, dated September 22, 2009. The applicant's spouse notes that her expenses have doubled because she now pays for living, food and utilities in the United States and in Guatemala. *Statement from the applicant's spouse*, dated September 7, 2008. She further notes that she is also responsible for car payments and miscellaneous expenses, as well as medical expenses for her child. *Id.* The applicant's spouse also claims that she is currently unemployed. *Statement from the applicant's spouse*, dated September 22, 2009. While the AAO acknowledges these claims, it notes that the record fails to provide documentation, such as bill statements and receipts, supporting such assertions. Going on record without supporting documentary evidence will not meet the burden of proof of 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)). Furthermore, there is nothing in the record that documents that the applicant is unable to obtain employment and contribute to his family's financial well-being from a location other than the United States. The applicant's spouse notes that necessary surgery for her child's finger cannot be done because the applicant is not here to provide support. *Statement from the applicant's spouse*, dated September 22, 2009. While the AAO acknowledges that the doctor treating the applicant's child has recommended surgery for her finger, it notes, as just discussed, that the record does not establish the financial status of the applicant's spouse or the cost of the proposed surgery and, therefore, that the surgery could not be performed in the absence of the applicant. The record also fails to establish that there are no other family members, e.g., the applicant's spouse's mother, who could assist the applicant's spouse, emotionally, physically and financially, while her child receives additional treatment. The AAO also notes that the applicant's child is not a qualifying relative in this case and hardship to the applicant's child will be assessed only to the extent that it would affect that applicant's spouse, the only qualifying relative in this case.

The applicant's spouse notes that the applicant's is very important to her and she misses him very much. *Statement from the applicant's spouse*, dated September 7, 2008. The AAO acknowledges the difficulties that would be faced by the applicant's spouse if the applicant is excluded from the United States. However, U.S. court decisions have repeatedly held that the common results of deportation or exclusion are insufficient to prove extreme hardship. *See Hassan v. INS*, 927 F.2d 465, 468 (9th Cir. 1991). For example, *Matter of Pilch*, 21 I&N Dec. 627 (BIA 1996), held that emotional hardship caused by severing family and community ties is a common result of deportation and does not constitute extreme hardship. In addition, *Perez v. INS*, 96 F.3d 390 (9th Cir. 1996), held that the common results of deportation are insufficient to prove extreme hardship and defined extreme hardship as hardship that was unusual or beyond that which would normally be expected upon deportation. *Hassan v. INS, supra*, held further that the uprooting of family and separation from friends does not necessarily amount to extreme hardship but rather represents the type of inconvenience and hardship experienced by the families of most aliens being deported. Separation from a loved one is a normal result of the removal process. The AAO recognizes that the applicant's spouse will endure hardship as a result of her separation from the applicant. However, the record does not distinguish her situation, if she remains in the United States, from that of other individuals separated as a result of removal. Accordingly, it does not establish that the hardship experienced by the applicant's spouse would rise to the level of extreme hardship. When looking at the aforementioned factors, the AAO does not find that the applicant has demonstrated extreme hardship to his spouse if she were to reside in the United States.

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) 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.