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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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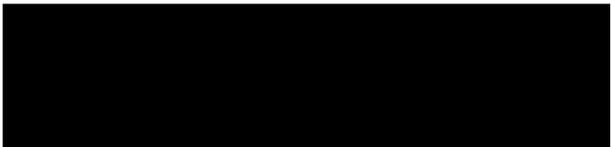
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DATE: **MAR 19 2012** Office: CALIFORNIA SERVICE CENTER FILE: 

IN RE: Applicant: 

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:


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 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 was denied by the Director, California Service Center. A subsequent appeal was dismissed by the Administrative Appeals Office (AAO). The matter is now before the AAO on a motion to reconsider. The motion will be granted. The previous decision of the AAO will be affirmed and the waiver application will be denied.

The applicant is a native and citizen of Guatemala who was found to be inadmissible to the United States under section 212(a)(6)(C)(i) of the Act, § 1182(a)(6)(C)(i), for having attempted to enter the United States by fraud or willful misrepresentation. The applicant is married to a U.S. citizen, has three U.S. citizen children and seeks a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i), in order to reside with her spouse and children in the United States.

The director concluded that the applicant had failed to establish that extreme hardship would be imposed on a qualifying relative and denied the Application for Waiver of Grounds of Excludability (Form I-601) accordingly. *Decision of the Director*, dated November 29, 2006. The AAO also found that the applicant had failed to establish that extreme hardship would be imposed on a qualifying relative and dismissed the appeal. *AAO Decision*, dated February 19, 2009.

On motion, counsel asserts that the applicant's spouse would experience extreme hardship if the applicant was refused admission to the United States. *Memorandum in Support of Appeal*, undated.

The record includes, but is not limited to, statements from the applicant; the applicant's spouse's statement; financial records; education-related records; letters of support for the applicant; counsel's appeal memorandum; articles on married parents and crime prevention, and daycare; and country conditions information. The entire record was reviewed and considered in rendering this decision.

Section 212(a)(6)(C)(i) of the Act provides:

In general.—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) provides:

(1) The Attorney General [now Secretary of Homeland Security] may, in the discretion of the Attorney General [now Secretary of Homeland Security], 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 [Secretary] that the refusal of admission to the United States of such immigrant alien

would result in extreme hardship to the citizen or lawfully permanent resident spouse or parent of such an alien. . . .

The record reflects that the applicant attempted to procure admission to the United States in March of 1995 using a fraudulent passport in another person's name. The applicant was denied entry into the United States and sent back to Guatemala the same day. Three months later, in June of 1995, the applicant entered the United States without inspection. Therefore, the applicant is inadmissible under section 212(a)(6)(C)(i) for fraud or willfully misrepresenting a material fact in order to procure admission into the United States.

A section 212(i) waiver of the bar to admission resulting from section 212(a)(6)(C)(i) of the Act is dependent first upon a showing that the bar imposes an extreme hardship to the U.S. citizen or lawfully resident spouse or parent of the applicant. Hardship to the applicant or her children is not considered in section 212(i) waiver proceedings unless it causes hardship to a qualifying relative, in this case the applicant's spouse. Once 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).

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*, 22 I&N Dec. 560, 565-66 (BIA 1999), the Board provided a list of factors it deemed relevant in determining whether an alien has established extreme hardship to a qualifying relative. 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 deportation, 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. at 631-32; *Matter of Ige*, 20 I&N Dec. at 883; *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.*

We observe that 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., In re 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).

The applicant’s spouse states that he would have to return to Guatemala with his three children; he would have to sell his property for a net loss; he would return to Guatemala with nothing; his oldest son was accepted to a prestigious high school; he has not lived in Guatemala for 28 years; his children can speak Spanish but cannot write proficiently; it would be difficult for his children to learn to write Spanish at the levels expected for their age; and the economic situation in Guatemala is very poor. *Applicant’s Spouse’s Statement*, dated March 16, 2009. The record includes an acceptance letter from [REDACTED] for the applicant’s oldest son. The middle son’s school social worker states that the middle son’s ability to read Spanish is limited; his academics are taught in English; his abstract reasoning is done in English; and his educational needs must be met in English. *Letter from [REDACTED]*, dated March 11, 2009. The record includes a 2008 human rights report on Guatemala; a mortgage statement for the applicant’s spouse’s property reflecting a \$183,650.19 balance; and school records and letters reflecting that the applicant’s two older children are having significant success in school.

The record reflects that the applicant’s spouse has not resided in Guatemala in nearly 30 years. He would have to relocate with three U.S. citizen children, who were all born and raised in the United States. His two older children are 15 and 12 years old and are having success in their respective schools, with the middle child requiring educational needs in English. In addition, they would be relocating to a country with significantly different conditions than the United States. Based on these factors, and the normal results of relocation, the AAO finds that the applicant’s spouse would experience extreme hardship upon relocation to Guatemala.

The applicant's spouse contends that "the financial, educational and personal problems that would result from a denial of [the applicant's] admission into the United States, when taken together, amount to extreme hardship." *Affidavit of* [REDACTED] dated September 26, 2006. On motion, the applicant's spouse states that he was laid off and is collecting unemployment; he is receiving \$373 per week with a cap of \$8,441; he had been earning about \$24,000 annually; his rental income has declined as his sister can no longer afford to pay the rent and he has been unable to rent his other apartment due to a weak rental market. *Applicant's Spouse's Statement*, dated March 16, 2009. The record includes the applicant's spouse's unemployment benefits letter and Schedule E of the applicant and her spouse's 2008 tax return which reflects a loss of \$3,620 on the rental property. It is noted that the bulk of the loss (\$3,140.00) was from depreciation. In addition, the record contains mortgage statement from July 10, 2006 reflecting a balance of \$183,650.19. Although the record reflects that the applicant has worked in the United States, the applicant's spouse states that the applicant stopped working in January 2009 and is not eligible for unemployment. Although the AAO acknowledges that the applicant's spouse may experience some financial difficulty as a result of separation from the applicant, there is nothing in the record to indicate that he would be unable to meet his financial obligations or would otherwise experience financial hardship that goes beyond that which is normally experienced by family members of inadmissible aliens.

The applicant's spouse states that the applicant "supported [their] son in his studies throughout elementary school which has been critical to his academic success," and that her help in education has been critical to their family. *Id.* He also states that the applicant "assists [him] with [their] baby's everyday needs along with help from [him]self and [their] two other children." *Id.* The applicant states that she has assisted her spouse with the "daily activities normally associated with raising three children." *Affidavit of* [REDACTED] *supra*. Counsel states that the applicant's children have had success at school due to the applicant and she supports the children to the benefit of her spouse; and single parents have extremely greater responsibilities. *Memorandum in Support of Appeal*. A school social worker states that the applicant is vested in her middle son's education; she makes sure academics are a priority for her children; she has a close relationship with her children; her middle son needs her for his emotional well-being, educational guidance and social development; and she is an excellent parent. *Letter from* [REDACTED] On motion, the applicant's spouse states that his sister has multiple medical conditions which preclude her from working and taking care of his children. The record contains a physician's letter reflecting that his sister is on disability due to numerous medical problems. However, no detail is provided regarding the nature of these problems, whether they are temporary or permanent, and whether they render the sister unable to assist in caring for the applicant's children.

Although the record reflects that the applicant is involved in caring for her and her spouse's children, the record does not establish that the applicant would be unable to care for his children in the applicant's absence. Nor does the record establish that any hardship experienced by the applicant's children would cause hardship to the applicant's spouse, who is the only qualifying relative in the instant case.

The AAO notes that the applicant's spouse may experience some difficulty as a result of separation from the applicant, but finds that even when these hardships is considered in the aggregate, the record fails to establish that the applicant's spouse would suffer extreme hardship as a result of separation from the applicant.

Although the applicant has demonstrated that the qualifying relative would experience extreme hardship if he relocated to be with the applicant, the AAO 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. The AAO has long interpreted the waiver provisions of the Act to require a showing of extreme hardship in both possible scenarios; as a claim that a qualifying relative will remain in the United States and thereby suffer extreme hardship as a consequence of separation can easily be made for purposes of the waiver even where there is no intention to separate in reality. *See Matter of Ige*, 20 I&N Dec. 880, 886 (BIA 1994). Furthermore, to separate and suffer extreme hardship, where relocating abroad with the applicant would not result in extreme hardship, is a matter of choice and not the result of inadmissibility. *Id.*; *see also Matter of Pilch*, 21 I&N Dec. 627, 632-33 (BIA 1996). As the applicant has not demonstrated extreme hardship from separation, the AAO 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 hardship faced by the qualifying relative, considered in the aggregate, rises 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 her United States 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.

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. 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.