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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**



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Date: Office: KENDALL, FLORIDA FILE: 
DEC 02 2011
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.

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.

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Field Office Director, Kendall, Florida, 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 Honduras 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 her last departure from the United States. The applicant is married to a United States citizen and 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 her spouse.

The Field Office Director found that the applicant had failed to establish that extreme hardship would be imposed on the applicant's qualifying relative and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) accordingly. *Decision of the Field Office Director*, dated May 22, 2009.

On appeal, the applicant's husband claims that he "would suffer extreme hardship if [the applicant] were to depart from the United States." *Form I-290B*, filed June 19, 2009. He also states that he could not join the applicant in Honduras, because he has "a four year old child of whom [he] share[s] joint custody." *Id.*

The record includes, but is not limited to, the applicant's husband statement on appeal, a statement from the applicant's husband, insurance documents, a lease agreement, tax documents, bank statements, and divorce documents from the applicant's first marriage. 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.

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(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 this case, the record reflects that the applicant entered the United States on August 18, 1990 on a B-2 nonimmigrant visa with authorization to remain in the United States until February 17, 1991. On an unknown date, the applicant applied for Temporary Protected Status (TPS). As noted by the Field Office Director, the earliest date the applicant could have been granted TPS status as a Honduran national was January 5, 1999. *See* 64 Fed. Reg. 524-28 (Jan. 5, 1999). On December 4, 2003, the applicant was granted Advance Parole. On an unknown date after December 4, 2003, the applicant departed the United States. On January 3, 2004, the applicant was paroled into the United States.

The applicant accrued more than one year of unlawful presence from April 1, 1997, the effective date of the unlawful presence provisions under the Act, until January 5, 1999, the earliest date the applicant could have been granted TPS status. The applicant's departure from the United States following this period of unlawful presence triggered the applicant's inadmissibility under section 212(a)(9)(B)(i)(II) of the Act. The applicant is seeking admission into the United States within ten years of her December 2003 departure. The applicant is, therefore, 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 admission within 10 years of her departure.

On appeal, the applicant's husband states the applicant departed "the United States for emergency reasons" and she had "special permission" to depart. He claims that the applicant "is now being penalized although she received a special permit to travel." The AAO notes that the Authorization for Parole of an Alien into the United States (Form I-512L) clearly states that "[i]f after April 1, 1997, you were unlawfully present in the United States for more than 180 days before applying for adjustment of status, you may be found inadmissible under section 212(c)(9)(B)(i) of the Act when you return to the United States to resume the processing of your application." By using the parole document, the applicant was put on notice that if she departed the United States after 180 days of unlawful presence in the United States, she may be found inadmissible. The AAO notes that it was the applicant's responsibility to ensure she understood the consequences of her departure.

While the AAO notes the concerns expressed by the applicant's husband, they do not alter the facts in the present case, which are that the applicant departed the United States on advance parole after accruing more than one year of unlawful presence, thereby triggering the bar to admission in section 212(a)(9)(B)(i)(II) of the Act. To qualify for a waiver, she, like any other waiver applicant, must satisfy the extreme hardship requirement set forth in section 212(a)(9)(B)(v).

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 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 United States Citizenship and Immigration Service (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 of Immigration Appeals (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 “irrelevant 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, the applicant's husband states he was born in the United States, he speaks English, all of his family is in the United States, he has joint custody of his four year old child, and he could not "adapt to another country." He states he could not join the applicant in Honduras because his "child needs [him] here in the United States." The AAO notes that no documentary evidence has been submitted establishing that the applicant's husband has any children. 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)). The applicant's husband claims that his mother "relies heavily on [him] for emotional support," and she needs him in the United States. However, no evidence has been submitted to establish either that the applicant's husband's mother needs support or that the applicant's husband provides support to his mother. Additionally, the applicant's husband states that he and the applicant are studying theology, and "[t]his course of study would be impossible to pursue in Honduras." However, there is no supporting documentation in the record that establishes that the applicant or her husband is studying theology.

The AAO acknowledges that the applicant's husband is a citizen of the United States and that he may experience some hardship in joining the applicant in Honduras. However, the AAO notes that the applicant's husband's mother is a native of Cuba, his father was a native of Puerto Rico, and it has not been established that he does not speak Spanish, which would help him adapt to the culture of Honduras. Additionally, the AAO notes that the record does not contain documentary evidence, e.g., country conditions reports on Honduras, that demonstrate that the applicant's husband would be unable to obtain employment upon relocation that would allow him to use the skills he has acquired in the United States. Further, the AAO notes that no documentary evidence has been submitted establishing that the applicant and her husband could not study theology in Honduras. The AAO acknowledges that the applicant's husband's family may suffer some hardship in being separated from the applicant's husband; however, the applicant's husband's family are not qualifying relatives, and the applicant has not shown that hardship to her husband's family will elevate her husband's challenges to an extreme level. Therefore, based on the record before it, the AAO finds that, even considering the potential hardships in the aggregate, the applicant has failed to establish that her husband would suffer extreme hardship if he relocated to Honduras.

In addition, the record also fails to establish extreme hardship to the applicant's husband if he remains in the United States. The applicant's husband states he needs the applicant in the United States. In an undated statement, the applicant's husband states he "would be very heart broken if [the applicant] does not receive her residency." Additionally, he states that he relies "on [the applicant] for financial support." The applicant's husband states their expenses are "about \$3600 a month," and he earns \$500.00 a week, while the applicant earns about \$400.00 a week. He claims that he "cannot pay all of the expenses by

[himself].” Additionally, he claims that he started his own business and he relies “more than ever on [the applicant] for her assistance in keeping the house and [their] lives financially stable.” The AAO notes that no documentary evidence has been submitted establishing that the applicant’s husband started his own business. However, the AAO notes the applicant’s husband’s financial and emotional concerns.

The AAO acknowledges that the applicant’s husband may suffer some emotional problems in being separated from the applicant. While it is understood that the separation of relatives often results in significant psychological challenges, the applicant has not distinguished her husband’s emotional hardships upon separation from that which is typically faced by the relatives of those deemed inadmissible. Additionally, the AAO finds the record to include some documentation of the applicant and her husband’s income and expenses; however, this material offers insufficient proof that the applicant’s husband will be unable to support himself in the applicant’s absence. Further, the applicant has not distinguished her husband’s financial challenges from those commonly experienced when a family member remains in the United States alone. Based on the record before it, the AAO finds that the applicant has failed to establish that her husband would suffer extreme hardship if her waiver application is denied and he remains in the United States.

A review of the documentation in the record fails to establish the existence of extreme hardship to the applicant’s husband caused by the applicant’s inadmissibility to the United States. Having found the applicant statutorily ineligible for relief, the AAO finds no purpose would be served in discussing whether she 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.