

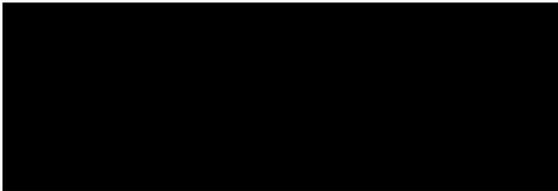
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U.S. Department of Homeland Security  
U.S. Citizenship and Immigration Services  
Office of Administrative Appeals MS 2090  
Washington, DC 20529-2090



**U.S. Citizenship  
and Immigration  
Services**



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FILE:



Office: MEXICO CITY, MEXICO  
(PANAMA CITY, PANAMA)

Date: **DEC 29 2010**

IN RE:

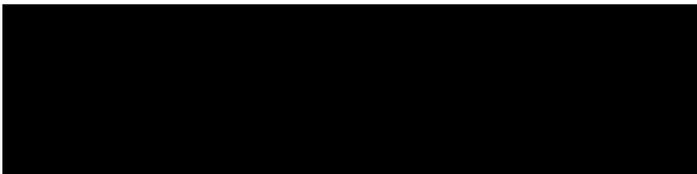
Applicant:



APPLICATIONS:

Application for Waiver of Grounds of Inadmissibility under Section 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 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 must be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

*Tariq Syed*  
for

Perry Rhew  
Chief, Administrative Appeals Office

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

The record reflects that the applicant is a native and citizen of Ecuador who was found to be 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 seeking readmission within ten years of his last departure from the United States. The record indicates that the applicant is married to a United States citizen and the father of a United States citizen child. He is the beneficiary of an approved Petition for Alien Relative (Form I-130). The applicant 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), in order to reside in the United States with his United States citizen wife and son.

The Acting District Director found that the applicant had failed to establish that extreme hardship would be imposed on the applicant's spouse and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) accordingly. *Decision of the Acting District Director*, dated July 25, 2008.

On appeal, the applicant, through counsel, asserts that United States Citizenship and Immigration Service (USCIS) "did not state the appropriate legal standard, and failed to consider all relevant factors and documentation submitted." *Form I-290B*, filed August 26, 2008.

The record includes, but is not limited to, counsel's appeal brief; statements from the applicant's wife; letters of support for the applicant and his wife; tax documents, mortgage documents, bank statements, and household bills; and school documents for the applicant's wife. The entire record was reviewed and considered in arriving at a decision on the appeal.

Section 212(a)(9)(B) 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.

.....  
(iii) Exceptions.-

(I) Minors.-No period of time in which an alien is under 18 years of age shall be taken into account in determining the period of unlawful presence in the United States under clause (i).

- .....
- (v) Waiver.-The Attorney General [now the 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 to the satisfaction of the [Secretary] 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.

In the present case, the record indicates that the applicant entered the United States in December 2000 without inspection. In January 2008, the applicant departed the United States.

The applicant accrued unlawful presence from December 14, 2001, the date he turned eighteen (18) years old, until January 2008, the date he departed the United States. As the applicant is seeking admission to the United States within ten years of his January 2008 departure, he is inadmissible pursuant to section 212(a)(9)(B)(i)(II) of the Act for being unlawfully present in the United States for a period of more than one year.

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 children can be considered only insofar as it results in hardship to a qualifying relative. The applicant's wife 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-Moralez*, 21 I&N Dec. 296, 301 (BIA 1996).

As a qualifying relative is not required to depart the United States as a consequence of an applicant's inadmissibility, two distinct factual scenarios exist should a waiver application be denied: either the qualifying relative will join the applicant to reside abroad or the qualifying relative will remain in the United States. Ascertaining the actual course of action that will be taken is complicated by the fact that an applicant may easily assert a plan for the qualifying relative to relocate abroad or to remain in the United States depending on which scenario presents the greatest prospective hardship, even though no intention exists to carry out the alleged plan in reality. *Cf. Matter of Ige*, 20 I&N Dec. 880, 885 (BIA 1994) (addressing separation of minor child from both parents applying for suspension of deportation). Thus, we interpret the statutory language of the various waiver provisions in section 212 of the Act to require an applicant to establish extreme hardship to his or her qualifying relative(s) under both possible scenarios. To endure the hardship of separation when extreme hardship could be avoided by joining the applicant abroad, or to endure the hardship of relocation when extreme hardship could be

avoided by remaining in the United States, is a matter of choice and not the result of removal or inadmissibility. As the Board of Immigration Appeals (Board) stated in *Matter of Ige*:

[W]e consider the critical issue . . . to be whether a child would suffer extreme hardship if he accompanied his parent abroad. If, as in this case, no hardship would ensue, then the fact that the child might face hardship if left in the United States would be the result of parental choice, not the parent's deportation.

*Id.* See also *Matter of Pilch*, 21 I&N Dec. 627, 632-33 (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 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).

Family separation, for instance, has been found to be a common result of inadmissibility or removal in some cases. *See Matter of Shaughnessy*, 12 I&N Dec. at 813. Nevertheless, family ties are to be considered in analyzing hardship. *See Matter of Cervantes-Gonzalez*, 22 I&N Dec. at 565-66. The question of whether family separation is the ordinary result of inadmissibility or removal may depend on the nature of family relationship considered. For example, in *Matter of Shaughnessy*, the Board considered the scenario of parents being separated from their soon-to-be adult son, finding that this separation would not result in extreme hardship to the parents. *Id.* at 811-12; *see also U.S. v. Arrieta*, 224 F.3d 1076, 1082 (9th Cir. 2000) (“Mr. Arrieta was not a spouse, but a son and brother. It was evident from the record that the effect of the deportation order would be separation rather than relocation.”). In *Matter of Cervantes-Gonzalez*, the Board considered the scenario of the respondent’s spouse accompanying him to Mexico, finding that she would not experience extreme hardship from losing “physical proximity to her family” in the United States. 22 I&N Dec. at 566-67.

The decision in *Cervantes-Gonzalez* reflects the norm that spouses reside with one another and establish a life together such that separating from one another is likely to result in substantial hardship. It is common for both spouses to relocate abroad if one of them is not allowed to stay in the United States, which typically results in separation from other family members living in the United States. Other decisions reflect the expectation that minor children will remain with their parents, upon whom they usually depend for financial and emotional support. *See, e.g., Matter of Ige*, 20 I&N Dec. at 886 (“[I]t is generally preferable for children to be brought up by their parents.”). Therefore, the most important single hardship factor may be separation, particularly where spouses and minor children are concerned. *Salcido-Salcido*, 138 F.3d at 1293 (quoting *Contreras-Buenfil v. INS*, 712 F.2d 401, 403 (9th Cir. 1983)); *Cerrillo-Perez*, 809 F.2d at 1422.

Regardless of the type of family relationship involved, the hardship resulting from family separation is determined based on the actual impact of separation on an applicant, and all hardships must be considered in determining whether the combination of hardships takes the case beyond the consequences ordinarily associated with removal or inadmissibility. *Matter of O-J-O-*, 21 I&N Dec. at 383. Nevertheless, though we require an applicant to show that a qualifying relative would experience extreme hardship both in the event of relocation and in the event of separation, in analyzing the latter scenario, we give considerable, if not predominant, weight to the hardship of separation itself, particularly in cases involving the separation of spouses from one another and/or minor children from a parent. *Salcido-Salcido*, 138 F.3d at 1293.

The first prong of the analysis addresses hardship to the applicant's wife if she relocates to Ecuador. In counsel's appeal brief filed August 26, 2008, counsel states all of the applicant's wife's family resides in the United States, "[s]he knows very little of Ecuadorian culture and has a very poor command of the Spanish language," and she is raising her child in the United States. Counsel states the applicant's wife "cannot go back to Ecuador with [the applicant] because there is nothing to go back to." "[t]here is no work for [her], and no nearby hospital to go to in the event [the applicant's wife] or her son...needed immediate medical treatment." In a statement dated December 21, 2007, the applicant's wife states that if she joined the applicant in Ecuador, they could not keep "up with [their] financial obligations here" and they "could never manage to pay for what [they] have here and still afford to live in Ecuador at the same time." In an affidavit dated August 20, 2008, the applicant's wife claims that the town that the applicant resides in is full of "misery and poverty." She also claims that the area "to which [the applicant] [will] [return] is known for having allot [sic] [of] crime and there are many robberies, assaults, and murders," and she does not want to "risk [her] son's safety and well-being." Additionally, she states that she wants to continue her education. The applicant's wife states that if her depression gets worse, she "will not be able to get proper treatment" in Ecuador. The AAO notes the claims made by the applicant's wife regarding the difficulties she would face in relocating to Ecuador.

Counsel claims that the applicant's wife cares for her two sick parents. Counsel states the applicant's wife's mother "has a history of bad stomach and back problems," and she requires treatment from a car accident that she had several years ago. The AAO notes that other than a medical fee document and an appointment notice for the applicant's mother, there is no medical documentation in the record establishing that the applicant's wife's mother is suffering from any medical conditions. Going on record without supporting documentation is not sufficient to meet the applicant's burden of proof in this proceeding. *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)). Counsel states the applicant's wife's father "has a bad hernia" and "has had two operations." The AAO notes that the record establishes that on December 28, 2006, the applicant's wife's father had surgery for a ruptured right hernia in Santiago, Chile. Additionally, in October 2007, the applicant's wife's father was discharged for an outpatient surgery; however, the AAO notes that the discharge instructions do not indicate what kind of surgery he had. The AAO notes the applicant's wife's concerns for her parent's medical conditions.

The AAO acknowledges that the applicant's wife is a native and citizen of the United States and that she may experience some hardship in relocating to Ecuador. The AAO notes that the record fails to contain documentary evidence, e.g., country conditions reports on Ecuador, that establishes that the applicant's wife would be unable to obtain employment upon relocation, or of the town that the applicant resides in, or of the safety issues. Going on record without supporting documentation is not sufficient to meet the applicant's burden of proof in this proceeding. *See Matter of Soffici, supra*. Additionally, the AAO notes that there is no medical documentation for the applicant's wife's claimed depression and the severity of her depression. *Id.* Further, the AAO notes that the record contains no documentary evidence that treatment for the applicant's wife's claimed depression is unavailable in Ecuador or of the quality of medical care in Ecuador. *Id.* The record fails to demonstrate that the applicant's wife has any medical condition, physical or mental, that would affect her ability to relocate.

Based on its review of the record, the AAO finds that the applicant has failed to establish that his wife would suffer extreme hardship if she joined him in Ecuador.

The second prong addresses hardship to the applicant's wife if she remains in the United States. Counsel states the applicant's wife has "had serious health problems." Counsel claims that in November 2006, the applicant's wife collapsed at work and was taken to the emergency room. The applicant's wife states her collapse was due to "overstress and high fever." Counsel claims that the stress and depression that led to the applicant's wife's collapse is "only getting worse now that [the applicant] is gone from her life." In a statement dated December 21, 2007, the applicant's wife states she worries about the applicant. In a letter dated August 15, 2008, [REDACTED] the applicant's wife's supervisor, states he has observed the applicant's wife leave the area to cry, she is "bitter towards others and very disconnected," and he "suspect[s] this behavior is caused by a separation from [the applicant]." However, [REDACTED] states that as for actual job performance, the applicant's wife has done an exceptional job. The applicant's wife states she "began to experience depression after [she] had [her] baby" and she is "at a point that [she] want[s] to commit suicide." Counsel states the applicant's wife "is currently seeking psychiatric treatment." The AAO notes that other than counsel's statement that the applicant's wife is seeking psychiatric treatment, the record contains no documentary evidence that she is seeking any treatment. Without supporting documentation, the assertions of counsel are not sufficient to meet the burden of proof in these proceedings. The assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980). Going on record without supporting documentation is not sufficient to meet the applicant's burden of proof in this proceeding. See *Matter of Soffici*, *supra*. The applicant's wife states her son "is also very attached to [the applicant]."

Counsel states the applicant's wife is suffering severe financial hardship. Counsel states the applicant's wife was attending university and had plans to become a teacher, but she had to drop out of school to work. In a letter dated August 20, 2008, [REDACTED] states the applicant's wife has been unable to attend university "since fall 2007 because of personal issues." The applicant's wife states she works "more than 60 hours a week in order to make enough money to cover all [her] payments, but it is still not enough." Counsel claims that before the applicant departed the United States, he was earning about \$2,500.00 a month, now the applicant's wife is only earning \$1,800.00 a month, her monthly expenses are approximately \$3,479.00 a month, and "[r]ight now she simply cannot make all her monthly payments." The applicant's wife states she had to "get health care from the State of Illinois because [she] [is] too poor to pay for [her] own." The AAO notes that the record establishes that the applicant's wife and son are receiving state sponsored health care. The applicant's wife claims that she sends the applicant money in Ecuador because he only earns about \$100.00 a month. The AAO notes that the 2007 tax return and W-2s reflect that the applicant was earning approximately \$25,000 annually and his spouse was earning under \$17,000 annually. The record reflects that the applicant shares half of the mortgage payment with the applicant's spouse's father. The AAO notes the applicant's wife's financial concerns.

Considering that the applicant's spouse is raising her son on her own, the emotional and financial hardship presented, her inability to pursue her education, and the normal results of separation, the AAO finds that the applicant has established that his wife would suffer extreme hardship if she remains in the United States.

However, in that the record does not also establish that the applicant's wife would suffer extreme hardship if she relocated to Ecuador, the applicant has failed to establish extreme hardship to his wife under section 212(a)(9)(B)(v) of the Act. 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 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.