

identifying data deleted to  
prevent clearly unwarranted  
invasion of personal privacy  
**PUBLIC COPY**



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



tl6

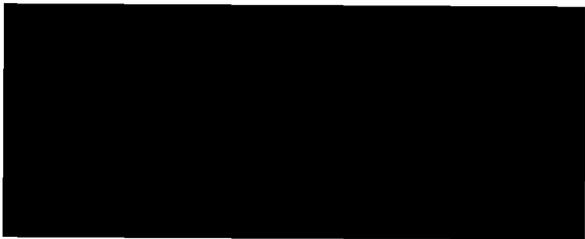
DATE: OFFICE: TEGUCIGALPA, HONDURAS File:

DEC 08 2011

IN RE: Applicant:

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

ON BEHALF OF APPLICANT:



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, Tegucigalpa, Honduras and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

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 10 years of her last departure from the United States. The applicant seeks a waiver of inadmissibility in order to reside in the United States with her U.S. citizen spouse and children.

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 Field Office Director*, dated July 14, 2009.

On appeal, the applicant's spouse asserts extreme hardship of an emotional and economic nature. See *Hardship Letter 2*, dated August 6, 2009.

The record contains but is not limited to: Form I-290B; two hardship letters from the applicant's spouse; psychiatrist's letter; employer's letter; Form I-601 and denial letter; and Form I-130. The entire record was reviewed and considered in rendering a decision on the appeal.

Section 212(a)(9) of the Act provides:

(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 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 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. No court shall have

jurisdiction to review a decision or action by the Attorney General regarding a waiver under this clause.

The record reflects that the applicant entered the United States without inspection in or about February 2004 and remained until May 16, 2008, when she voluntarily departed to Honduras. The applicant accrued unlawful presence for the entire time she was in the United States. As the applicant was unlawfully present in the United States for more than one year and seeks readmission within 10 years of her May 16, 2008 departure she is inadmissible under section 212(a)(9)(B)(i)(II) of the Act, 8 USC § 1182(a)(9)(B)(i)(II). The applicant does not contest this finding on appeal.

A waiver of inadmissibility under section 212(9)(B)(v) of the Act is dependent on a showing that the bar to admission would impose 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 child can be considered only insofar as it results in hardship to the 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.

In this case, the record reflects that the applicant’s spouse is a 51-year-old native of Guatemala and citizen of the United States. He states that he and the applicant met in 2005, married, and have two young children together. See *Hardship Letter 1*, undated. The applicant’s spouse also has three adult sons from a previous marriage. *Id.* The applicant’s spouse states that he and his wife “share a very unique relationship that cannot be expressed over the phone or through letters and short visitations.” See *Hardship Letter 2*, dated August 6, 2009. He states that since the applicant and their two children left for Honduras, he calls two to three times a day, it is very painful being unable to see them, and he cries when his children speak to him. *Id.* The applicant’s spouse states that he tries to travel to Honduras to see his family “at least every 2 months,” and that without his wife he is empty. *Id.* He states that he fears his family is in danger in Honduras due to political problems there which may one day result in a civil war. *Id.* The applicant’s spouse states that he wakes from sleep most days at 2:00 or 3:00 a.m. thinking about whether his wife and children are safe or just missing them. *Id.*

In support of the assertion of emotional hardship related to separation, a letter was submitted from [REDACTED] in which [REDACTED] identifies herself as a Psychiatrist. See

██████████  
*Psychiatrist's Letter*, dated July 30, 2009. Therein ██████████ asserts that on July 30, 2009, she examined the applicant's spouse who "sought help for extreme depression and sadness caused by the separation" from his wife and two small children. *Id.* ██████████ asserts that the applicant's spouse "worries a great deal about his family's safety as he says they are living close to a danger zone where there is a lot of fighting and they may be in physical danger." The record contains no country conditions evidence for Honduras and no evidence has been submitted showing that the applicant and her children are living in a particularly dangerous area of the country. 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)).

██████████ asserts that since the applicant has not been permitted to return to the US, her spouse "has become more and more depressed, sad and frustrated," misses his family terribly, and yearns for their return." See *Psychiatrist's Letter*, dated July 30, 2009. ██████████ asserts that the applicant's spouse "is taking antidepressant medication but it cannot erase his fear and worries about his family's safety, his terror that something awful could happen to them in Honduras. His preoccupations interfere with sleep, with his zest for work, with his ability to socialize. He is withdrawn frightened, tearful, or irritable, he feels helpless and desperate to bring his loved ones back to the US where they belong, back in their own home." *Id.* The record contains no documentary evidence that the applicant's spouse has been prescribed or has taken antidepressants. The AAO has considered ██████████ letter, but the record does not establish that the applicant's spouse's emotional difficulties go beyond the normal hardships associated with the removability or inadmissibility of a family member. Given that ██████████ letter is based on self-reporting by the applicant's spouse and that no diagnosis or treatment options have been presented, there is insufficient evidence to establish that the applicant's spouse would suffer significant psychological hardship related to separation.

With regard to the economic impact of separation, the applicant's spouse states that it has been "very hard financially." See *Hardship Letter 2*, dated August 6, 2009. The applicant's spouse states that in addition to sending money for his wife's "rent and bills," he sends \$300 per week for "basic necessities." *Id.* The applicant's spouse does not indicate the full amount he sends weekly to Honduras, and the record contains no documentary evidence of his expenses. The applicant's spouse states that his financial situation "is hard to control," that he must work extra hours each week so he will have extra money to send his wife and children in Honduras, and that he lives in an empty house but still pays the same bills as when his family lives with him. *Id.* The applicant's spouse states: "I cannot have my children over here without their mother. I cannot have someone else taking care of my children while my wife is in another country and I am at work." It is unclear whether the applicant's spouse is asserting an economic difficulty in this regard and the record contains no financial records. Though the record contains no tax returns or earnings statements, ██████████ asserts that the applicant's husband's "gross earnings last year were in excess of \$125,000, so he is well able to support his wife and children. He also owns his own home." See *Psychiatrist's Letter*, dated July 30, 2009. Given these assertions and the absence of documentary evidence to the contrary, there is insufficient evidence to establish that the applicant's spouse would suffer significant economic hardship related to separation. The AAO

recognizes that an *Employer's Letter*, dated August 5, 2009 from [REDACTED] [REDACTED] asserts that the applicant's spouse has been taking more time off than normally allowed, his performance is "noticeably suffering due to his attentions being elsewhere," and he "can no longer accept this type of performance." [REDACTED] adds: "I am in hopes his family issues can be resolve in the near future to avoid any disciplinary actions." *Id.* The nature of such actions is not defined and the AAO cannot speculate with regard to the current employment status of the applicant's spouse.

The AAO acknowledges that separation from the applicant may cause various difficulties for the applicant's spouse. However, it finds the evidence in the record insufficient to demonstrate that the challenges encountered by the qualifying relative, when considered cumulatively, meet the extreme hardship standard.

The applicant's spouse does not address the possibility of relocating to Honduras to be with his wife and children. As no relocation-related hardship assertions have been made, the AAO will not speculate in this regard. While the applicant's spouse may experience difficulties as a result of relocation to Honduras, the applicant has failed to establish that such difficulties would be uncommon or extreme.

The applicant has, therefore, failed to demonstrate the challenges her spouse faces are unusual or beyond the common results of removal or inadmissibility to the level of extreme hardship. Accordingly, the AAO finds that the applicant has failed to demonstrate extreme hardship to a qualifying relative.

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. Section 291 of the Act, 8 U.S.C. § 1361. Here, the applicant has not met that burden. As the applicant has not established extreme hardship to a qualifying family member no purpose would be served in determining whether the applicant merits a waiver as a matter of discretion. Accordingly, the appeal will be dismissed.

**ORDER:** The appeal is dismissed.