

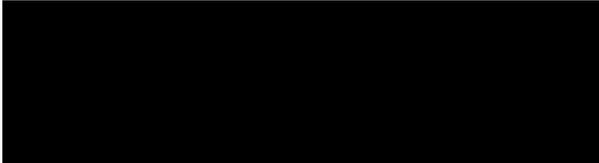
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U.S. Department of Homeland Security  
U.S. Citizenship and Immigration Services  
Office of Administrative Appeals MS 2090  
Washington, DC 20529-2090

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



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FILE: 

Office: TEGUCIGALPA

Date:

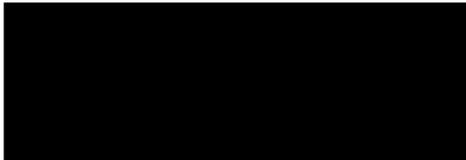
**NOV 03 2010**

IN RE:

Applicant: 

APPLICATION: 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.

Thank you,

Perry Rhew  
Chief, Administrative Appeals Office

**DISCUSSION:** The waiver application was denied by the Field Office Director, Tegucigalpa, Honduras, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained.

The applicant is a native and citizen of Honduras who was found to be inadmissible to the United States under 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 a period of one year or more. The applicant is married to a U.S. Citizen and is the beneficiary of an approved petition for alien relative. 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), in order to return to the United States and reside with her husband.

The field office director concluded that the applicant failed to establish that extreme hardship would be imposed on a qualifying relative and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) accordingly. *Decision of the Filed Office Director*, dated April 28, 2008.

On appeal, counsel for the applicant asserts that U.S. Citizenship and Immigration Services (USCIS) erred in determining that the applicant's husband would not suffer extreme hardship if he relocated to Honduras with the applicant. *Brief in Support of Appeal* at 1. Counsel further asserts that the U.S. government has extended the grant of Temporary Protected Status (TPS) to Honduran nationals due to conditions there, and this further supports the claim that the applicant's husband would suffer extreme hardship if he relocated there. *Brief* at 2. Counsel additionally states that the applicant's husband would experience emotional and financial hardship if he relocated to Honduras because he has adapted to life in the United States and would be unable to find employment and support himself and the applicant in Honduras. *Brief* at 3. Counsel claims that the applicant's husband is experiencing financial hardship due to having to support two households and emotional and psychological hardship due to separation from the applicant and fear for her safety in Honduras. *Brief* at 3-4. In support of the appeal counsel submitted an affidavit from the applicant's husband, letters from friends and relatives, letters from the applicant's husband's employer and the pastor of his church, a psychological evaluation of the applicant's husband, and information on conditions in Honduras. The entire record was reviewed and 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.

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 his children can be considered only insofar as it results in hardship to a qualifying relative. 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).

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 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).

Although 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 the 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 record reflects that the applicant is a thirty year-old native and citizen of Honduras who resided in the United States from April 2002, when she entered without inspection, to October 2007, when she returned to Honduras. She is therefore inadmissible under section 212(a)(9)(B)(i)(II) of the Act for having been unlawfully present in the United States for more than one year. The record further reflects that the applicant’s husband is a thirty-one year-old native of Honduras and citizen of the United States. The applicant currently resides in Honduras and her husband resides in [REDACTED]

The applicant’s husband states that he is under a lot of stress and feels the weight of the whole world on his shoulders since the applicant departed the United States, and he worried about her safety and feels stress because he must support himself and the applicant in Honduras. *Affidavit of [REDACTED]* dated June 24, 2008. In support of these assertions counsel submitted a psychological evaluation for the applicant’s husband that states that the applicant’s husband reports feeling anxiety, having problems sleeping, and feeling easily distracted since the applicant was denied admission to the United States. *Psychological Evaluation of [REDACTED]*

██████████ dated June 20, 2008. ██████████ further states that the applicant's husband reports that he abused drugs until 2002 and family members experienced depression and his mother suffered a nervous breakdown after the death of his sister in 2000 at the age of three. *Psychological Evaluation of ██████████*. The evaluation further states that the applicant's husband appears inclined to an "inflexible life adjustment that may lead to psychological symptoms when stress is present," and he is experiencing an adjustment disorder with anxious mood. ██████████ concludes that his adjustment is "significantly impacted by the separation from his wife" and he is experiencing physical symptoms as a result, and his anxiety symptoms will likely worsen and his feelings of hopelessness and depression will increase if their separation continues.

Letters from friends and relatives state that the applicant's husband is experiencing emotional and financial difficulties due to separation from the applicant and having to maintain two households and his brother states that he is having difficulty paying his bills and sending enough money to the applicant in Honduras. He further states,

██████████ has to deal with the fact that there's a very high crime rate. It's very dangerous over there and living conditions are very poor. ██████████ nephews got robbed recently and there was a murder that occurred when my brother went to visit her. There are sexual predators all around and without a male companion, ██████████ is in the middle of great danger. ██████████ worries about this all the time. . . . He's helpless to do anything and the stress is wearing him down so much that he just stays in his room and doesn't talk to anyone for a while. These are his most desperate moments. *Letter from ██████████ dated June 19, 2008.*

Counsel submitted information on conditions in Honduras, including an extension of the designation of Temporary Protected Status (TPS) and information issued by the U.S. Department of State. The documentation states that crime is endemic in Honduras and "requires a high degree of caution by U.S. visitors and residents alike." *U.S. Department of State, Honduras – Country Specific Information*. The report further states,

Poverty, gangs, and low apprehension and conviction rates of criminals contribute to a critical crime rate, including horrific acts of mass murder. . . . Honduras has one of the world's highest per capita murder rates.

Documentation on the record indicates that the applicant's husband is experiencing anxiety and emotional difficulties as a result of separation from the applicant and concern for her safety in Honduras. A psychological evaluation further indicates that the applicant's husband abused drugs until 2002 and later became active in his church and established a youth ministry with the applicant, which he continues in her absence. Letter from friends and family members state that he greatly misses the applicant and has appeared depressed and anxious since her departure, and he is very worried about her safety in Honduras due to the high rate of violent crime and poor conditions there. The record indicates that the applicant and her husband were very active together at their church and further indicates that her husband has experienced difficulties in the past, including the death of his sister in 2000 and a drug addiction. A psychological evaluation states that he is suffering from an adjustment disorder and anxiety due to separation from the

applicant and his condition is likely to worsen if the applicant is not permitted to return to the United States. As noted above, separation from close family members is a primary concern in assessing extreme hardship. *Salcido-Salcido v. INS*, 138 F.3d 1292, 1293 (9<sup>th</sup> Cir. 1998). Further documentation indicates that there is a high rate of violent crime in Honduras and the applicant's husband is very worried about the applicant's safety there, which contributes to his anxiety. Letters from several friends and neighbors describe the problems that applicant's spouse is experiencing since the applicant departed the United States, including anxiety and stress and financial difficulties because he must support two households. When considered in the aggregate, the emotional and financial hardships to the applicant's husband caused by separation from the applicant and concern over her safety in Honduras rise to the level of extreme hardship to the applicant's husband.

The AAO further finds that relocating to Honduras would pose other hardships for the applicant's husband, a native of Honduras who has been a U.S. Citizen since 1999 and whose immediate family members reside in the United States. Letters from the applicant's husband and other individuals in support of the waiver application, including church members who have traveled to Honduras on church missions in recent years, address the poor economic conditions in Honduras. The AAO further notes that the TPS designation for Honduras was extended by the Secretary of Homeland Security until July 5, 2010. The extension of the TPS designation states, in pertinent part:

Department of Homeland Security (DHS) will extend Temporary Protected Status (TPS) for nationals of Honduras from the current expiration of Jul. 5, 2010, to the new expiration date of Jan. 5, 2012. During the past year, DHS and the Department of State have reviewed the conditions in Honduras. Based on this review, Secretary of Homeland Security Janet Napolitano has determined that an 18-month extension is warranted because the conditions that prompted the TPS designation in 1999 following the environmental disaster caused by Hurricane Mitch persist and prevent Honduras from adequately handling the return of its nationals.

An estimated 80,000 to over 200,000 dwellings were destroyed or severely damaged due to Hurricane Mitch. By 2005, nongovernmental organizations had repaired or built over 15,000 housing units. However, much of the housing still lacked water and electricity. In May 2006, the Honduran government said that more than 600,000 people live in areas designated as "high risk" for flooding. The erosion of agricultural land caused by Mitch has not been reversed. The increased sedimentation caused by Hurricane Mitch to many rivers and streams has also not been reversed, causing them to rise above their banks and flood surrounding areas even with minimal levels of rain. This has caused a decrease in land available for food production and the increased likelihood of flooding, landslides, and forest fires. All health centers were fully operational and almost all schools had reopened by the end of 1999. However, in those cases where people had to be relocated, infrastructure and personnel for health and education services, as well as employment opportunities, were reported to be unavailable.

Despite improvements in the road network, the infrastructure remains basic and vulnerable to further damage from adverse climatic conditions. In fact, in October 2008, half the country's roads were damaged or destroyed in flooding caused by heavy continuous rains brought by Tropical Depression Sixteen. In addition, other natural disasters have occurred since Hurricane Mitch, including flooding in October 2008 and an earthquake in May 2009, which have further delayed the recovery from Hurricane Mitch. These disasters themselves have also caused extensive additional disruption in the affected regions and much of the damaged infrastructure has still not been repaired or replaced.

Honduras is also currently unable to handle adequately the return of tens of thousands of its nationals who now have TPS but no other immigration status in the United States. Their return would greatly aggravate Honduras' deteriorating economy by increasing unemployment. Honduras had a per capita gross domestic product of U.S. \$1,845 in 2008; an estimated 59 percent of Honduran households live in poverty; and 36 percent of the labor force was unemployed or underemployed in 2008. The 2009 political crisis exacerbated the effects of the global economic downturn in Honduras by significantly reducing economic activity, particularly in the industrial and tourist sectors, and increasing unemployment. Honduras therefore remains ill-equipped to handle adequately the return of Hondurans in the United States who are TPS beneficiaries. *Extension of the Designation of Honduras for Temporary Protected Status*, 75 Fed. Reg. 24734, 24735 (May 5, 2010).

When considered in the aggregate and in light of current conditions in Honduras, the factors of hardship to the applicant's husband should he relocate to Honduras, including separation from his family members and loss of his employment in the United States and having to adjust to poor conditions in Honduras, constitute extreme hardship.

Based on the forgoing, the AAO finds that the applicant's husband would face extreme hardship if the applicant's waiver application is denied. Thus, the applicant has shown that a qualifying relative would suffer extreme hardship if she is denied admission to the United States. The AAO additionally finds that the applicant merits a waiver of inadmissibility as a matter of discretion. In *Matter of Mendez-Morales*, 21 I&N Dec. 296 (BIA 1996), the BIA held that establishing extreme hardship and eligibility for relief does not create an entitlement to that relief, and that extreme hardship, once established, is but one favorable discretionary factor to be considered. In discretionary matters, the alien bears the burden of proving eligibility in terms of equities in the United States which are not outweighed by adverse factors. *See Matter of T-S-Y-*, 7 I&N Dec. 582 (BIA 1957). The Attorney General (now Secretary of the Department of Homeland Security) has the authority to consider all negative factors in deciding whether or not to grant a favorable exercise of discretion. *See Matter of Cervantes-Gonzalez, supra*, at 12.

In evaluating whether relief is warranted in the exercise of discretion, the factors adverse to the alien include the nature and underlying circumstances of the exclusion ground at issue, the presence of additional significant violations of this country's immigration laws, the existence of a criminal record, and if so, its nature and seriousness, and the presence of other evidence

indicative of the alien's bad character or undesirability as a permanent resident of this country. The favorable considerations include family ties in the United States, residence of long duration in this country (particularly where alien began residency at a young age), evidence of hardship to the alien and his family if he is excluded and deported, service in this country's Armed Forces, a history of stable employment, the existence of property or business ties, evidence of value or service in the community, evidence of genuine rehabilitation if a criminal record exists, and other evidence attesting to the alien's good character (e.g., affidavits from family, friends and responsible community representatives). *Matter of Mendez-Morales*, 21 I&N Dec. 296, 301 (BIA 1996). The AAO must then "balance the adverse factors evidencing an alien's undesirability as a permanent resident with the social and humane considerations presented on the alien's behalf to determine whether the grant of relief in the exercise of discretion appears to be in the best interests of the country." *Id.* at 300. (Citations omitted).

The negative factor in this case is the fact that the applicant entered the United States without inspection and unlawfully remained in the United States for more than one year. The positive factors in this case include the applicant's family and community ties in the United States, her good moral character as attested to in letters of recommendation from members of her church, extreme hardship to the applicant's husband if she is denied admission to the United States, and her lack of a criminal record.

The AAO finds that applicant's violation of the immigration laws cannot be condoned. Nevertheless, the AAO finds that taken together, the favorable factors in the present case outweigh the adverse factor, such that a favorable exercise of discretion is warranted. Accordingly, the appeal will be sustained.

**ORDER:** The appeal is sustained.