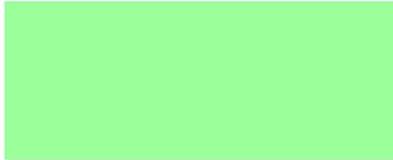
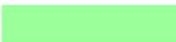




U.S. Citizenship
and Immigration
Services

(b)(6)



DATE: JUN 21 2013 Office: GUATEMALA CITY, GUATEMALA 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); Application for Waiver of Grounds of Inadmissibility under Sections 212(a)(9)(B)(v) of the Immigration and Nationality Act, 8 U.S.C. § 1182(a)(9)(B)(v).

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 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,

Ron Rosenberg
Acting 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 a citizen of Guatemala who entered the United States without inspection after having been previously removed in a 235(b)(1) within a period of five years. The applicant was found to be inadmissible to the United States pursuant to section 212(a)(6)(C)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(6)(C)(i). He is also inadmissible 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 one year or more and seeking readmission within 10 years of his last departure. He is the spouse of a U.S. citizen. The applicant is seeking a waiver under section 212(i) of the Act, 8 U.S.C. § 1182(i), and 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.

The Field Office Director concluded that the applicant had failed to establish that the bar to his admission would impose extreme hardship on a qualifying relative, his U.S. citizen spouse, and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) on September 24, 2012.

On appeal, counsel for the applicant states the applicant did not willfully omit material information pertaining to prior deportations and a criminal record during his consular interview, and that the applicant's spouse will experience extreme hardship due to his inadmissibility. *Attachment, I-290B*, received October 22, 2012. Counsel does not submit any evidence supporting the applicant's claims that he is not inadmissible pursuant to section 212(a)(6)(C)(i) of the Act.

The AAO conducts appellate review on a *de novo* basis. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004).

The record includes, but is not limited to, the following documentation: a brief from counsel; statements from the applicant and the applicant's spouse; statements from friends and family members of the applicant attesting to his moral character; phone bills for the applicant's spouse; a credit bill and automobile billing statement for the applicant's spouse; medical records pertaining to the applicants' spouse; and photographs of the applicant, his spouse and members of his church. The entire record was reviewed and all relevant evidence considered in rendering this decision.

At the outset, the AAO notes that the applicant has provided inconsistent information in multiple encounters he has had with U.S. immigration and government authorities since his first entry without inspection in 1990. The record indicates that the applicant was encountered and detained by U.S. immigration authorities in February 1990 near San Ysidro, California and admitted that he was a Guatemalan national, born on [REDACTED] 1975, giving specific details of his journey from Guatemala through Mexico and into the United States. The applicant requested voluntary departure from the United States, which was granted on March 9, 1990. The applicant was detained again in February 1991, after having re-entered the United States without inspection. This time the applicant

filed an application for asylum which was subsequently denied. He was ordered removed *in absentia* on June 15, 1992. On July 9, 1993, the applicant was detained by [REDACTED] North Dakota, police and he provided them with a false name, nationality and birth date. His deportation order was re-instated and he was ordered to depart by October 1993. The applicant failed to depart.

In 2004 the applicant married his current spouse and began claiming his birth date as [REDACTED] 1978. The applicant also failed to reveal his prior deportations or a criminal arrest record for arrests in Florida.

Counsel contests that the applicant did not willfully fail to reveal his prior removals and prior arrests in his most recent consulate interview, but in light of the overwhelming documentary evidence to the contrary in the record, the AAO finds counsel's assertions implausible. Nonetheless, as the record indicates the applicant is also inadmissible under section 212(a)(9)(B)(i)(II) of the Act, the AAO need not further examine the applicant's inadmissibility under section 212(a)(6)(C)(i) of the Act.¹

Section 212(a)(9)(B) of the Act provides, in pertinent part:

(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.

....

The record indicates that the applicant entered the United States without inspection in 1990 and remained until 2010. No period in which the applicant had an asylum application pending counts toward the accrual of unlawful presence. In this case, the applicant was ordered deported *in absentia* in 1993. As such, he was unlawfully present from April 1, 1997, the date of the unlawful presence provision of the Act, until his departure in 2010, a period over one year, and is now seeking admission within 10 years of her last departure from the United States. Accordingly, the applicant is inadmissible to the United States under section 212(a)(9)(B)(i)(II) of the Act. The applicant does not contest this finding.

¹ The AAO also notes that the applicant may be inadmissible pursuant to section 212(a)(2)(A) of the Act based on his arrest for shoplifting in [REDACTED] Florida, in September 1993. As the record indicates the applicant is inadmissible based on other grounds, the AAO need not reach a determination on this basis of inadmissibility at this time.

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] 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.

A waiver of inadmissibility under section 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. Hardship to the applicant or any children can be considered only insofar as it results in hardship to a qualifying relative. The applicant's spouse 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.

On appeal, counsel for the applicant asserts that the applicant has been a pastor for over 10 years, demonstrating his good moral character, and that his spouse is a cancer survivor who requires regular medical monitoring that will be greatly impacted by the stress of the applicant’s inadmissibility. *Brief in Support of Appeal*, dated October 20, 2012. The applicant’s spouse has submitted a statement attesting to the good moral character of the applicant and explaining that she is a cancer survivor who requires regular medical checkups. *Statement of the Applicant’s Spouse*, received October 22, 2012. She states that the applicant is her sole source of income and that her expenses will exceed her income if the applicant is removed.

The record contains copies of phone bills, energy bills, credit card bills and a billing statement for an automobile. These documents are sufficient to establish that the applicant’s spouse has financial obligations, however, the amount of financial impact she would experience is not clear, since it is not clear that she would be unable to re-arrange her financial commitments to adjust her financial obligations. While the record indicates the applicant’s spouse previously suffered from cancer, there is nothing in the record which indicates she is incapable of seeking employment in order to meet her financial needs. The record fails to establish that the applicant’s spouse would experience an uncommon financial impact.

The record contains documentation establishing that the applicant's spouse underwent a surgical procedure in 2007 to treat a form of cancer. Based on the documentation in the record the AAO can determine that the applicant's spouse has heightened medical needs by virtue of having to monitor her previous medical condition. However, without additional evidence which indicates that she is currently diagnosed with a medical condition, and the impact it has on her daily life, the AAO is unable to fully assess what medical care she presently needs. However, consideration is given to the physical and emotional impact of her prior illness.

However, when the impacts due to separation are examined in the aggregate, the AAO does not find them to rise to the level of extreme hardship.

Counsel does not articulate what impacts, if any, the applicant's spouse may experience upon relocation to Guatemala. As such, the record does not establish that a qualifying relative will experience extreme hardship due to relocation.

The record, reviewed in its entirety and in light of the *Cervantes-Gonzalez* factors cited above, does not support a finding that the applicant's spouse faces extreme hardship if he is refused admission. The AAO recognizes that the applicant's spouse would prefer to have the applicant reside in the United States to support her financially and emotionally. These concerns, however, are common hardships associated with removal and separation, and do not rise to the level of "extreme" as informed by relevant precedent. U.S. court decisions have repeatedly held that the common results of removal or inadmissibility are insufficient to prove extreme hardship. *See Hassan v. INS*, 927 F.2d 465, 468 (9th Cir. 1991). 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. 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.

The AAO notes testimony regarding the applicant's moral character and that his service as a pastor has served his community. While the AAO recognizes the value of the applicant's service to his church and community, and accepts the testimony regarding his moral character, these considerations are only relevant to a discretionary determination of a waiver application, and not the applicant's statutory eligibility. Unfortunately, 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)(v) of the Act, the burden of proving eligibility rests 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.