

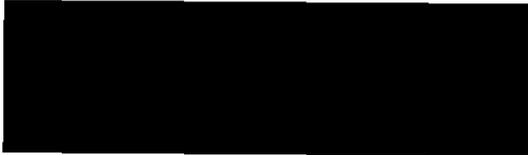
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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals
20 Massachusetts Avenue, N.W., MS 2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services



H5

DATE: JUN 21 2012

OFFICE: PANAMA CITY

FILE: 

IN RE: 

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

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 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,

for

Perry Rhew
Chief, Administrative Appeals Office

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

The applicant is a native and citizen of Ecuador who was found to be inadmissible to the United States under section 212(a)(6)(C)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(6)(C)(i), for attempting to procure entry to the United States by fraud or willful misrepresentation. The record reflects that the applicant, on September 7, 2002 presented a passport with a false Ecuadorian entry stamp to gain entry to the United States. The applicant was ordered removed from the United States on September 7, 2002 and removed from the United States on the following date. The applicant seeks a waiver of inadmissibility in order to reside in the United States with his United States citizen spouse and children.

The Field Office Director concluded that the record failed to establish the existence of extreme hardship for a qualifying relative and denied the application accordingly. *See Decision of the Field Office Director*, dated July 22, 2009.

On appeal, the applicant's spouse asserts that her family members reside in the United States and her children have health problems that could not be resolved by physicians in Ecuador. In support of the waiver application and appeal, the applicant submitted letters from his spouse; medical documentation concerning his spouse, his children, and his spouse's grandfather; family photographs; financial documentation; information concerning court interpretation; background information concerning Ecuador; letters of support; and correspondence between the applicant and his spouse. The entire record was reviewed and considered in rendering a decision on the appeal.

Section 212(a)(6)(C) of the Act provides, in pertinent part:

- (i) Any alien who, by fraud or willfully misrepresenting a material fact, seeks to procure (or has sought to procure or has procured) a visa, other documentation, or admission into the United States or other benefit provided under this Act is inadmissible.

Section 212(i) of the Act provides:

- (1) The Attorney General [now the Secretary of Homeland Security (Secretary)] may, in the discretion of the Attorney General (Secretary), waive the application of clause (i) of subsection (a)(6)(C) in the case of an immigrant who is the spouse, 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 the United States of such immigrant alien would result in extreme hardship to the citizen or lawfully resident spouse or parent of such an alien...

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 qualifying relative in this case is his U.S. citizen spouse. The record contains references to hardship that the applicant's children would experience if the waiver application were denied. It is noted that Congress did not include hardship to an applicant's children as a factor to be considered in assessing extreme hardship. In the present case, the applicant's spouse is the only qualifying relatives for the waiver under section 212(i) of the Act, and hardship to the applicant's children will not be separately considered, except as it may affect the applicant's spouse.

In the present case, the record reflects that the applicant is a thirty-two year-old native and citizen of Ecuador. The applicant's spouse is a thirty-one year-old native of Ecuador and citizen of the United States. The applicant is currently residing in Ecuador and his spouse and children are currently residing in Bloomfield, New Jersey.

The applicant's spouse asserts that she needs the applicant in the United States because she is lonely without him and his family needs him. The record contains a letter from a psychiatrist in Ecuador stating that the applicant's spouse suffers from severe depression and a prescription for medication. There is no information concerning the need for continued therapy for the applicant's spouse, symptoms suffered by the applicant's spouse, or the reason for the prognosis. It is acknowledged that separation from a spouse nearly always creates a level of hardship for both parties. However, there is no indication that the emotional hardship suffered by the applicant's spouse would be so serious that she would be unable to continue with her employment or care for their children.

The applicant's spouse does not make any assertions concerning financial hardship in the absence of her husband in the United States. The record contains a letter of support submitted by a friend of the applicant's spouse stating that the applicant's spouse needs her husband for economic support. The record contains some bills for the applicant's spouse indicating a past due payment status. However, the record does not contain any evidence concerning the applicant's spouse's employer, her income, or an accounting of the applicant's spouse's financial obligations. It is noted that the applicant's spouse asserts that she was a student and also working in the United States. The applicant's spouse contends that all her relatives live in the United States. There is no information concerning the extent to which the applicant's spouse's relatives have or are able to provide her with financial assistance in the absence of the applicant. Further, courts considering the impact of financial detriment on a finding of extreme hardship have repeatedly held that, while it must be considered in the overall determination, it is not enough by itself to justify an extreme hardship determination. *See INS v. Jong Ha Wang*, 450 U.S. 139 (1981) (upholding BIA finding

that economic detriment alone is insufficient to establish extreme hardship). There is insufficient evidence in the record, in the aggregate, to find that the applicant's spouse would suffer a level of hardship beyond the common results of inadmissibility or removal upon separation from the applicant.

The applicant's spouse asserts that she cannot relocate to Ecuador to join the applicant because of the health and safety of herself and her children. The applicant's spouse also asserts that the applicant cannot financially support their family in Ecuador and she would be leaving behind her ties to the United States if she relocated, including her employment, family, and debts. It is noted that the applicant's spouse asserts that she used to take care of her grandfather in the United States, as he suffered from brain paralysis. The record contains medical records concerning the applicant's spouse's grandfather. However, the applicant's spouse's own past tense assertion and medical records noting her grandfather's intention to permanently return to Ecuador indicate that the applicant's spouse is not currently involved in her grandfather's care.

The applicant's spouse asserts that she resided in Ecuador several times since the departure of her husband from the United States and that her daughter left Ecuador for health reasons. The applicant's spouse further asserts that it was dangerous for her son's health to live in Ecuador and she suffered from worsening skin eruptions. It is initially noted that the applicant's children are not qualifying relatives in the context of this application so that any hardship they would suffer will be considered only insofar as it affects the applicant's spouse. The record contains medical documents concerning the applicant's children stating that his daughter was treated in a hospital in Ecuador for adenopathies, results were negative, and she suffers from anemia. There are *photographs and medical records submitted for the applicant's son*, but no indication that he suffers from any physical ailments. The record also contains medical documents from Ecuador for the applicant's spouse stating that she was treated for an acute intestinal infection and should avoid sun exposure because of solar dermatitis. There is no accompanying letter or documentation for the applicant's spouse or her children indicating the course of treatment for their physical ailment. It is evident that the applicant's spouse and children received medical treatment in Ecuador and there is no indication that they would be unable to receive further treatment in Ecuador, as necessary.

The applicant's spouse asserts that she would suffer from financial hardship if she relocated to Ecuador and that she would leave behind her ties in the United States. The applicant's spouse contends that all of her family resides in the United States. However, it is noted that the medical documentation submitted concerning her grandfather indicates his intention to reside permanently in Ecuador. In addition, the letters of support submitted in the record do not contain any letters from the applicant's spouse's relatives. It is noted that the applicant's spouse is a native of Ecuador who is familiar with the language and customs of the country. Further, there is no supporting evidence in the record concerning the applicant's spouse's employment or education in the United States. Going on record without supporting documentary evidence generally is not

sufficient for purposes of meeting the burden of proof in these proceedings. *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 applicant's spouse asserts that the applicant was unable to provide for his family when they joined him in Ecuador and that he got laid off from his job. The applicant submitted a Form G-325A on March 2, 2009 indicating that he held a position as a chief builder in Ecuador from January 2005 to the present. The applicant's spouse states that since the applicant lost his job, his father takes the applicant to work with him when he is hired for a job. It is noted that the record does not contain any information concerning the applicant's financial obligations in Ecuador and the applicant's spouse states that their families helped them get their home in Ecuador. There is no information concerning the extent to which their families would be able to assist in the applicant's spouse's relocation to Ecuador. The record contains background information concerning Ecuador and the applicant's spouse asserts that her husband has been the victim of crime in Ecuador. It is noted that the Department of State has not issued travel warnings for Ecuador. For the area where the applicant resides, [REDACTED] it is noted that visitors are advised by the U.S. Department of State to exercise extreme caution in certain areas of the city, including tourist sites. The record contains insufficient evidence to find that the applicant's spouse would suffer hardship beyond the common consequences of inadmissibility or removal if she relocated to Ecuador.

Although the depth of concern and anxiety over the applicant's immigration status is neither doubted nor minimized, the fact remains that Congress provided for a waiver of inadmissibility only under limited circumstances. While the prospect of separation or involuntary relocation nearly always results in considerable hardship to individuals and families, in specifically limiting the availability of a waiver of inadmissibility to cases of "extreme hardship," Congress did not intend that a waiver be granted in every case where a qualifying relationship exists. U.S. court decisions have repeatedly held that the common results of removal are insufficient to prove extreme hardship. *See Hassan v. INS*, 927 F.2d 465, 468 (9th Cir. 1991), *Perez v. INS*, 96 F.3d 390 (9th Cir. 1996); *Matter of Pilch*, 21 I&N Dec. 627 (BIA 1996) (holding that emotional hardship caused by severing family and community ties is a common result of deportation and does not constitute extreme hardship); *Matter of Shaughnessy*, 12 I&N Dec. 810 (BIA 1968) (holding that separation of family members and financial difficulties alone do not establish extreme hardship). "[O]nly in cases of great actual or prospective injury . . . will the bar be removed." *Matter of Ngai*, 19 I&N Dec. 245, 246 (BIA 1984).

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(i) 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.

In proceedings for application for waiver of grounds of inadmissibility under section 212(i) 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.

ORDER: The appeal is dismissed.