



U.S. Citizenship  
and Immigration  
Services



H5

Date: **OCT 31 2012** Office: PANAMA CITY, PANAMA FILE:

IN RE:

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

Perry Rhew  
Chief, Administrative Appeals Office

**DISCUSSION:** The waiver application was denied by the Field Office Director, Panama City, Panama. 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 Ecuador who was found 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 again seeking admission within ten years of her last departure from the United States. She is also inadmissible to the United States under section 212(a)(6)(C)(i) of the Act, 8 U.S.C. § 1182(a)(6)(C)(i), for attempting to procure admission to the United States through fraud or misrepresentation. Because the applicant was ordered removed from the United States and is seeking admission within ten years of her removal from the United States, she is also inadmissible under section 212(a)(9)(A) of the Act, 8 U.S.C. § 1182(a)(9)(A). The applicant is married to a U.S. citizen. She seeks a waiver of inadmissibility in order to reside in the United States with her spouse.

The Field Office Director found that the applicant failed to establish that her qualifying relative would experience extreme hardship as a consequence of her inadmissibility. The application was denied accordingly. *See Decision of the Field Office Director*, dated June 23, 2011.

On appeal, the applicant asserts that she is not required to file an Application for Permission to Reapply for Admission Into the United States After Deportation or Removal (Form I-212), as the Field Office Director stated in her decision. She also contends that the Field Office Director failed to properly review the evidence provided and that emotional hardship to her qualifying spouse was established.

The record contains the Application for Waiver of Grounds of Inadmissibility (Form I-601), a Notice of Appeal or Motion (Form I-290B), letters from the applicant and qualifying spouse, relationship and identification documents for the qualifying spouse and applicant, a document indicating that the applicant has no police record, medical documents, photographs, an approved Petition for Alien Relative (Form I-130) and an Application for Immigrant Visa and Alien Registration (DS-230). In addition, the record also contains a letter from a bank that is not written in English. The requisite translation, however, was not provided. 8 C.F.R. § 103.2(b)(3) states:

Translations. Any document containing foreign language submitted to 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.

As such, the bank letter without a translation cannot be considered in analyzing this case. The rest of the record was reviewed and considered in rendering a decision on the appeal.

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-

....

(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.

Section 212(a)(9)(B)(v) of the Act provides for a waiver of section 212(a)(9)(B)(i) inadmissibility as follows:

The Attorney General [now 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 . . . 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.

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 [Secretary] may, in the discretion of the [Secretary], waive the application of clause (i) of subsection (a)(6)(C) in the case of an alien 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 resident spouse or parent of such an alien.

A waiver of inadmissibility under sections 212(i) and 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. The applicant's husband 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 USCIS then assesses whether a favorable exercise of discretion is warranted. *See Matter of Mendez-Morales*, 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 applicant entered the United States on April 12, 2006 as a non-immigrant tourist with authorization to remain for six months. She did not depart until December 29, 2007. She accrued over one year of unlawful presence between October 2006 and December 2007 and therefore is inadmissible to the United States pursuant to 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 again seeking admission within ten years of her last departure from the United States. On November 2, 2008, upon her arrival to the United States, the applicant presented her passport with a fraudulent Ecuadorian admission stamp dated October 20, 2006 to a U.S. immigration inspector, to try to conceal her previous overstay. She was then removed from the United States. Therefore, as a result of the applicant's unlawful presence and misrepresentation, she is inadmissible to the United States under sections 212(a)(9)(B)(i)(II) and 212(a)(6)(C)(i) of the Act. The applicant does not contest her inadmissibility with respect to her unlawful presence and misrepresentation.

However, the applicant asserts that she is not required to file Form I-212, and as support for her position, she cites the form's instructions, dated July 30, 2007. While we agree that the instructions may be confusing because they refer to a law that has since changed, the instructions she cites were not the most current version available at the time of her appeal. Because the applicant was ordered removed from the United States and seeks admission within five years of her removal from the United States, she is also inadmissible under section 212(a)(9)(A) of the Act, 8 U.S.C. § 1182(a)(9)(A), and requires permission to reapply for admission, which is obtained by filing Form I-212.

The applicant must first establish that her U.S. citizen spouse would suffer extreme hardship were he to live in the United States while the applicant resides in Ecuador due to her inadmissibility. The applicant indicates that her qualifying spouse is suffering emotional hardships as a result of his separation from her. The record contains letters from the qualifying spouse, his doctor and his psychologist. The qualifying spouse states that it is "very difficult to accept that [he] has a wife, but she cannot be with [him]." The doctor, in his letter dated June 8, 2010, indicates that the qualifying spouse has been in treatment since April 22, 2010 for depression and anxiety and that he is taking an antidepressant. His psychologist confirms the applicant's spouse suffers from anxiety and depression related to the applicant's immigration circumstances. However, the record contains little detail regarding how his psychological hardships are outside the ordinary consequences of separation from family members. Further, no updated psychological or emotional documentation was provided on appeal to establish whether the applicant's spouse continues to deal with any psychological or emotional hardships. Moreover, the applicant has not shown that her spouse currently is experiencing other types of hardship caused by their separation. As such, the applicant failed to provide sufficient evidence to establish that the qualifying spouse

is suffering hardships as a result of his separation from the applicant that, considered in the aggregate, are extreme.

The applicant also failed to establish that her qualifying spouse would experience hardship upon relocation to Ecuador. The qualifying spouse notes in his letter that he has lived in the United States for most of his life, since he was twenty years old. He also states that there are more opportunities in the United States than in Ecuador, and he would lose his job as a truck driver in the United States. However, the record does not contain documentation concerning his employment prospects in Ecuador or corroborating his claims about his employment in the United States. Further, the qualifying spouse states that he has financial responsibilities in the United States, including a mortgage and a car loan, yet no supporting evidence was provided to confirm these financial responsibilities or to show that he would be unable to meet such responsibilities if he relocated to Ecuador. Further, the record does not contain any financial documentation concerning the family's income and expenses. As such, there is insufficient documentation to draw any conclusions regarding the applicant's spouse's potential financial hardship upon relocation. Additionally, the qualifying spouse states that his mother lives with him; because she cannot hear well, he takes care of her. He explains how it would be difficult for him to leave his mother, because he is her only child and he promised to care for her. However, the record does not contain documentation confirming that the qualifying spouse's mother lives with him, is unable to care for herself, and that he cares for her. Although the qualifying spouse's assertions are relevant and have been taken into consideration, little weight can be afforded them in the absence of supporting evidence. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *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)). As such, the current record does not establish that the applicant's spouse would experience extreme hardship upon relocating to Ecuador and the applicant has not met her burden of demonstrating that her qualifying spouse will suffer extreme hardship in the event that her spouse relocates to Ecuador.

In proceedings for applications for waiver of grounds of inadmissibility under sections 212(a)(9)(B) and 212(i) 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.