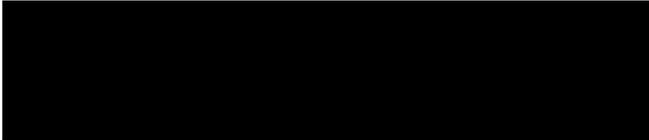


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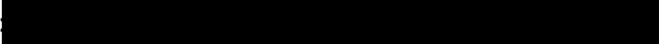


U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090
**U.S. Citizenship
and Immigration
Services**



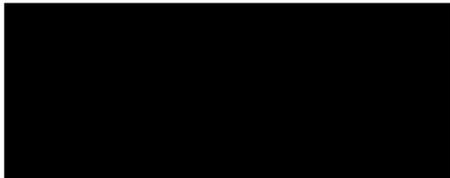
H6

DATE: **AUG 31 2011** Office: GUATEMALA CITY, GUATEMALA FILE: 

IN RE: Applicant 

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

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,

A handwritten signature in black ink, appearing to read "Perry Rhew".

Perry Rhew
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 sustained.

The applicant is a native and citizen of Guatemala 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 applicant's spouse and child are U.S. citizens. He seeks a waiver of inadmissibility in order to reside in the United States.

The field office director found that the applicant had failed to establish extreme hardship to a qualifying relative and the application was denied accordingly. *Decision of the Field Office Director*, dated May 22, 2009.

On appeal, counsel asserts that the field office director made factual errors and misapplied the law to the facts. *Brief in Support of Appeal*, dated July 10, 2009.

The record includes, but is not limited to, counsel's brief, the applicant's spouse's statements, photographs, statements from friends and relatives, a doctor's letter, information on schizoaffective disorder and country conditions information. The entire record was reviewed and considered in rendering a decision on the appeal.

The record reflects that the applicant entered the United States without inspection in September 2000, he was granted voluntary departure on May 19, 2003 and he departed the United States on September 11, 2003. The applicant accrued unlawful presence from September 2000, the date he entered the United States without inspection, until May 19, 2003, the date he was granted voluntary departure. The applicant is inadmissible to the United States under 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 and seeking readmission within ten years of his September 11, 2003 departure from the United States.

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.

.....

(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 Attorney General [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.

A section 212(a)(9)(B)(v) waiver of the bar to admission resulting from section 212(a)(9)(B)(i)(II) of the Act is dependent first upon a showing that the bar imposes an extreme hardship to the U.S. citizen or lawfully resident spouse or parent of the applicant. Hardship to the applicant or his child is not considered in section 212(a)(9)(B)(v) waiver proceedings unless it causes hardship to a qualifying relative, in this case the applicant's spouse. Once extreme hardship is established, it is but one favorable factor to be considered in the determination of whether the Secretary should exercise discretion. *See Matter of Mendez*, 21 I&N Dec. 296 (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 record reflects that the applicant’s spouse is a native of El Salvador. Counsel states that the applicant’s spouse would have to leave the life she loves in the United States, her sick mother and her entire family; she would have to pull her son out of school and away from his friends and teachers; her son will have even more instability due to being in a new society; medical conditions in Guatemala are inadequate and it has extreme poverty; and the applicant’s spouse and her mother will have to forgo the medical treatment they receive in California. *Brief in Support of Appeal*. The record reflects that the applicant’s spouse’s mother has been receiving mental health treatment at a clinic since June 26, 2003; she has been diagnosed with schizoaffective disorder; she is stable at this time; and she needs family to provide emotional and physical support to maintain her stability. *Letter from Dr. [REDACTED]* dated July 15, 2008. The record does not reflect that one of the applicant’s spouse’s siblings could not take care of their mother if she remained in the United States, although the AAO notes the hardship to the applicant’s spouse if she were separated from her mentally ill mother.

The applicant’s spouse states that she suffered through the Salvadoran war, poverty and crime; she does not want to relive her early years by returning to Guatemala; and she will not be protecting her son’s welfare and safety by returning to Guatemala and possibly becoming the target of violent crime, poverty and dysfunctional laws. *Applicant’s Spouse’s First Statement*, dated October 7, 2008. The applicant’s spouse states that visiting Guatemala resulted in culture shock due to the poverty, violence, unhealthy food and insect bites. *Applicant’s Spouse’s Second Statement*, dated June 26,

2009. Other claims made by the applicant's spouse include her son's loss of healthcare in the United States and her loss of employment. *Relocation Impact Statement*, undated. The record includes general country conditions reports on Guatemala. The record reflects that Guatemala has one of the highest violent crime rates in Latin America; the number of violent crimes reported by U.S. citizens and other foreigners remains high; and the full range of medical facilities is available in Guatemala City, but medical care outside of the city is limited. *U.S. Department of State, Guatemala Country Specific Information*, dated March 19, 2009.

Counsel states that the applicant's spouse is raising her and the applicant's child by herself; she is supporting the applicant in Guatemala as he cannot find work; she is caring for her mentally ill mother, who has bipolar disorder; the applicant's spouse's mother needs her care and assistance; the applicant's spouse can barely afford her own rent without the applicant's income, and can no longer pay her mother's rent; and she grew up without a father and her son is also growing up without a father. *Brief in Support of Appeal*.

A coworker of the applicant's spouse states that the applicant's spouse talks of the dangers in Guatemala and worries for the safety of the applicant. *Coworker's Statement*, undated. The applicant's spouse states that she is raising her son alone; she is constantly asked about when the applicant is returning; her separation from the applicant is comparable to a divorce; she is experiencing loneliness and hopelessness; her son sees his friends with their fathers and has been told he does not have a dad; her son cannot prove that his dad is real; there are nights where all she does is cry; her son sees her go through her emotional roller coaster; the applicant is not here to help her with car issues and she has missed work due to lack of transportation; and she is angry and resentful. *Applicant's Spouse's Second Statement*. The applicant's spouse states that she goes to work feeling extremely sick as she cannot afford to call in sick; her marriage will suffer due to separation; she worries that she will not have enough money to pay the monthly bills and for rent, utilities, car and health insurance, gas and food; and she is the sole supporter of the family. *Applicant's Spouse's First Statement*. The applicant's spouse states that she has loans to pay; airfare to Guatemala is overpriced; she is prevented from saving for her son's education; she will be losing her job in four days due to a layoff of teachers in Arizona; she has to move back to California; she has to live with her mother; and her son will have to deal with her bipolar mother. *Applicant's Spouse's Second Statement*. The record includes numerous statements from family and friends of the applicant's spouse detailing the difficulties that she and her son are experiencing. The record includes evidence of various expenses for the applicant's spouse. The record does not include supporting documentary evidence that the applicant's spouse has lost her job. The record is not clear as to the income of the applicant when he was in the United States. The record is not clear as to whether the applicant's spouse is financially supporting the applicant in Guatemala. As such, the record is not clear as to the degree of financial hardship that the applicant's spouse is experiencing.

The AAO notes that the applicant's spouse is not a citizen of Guatemala and has no ties there. Her family and friends are in the United States, as is her mentally ill mother. The record reflects that she would have difficulty in raising her child in Guatemala and that there are issues related to country conditions, which include safety concerns. Furthermore, the record includes evidence of the applicant's spouse's emotional issues related to separation from the applicant, difficulties in raising

her son without the applicant and difficulties in caring for her mother if she remains in the United States. Considering all of these factors, the AAO finds that the applicant's spouse would suffer extreme hardship.

The AAO additionally finds that the applicant merits a waiver of inadmissibility as a matter of discretion. 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).

In evaluating whether section 212(h)(1)(B) 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).

See Matter of Mendez-Moralez, 21 I&N Dec. 296, 301 (BIA 1996). The AAO must then, "[B]alance 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 adverse factors in the present case are the applicant's entry without inspection, unlawful presence, unauthorized employment and July 24, 2002 conviction for DUI.

The favorable factors include the presence of the applicant's U.S. citizen spouse and child, extreme hardship to his spouse, letters related to his good character and the lack of a criminal conviction since July 24, 2002. The record reflects that the applicant's criminal proceedings were terminated on June 18, 2009.

The AAO finds that the violations committed by the applicant cannot be condoned. Nevertheless, the AAO finds that taken together, the favorable factors in the present case outweigh the adverse factors, such that a favorable exercise of discretion is warranted. Accordingly, the appeal will be sustained.

ORDER: The appeal is sustained. The application is approved.