

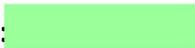


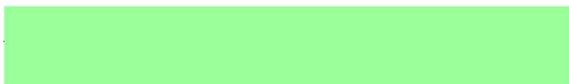
U.S. Citizenship
and Immigration
Services

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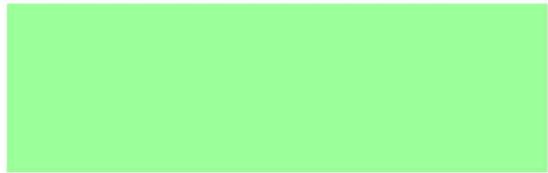
DATE: **MAR 22 2013** Office: TEGUCIGALPA, HONDURAS

FILE: 

IN RE: Applicant: 

APPLICATION: Application for Waiver of Grounds of Inadmissibility under section 212(a)(9)(B)(v) of the Immigration and Nationality Act (the Act), 8 U.S.C. section 1182(a)(9)(B)(v), and 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 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, Tegucigalpa, Honduras. 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 Costa Rica. She was found to be 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), and section 212(a)(6)(C)(i) of the Act, 8 U.S.C. § 1182(a)(6)(C)(i), for having been unlawfully present in the United States for one year or more and seeking admission within 10 years of her last departure, and misrepresenting a material fact when applying for a visa to enter the United States. She is married to a Lawful Permanent Resident (LPR). She seeks a waiver of inadmissibility pursuant to section 212(a)(9)(B)(v) of the Act, 8 U.S.C. § 1182(a)(9)(B)(v).

The Field Office Director concluded that the applicant had failed to establish that the bar to her admission would impose extreme hardship on a qualifying relative, her U.S. citizen spouse, and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) on July 25, 2012.

On appeal, counsel for the applicant asserts the Field Office Director's decision was arbitrary and capricious, and that the applicant has demonstrated a qualifying relative will experience extreme hardship due to her inadmissibility. *Form I-290B*, received on August 30, 2012.

The record includes, but is not limited to, a brief from counsel for the applicant; statements from the applicant and her spouse; a psychological examination of the applicant's spouse by [REDACTED] and photographs of the applicant and her spouse. The entire record was reviewed and all relevant evidence considered in rendering this decision.

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 as a visitor for pleasure in March 2001, but remained beyond her authorized period of stay until she departed in 2006. As the applicant resided unlawfully in the United States for over a year and is now seeking admission within 10 years of her last departure, she is inadmissible under section 212(a)(9)(B)(i)(II) of the Act.

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

- (i) 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 chapter is inadmissible.

The record indicates that the applicant entered the United States in March 2001 as a visitor for pleasure, and remained beyond the expiration of her authorized period of stay until she departed in 2006. When interviewing for one of her visa applications it was discovered that she had mailed her passport back to Costa Rica and paid the equivalent of \$50 U.S. dollars to obtain a date stamp indicating she had returned to Costa Rica two weeks after entering the United States. The Field Office Director noted that the applicant had been refused entry into the United States on a number of occasions and concluded that the applicant had previously failed to reveal that she was married to a U.S. citizen when applying for entry. The applicant does not contest this finding on appeal. As such, the applicant is inadmissible under section 212(a)(6)(C)(i) of the Act for having misrepresenting her intent to reside in the United States and prior overstay of her approved immigration status.

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.

Section 212(a)(6)(C)(iii) authorizes a waiver, in the discretion of the Attorney General, as proscribed by Section 212(i):

- (1) The Attorney General may, in the discretion of the Attorney General, waive the application of clause (i) of subsection (a)(6)(C) of this section 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 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 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 lawful permanent 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.

Counsel asserts on appeal that the applicant's spouse would experience emotional and financial hardship upon relocation to Costa Rica. *Brief in Support of Appeal*, dated September 4, 2012. Counsel asserts that the applicant's spouse is self-employed with his own construction company and has other community ties, including the presence of two adult children and a lawful permanent resident mother. Counsel states that if the applicant's spouse were to relocate to Costa Rica he would have to sever ties with his son and daughter who depend on him financially and that he would not be able to find employment in Costa Rica.

An examination of the record reveals little evidence to support counsel's assertions. While the applicant's spouse has submitted a statement echoing counsel's assertions, there is no evidence to corroborate these assertions. There is no evidence which establishes the applicant's spouse is caring for his mother, that he provides financial support for his son or daughter or establishing his current level of income. There are no country conditions materials or other documentation which corroborate counsel's assertions that the applicant's spouse would not be able to find employment in Costa Rica.

While the AAO recognizes that the applicant's spouse has been residing in the United States since 1992 and is originally from Poland, this is not sufficient to establish that he would experience any greater relocation impact than other similarly situated relatives of inadmissible aliens. Without evidence to corroborate these assertions the AAO is unable to distinguish the impacts of relocation on the applicant's spouse from those which are commonly experienced. As such, the record fails to establish that a qualifying relative would experience extreme hardship upon relocation.

With regard to the hardship impacts upon separation, counsel asserts that the applicant's spouse will experience emotional and financial hardship due to the applicant's inadmissibility. *Brief in Support of Appeal*, dated September 4, 2012.

The applicant's spouse has submitted a statement explaining that he has been emotionally impacted by separation from the applicant. *Statement of the Applicant's Spouse*, June 11, 2012. The applicant's spouse further explains that frequent travel to Costa Rica to see the applicant is affecting his business.

As noted above, there is little evidence to support either counsel's or the applicant's spouse's assertion of financial hardship. The record does not contain any current tax records, income records,

evidence of financial obligations or financial support for the applicant's spouse's mother, son or daughter. In addition, the AAO notes that the applicant's spouse's children from a prior marriage are now considered adults, thus, it is not clear that he has any financial obligation for them, or that any such financial obligation rises above that which is commonly experienced by family members or spouses of inadmissible aliens. Based on this finding, the AAO concludes that the record does not establish the applicant's spouse would experience any uncommon financial impact due to separation.

With regard to emotional hardship, the AAO notes that the record contains a single piece of evidence in the form of a psychological examination by [REDACTED] narrates the applicant's spouse's background as relayed to him by the applicant's spouse, and concludes that the applicant's spouse is experiencing "strong depressive disorder" and "extraordinary hardship" due to separation. The AAO will give consideration to [REDACTED] statement.

As noted above the record contains little supporting documentation. The AAO acknowledges that the applicant's spouse will experience emotional hardship if he remains in the United States without the applicant, but the applicant has failed to demonstrate that this hardship, even when combined with other hardship factors, will be extreme. The AAO recognizes the significance of family separation as a hardship factor, but concludes that the hardship articulated in this case, based on the evidence in this record, does not rise above the common result of removal or inadmissibility and thus does not constitute extreme hardship. 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. As the applicant has failed to establish that a qualifying relative will experience extreme hardship, no purpose would be served in determining whether she warrants a waiver as a matter of discretion.

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