

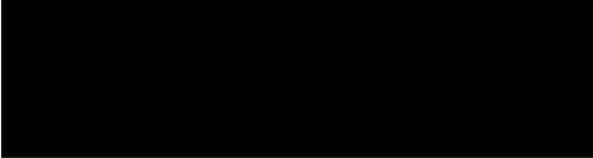
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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals
20 Massachusetts Ave. NW MS 2090
Washington, DC 20529-2090
**U.S. Citizenship
and Immigration
Services**



H4



DATE: **MAY 23 2012** OFFICE: GUATEMALA CITY

FILE:

IN RE: APPLICANT:

APPLICATION: Application for Waiver of Grounds of Inadmissibility under section 212(a)(9)(B) of the Immigration and Nationality Act (the 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 Act, 8 U.S.C. § 1182(a)(9)(A).

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 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,

Perry Rhew, Chief
Administrative Appeals Office

DISCUSSION: The waiver application (Form I-601) and the Application for Permission to Reapply for Admission into the United States after Deportation or Removal (Form I-212) were denied by the Field Office Director, Guatemala City, Guatemala, and are 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 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 was also found to be inadmissible pursuant to section 212(a)(9)(A)(ii) of the Act, 8 U.S.C. § 1182(a)(9)(A)(ii) due to his order of removal under section 240 of the Act, 8 U.S.C. § 1229. He seeks permission to reapply for admission into the United States under section 212(a)(9)(A)(iii) of the Act, 8 U.S.C. § 1182(a)(9)(A)(iii) and a waiver of inadmissibility under 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 with his U.S. Citizen spouse and child.

The Field Office Director concluded that the applicant failed to demonstrate extreme hardship to a qualifying relative and that he also did not merit a favorable exercise of discretion. *See Decision of Field Office Director* dated May 14, 2010. The applications were denied accordingly. *Id.*

On appeal, the applicant's spouse contends she would experience extreme hardship upon relocation to Guatemala due to her family and community ties in the United States, her absence of such ties in Guatemala, her lack of Spanish language skills and consequent inability to find employment in Guatemala, the country conditions, and the inadequacy of medical services for her and her child in that country. The spouse asserts that despite the Field Office Director's decision to the contrary, the applicant merits a favorable exercise of discretion.

The record includes, but is not limited to, financial and medical documents, evidence of birth, marriage, residence, and citizenship, documents related to the applicant's entry and removal proceedings, statements from the applicant and his spouse, letters of support from family, friends, and members of the community, other applications and petitions filed on behalf of the applicant, education related documents, photographs, evidence of physical presence in the United States, criminal record checks, and articles on country conditions in Guatemala. The entire record was reviewed and considered in rendering a decision on the appeal.

Section 212(a)(9) of the Act provides:

(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.

(ii) Construction of unlawful presence.- For purposes of this paragraph, an alien is deemed to be unlawfully present in the United States if the alien is present in the United States after the expiration of the period of stay authorized by the Attorney General or is present in the United States without being admitted or paroled.

....

(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.

Section 212(a)(9) of the Act states in pertinent part:

(A) Certain aliens previously removed.-

(i) Arriving aliens.- Any alien who has been ordered removed under section 235(b)(1) or at the end of proceedings under section 240 initiated upon the alien's arrival in the United States and who again seeks admission within five years of the date of such removal (or within 20 years in the case of a second or subsequent removal or at any time in the case of an alien convicted of an aggravated felony) is inadmissible.

(ii) Other aliens.-Any alien not described in clause (i) who-

(I) has been ordered removed under section 240 or any other provision of law, or

(II) departed the United States while an order of removal was outstanding, and who seeks admission within 10 years of the date of such alien's departure or removal (or within 20 years of such date in the case of a second or subsequent removal or at any time in the case of an alien

convicted of an aggravated felony) is inadmissible.

(iii)Exception.- Clauses (i) and (ii) shall not apply to an alien seeking admission within a period if, prior to the date of the alien's reembarkation at a place outside the United States or attempt to be admitted from foreign contiguous territory, the Secretary has consented to the alien's reapplying for admission.

In a written declaration the applicant admitted he entered the United States without inspection in 1991. He was apprehended by immigration officials, and subsequently he filed a Form I-589, Application for Asylum and Withholding of Removal on March 5, 1991. On May 6, 1991 an immigration judge denied his application and ordered him removed under section 240 of the Act to Guatemala. The Board of Immigration Appeals dismissed a subsequent appeal on August 9, 1991. The applicant was apprehended by immigration officials, and he returned to Guatemala on March 22, 2007. Inadmissibility is not contested on appeal. The applicant has therefore accrued more than one year of unlawful presence, from April 1, 1997, the effective date of the unlawful presence provisions, until March 22, 2007. He is therefore inadmissible under section 212(a)(9)(B)(i)(II) of the Act, and requires a waiver of inadmissibility pursuant to section 212(a)(9)(B)(v) of the Act. Furthermore, the applicant is also inadmissible under section 212(a)(9)(A)(ii) of the Act, and requires permission to reapply for admission as set forth in section 212(a)(9)(A)(iii) of the Act for a period of 10 years from the date of his last departure from the United States. The applicant's qualifying relative for a waiver of inadmissibility under section 212(a)(9)(B)(v) of the Act is his U.S. Citizen spouse.

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 applicant’s spouse explains she was born and raised in the United States, and does not have Spanish language skills. She indicates that she has no family ties in Guatemala besides the applicant, and that all her family resides in her United States, including her father, two sisters, aunts, uncles, and nephews. Letters and photographs from family members are submitted. Furthermore, the spouse asserts if she relocated to Guatemala her community ties in the United States would be severed. Letters from employers, friends, and church members are submitted as evidence of her community ties in the United States. The spouse contends that she has irritable bowel syndrome, knee and back pain, as well as carpal tunnel syndrome, and she would be unable to access medical care for these conditions in San Marcos, Guatemala where the applicant resides. Medical documents and articles on country conditions are submitted in support of these assertions. She adds that she would experience emotional distress because of the inadequate medical care and

educational opportunities available for her young son in Guatemala, and she would experience financial hardship due to her inability to find employment there.

In another declaration, the applicant's spouse contends she has great difficulty managing her life given the present separation from the applicant. She explains that while the applicant was in the United States, he stayed at home to take care of their child while she earned money. She states that without the applicant, she has had to hire babysitters who are expensive and have also not been able to take care of her son as well as the applicant did. The spouse adds that this added cost, and the cost of visiting the applicant in Guatemala, has caused her financial difficulties, and that she also suffers from emotional hardship without the applicant.

The applicant's spouse has demonstrated that she will experience extreme hardship if she relocates to Guatemala to live with the applicant. The record reflects that she does not have Spanish language skills, she was born in the United States, and has lived here for her entire life. Moreover, the record also reflects she has numerous family and community ties in the United States. The record further indicates the applicant's spouse has a stable employment history in the United States, and that she has experienced some medical difficulties while visiting Guatemala. Given this evidence, the AAO finds the applicant's spouse has established she would experience extreme hardship upon relocation to Guatemala.

The record, however, does not support assertions of financial hardship given the present separation. The spouse's 2009 paystubs reflect a biweekly gross income of \$1227.76, which equals an annual income of \$31,921. This income is more than 125% of the minimum income requirements for a family of three for an affidavit of support. *Form I-864P, 2012 HHS Poverty Guidelines for Affidavit of Support*, March 1, 2012. Furthermore, although the spouse's father states that he charges her \$300 in rent and \$157 in condo fees per month, the record lacks evidence to show that the spouse's household expenses exceed her income. The AAO also notes the applicant is employed in Guatemala as a customer service representative, and there is no indication in the record that the applicant is unable to assist his spouse financially. Given this evidence, the AAO cannot conclude the applicant's spouse experiences financial hardship without the applicant present.

The applicant's spouse does not assert that her irritable bowel syndrome (IBS), knee and back pain, or carpal tunnel syndrome are severe enough to require significant assistance from the applicant. The AAO notes in a October 2, 2008 visit summary, her physician indicates that her IBS is well controlled without medication by adjusting her diet, her knee and back pain is not severe enough to warrant a visit to an orthopedic doctor, and her carpal tunnel syndrome can be treated by wearing wrist splints at night.

The applicant's spouse indicates she misses the applicant, and that their child needs his father present in the United States. While the AAO acknowledges that the applicant's spouse would face difficulties as a result of the applicant's inadmissibility, we do not find evidence of record to demonstrate that her hardship would rise above the distress normally created when families are separated as a result of inadmissibility or removal. In that the record fails to provide sufficient

evidence to establish the financial, medical, emotional or other impacts of separation on the applicant's spouse are cumulatively above and beyond the hardships commonly experienced, the AAO cannot conclude that she would suffer extreme hardship if the waiver application is denied and the applicant remains in Mexico without his spouse.

We 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.

In this case, the record does not contain sufficient evidence to show that the hardships faced by the qualifying relative, considered in the aggregate, rise beyond the common results of removal or inadmissibility to the level of extreme hardship. The AAO therefore finds that the applicant has failed to establish extreme hardship to his U.S. Citizen spouse as required under section 212(a)(9)(B)(v) of the Act. As the applicant has not established extreme hardship to a qualifying family member no purpose would be served in determining whether the applicant 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)(i)(II) of the Act no purpose would be served in granting the applicant's Form I-212.

In proceedings for a waiver of grounds of inadmissibility under section 212(a)(9)(B)(v) of the Act, and an application for permission to reapply for admission into the United States after deportation or removal under section 212(a)(9)(A)(iii) 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 and the I-601 and I-212 applications remain denied.

ORDER: The appeal is dismissed.