

identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

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



U.S. Citizenship
and Immigration
Services

PUBLIC COPY



HG

FILE: [REDACTED] Office: PHILADELPHIA, PA Date: JAN 05 2011
IN RE: Applicant: [REDACTED]
APPLICATION: Application for Waiver of Ground 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, Philadelphia, Pennsylvania, 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 El Salvador 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 is married to a United States citizen (USC) and is the beneficiary of an approved Petition for Alien Relative (Form I-130) filed on his behalf by his USC spouse. 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 USC wife.

The Field Office Director concluded that the applicant failed to establish extreme hardship to a qualifying relative, and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) accordingly. *Decision of the Field Office Director*, dated June 27, 2008.

On appeal, counsel asserts that the applicant has submitted sufficient evidence to establish that his spouse will suffer extreme hardship if the waiver request is denied and he is removed from the United States. *See Form I-290B*, filed on July 25, 2008 and the accompanying brief in support of the appeal.

The record includes, but is not limited to, counsel's brief in support of the appeal, dated August 21, 2008, a joint statement by the applicant and his spouse, dated August 8, 2007, a copy of an incomplete and unsigned "Contract of Sale" and Lease Agreement, dated April 30, 2007, between the applicant and his spouse and [REDACTED], a copy of a bank statement from Sovereign Bank, a copy of a mortgage statement from Wachovia Bank, a copy of a Retail Installment Contract dated July 31, 2007, for a 2007 [REDACTED], photographs showing the applicant, his spouse and one unidentified individual, a copy of a U.S. Department of State Country Report on Human Rights Practices on El Salvador for 2007 and a copy of Country Specific Information on El Salvador, and copies of two money transfer receipts from MoneyGram, dated July 24 and August 10, 2007. The entire record was reviewed and considered in rendering this decision on appeal.

Section 212(a)(9) 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 [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 applicant stated that in 1999, he entered the United States without being inspected, admitted or paroled. On January 30, 2002, he submitted a Form I-821, Application for Temporary Protected Status (TPS). The application was approved on June 1, 2004. On December 21, 2004, he traveled to El Salvador pursuant to Advance Parole and re-entered the United States on January 20, 2005. On January 30, 2007, his USC spouse filed a Form I-130 on his behalf, which was approved on July 20, 2007. On January 30, 2007, the applicant filed an Application to Register Permanent Resident Status (Form I-485). At his adjustment of status interview, the interviewing officer found the applicant inadmissible to the United States pursuant to 212(a)(9)(B)(i)(II) of the Act. On July 23, 2007, the applicant filed a Form I-601. On June 27, 2008, the Field Office Director denied the Form I-601 and the Form I-485, finding that the applicant had failed to establish extreme hardship to a qualifying relative.

The record reflects that the applicant accumulated unlawful presence in the United States from 1999 through January 30, 2002, when he first submitted an application for TPS. His departure from the United States in December 2004, triggered the bar to admission under section 212(a)(9)(B) of the Act. The fact that the applicant re-entered the United States pursuant to advance parole in January 2005, did not cure his prior unlawful presence from 1999 through January 2002. The applicant is seeking readmission into the United States within 10 years of January 2005. Thus, the AAO agrees with the Field Office Director that the applicant is inadmissible to the United States under section 212(a)(9)(B)(i)(II) of the Act.

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 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-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).

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.

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. [redacted] 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 [redacted]*, 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 [redacted] 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. [REDACTED]

In this case, the record reflects that the applicant's wife, [REDACTED], is a 29-year-old citizen of the United States. The applicant and his wife were married in Mechanicsburg, Pennsylvania, on August 19, 2006, and they have no children. The applicant's wife asserts that she will suffer extreme hardship if the applicant's waiver request is denied and the applicant is removed from the United States.

Regarding the emotional and financial hardship of separation, the applicant's wife asserts that she and the applicant have "made their lives together in the United States," that they have known each other since 2003 and have been married since 2006, and that they have acquired assets together like a house, a car, and a pizza business. *See Statement by [REDACTED] dated August 8, 2007.* The applicant's wife asserts that "it is necessary for [the applicant] to be at the pizza place at all times in order for the business to be successful." *Id.* The applicant's wife asserts that their income is derived solely from the pizza business because she quit her job and that if the applicant is removed from the United States, "I would not be able to run the restaurant without [the applicant]. I also would not be able to hire someone to help because the extra expense of an employee would be too great of a strain on the business." *Id.* The applicant's wife also asserts that she would not be able to meet all their financial obligations such as paying for the car, the mortgage and the lease on the restaurant. *Id.* Also, the applicant's wife asserts that with the applicant managing the business, she is able to take some time to run errands, visit her family, and attend appointments, however, if the applicant is removed from the United States, she would be left alone to manage the business, she would not be able to have some time to herself, which would cause "great stress" for her. *Id.* The record contains a copy of a Retail Installment Contract from Chase Bank regarding an automobile purchased by the applicant and his wife, a copy of a mortgage statement from Wachovia Bank addressed to the applicant and his wife, a copy of an incomplete and unsigned "Contract of Sale" and Lease Agreement dated April 30, 2007, for the sale and/or lease of [REDACTED] located in [REDACTED] and two copies of [REDACTED] receipts for one hundred dollars each, dated July 24 and August 10, 2007.

The AAO acknowledges that separation from the applicant could pose some challenges to the applicant's wife; however, it does not find the evidence in the record is sufficient to demonstrate that the challenges encountered by the applicant's wife, considered cumulatively, meet the extreme hardship standard. While the applicant's wife claims that she will lose money on the pizza business and will suffer extreme financial hardship if the applicant is not there to manage the business, the record does not contain documentations to support such claims. The record does not contain documentation to demonstrate that the pizza business will lose money if the applicant is not there managing the business. There is no information on the income generated from the business and the expenditures associated with the business and there is no information on the family's current personal income and all of their expenses. 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)). Without the financial documentation, the AAO cannot make a determination that the applicant's wife will suffer extreme financial hardship as a result of separation. Furthermore, a showing of economic detriment generally is not sufficient to warrant a finding of extreme hardship. *See Hassan*, 927 F.2d at 468. The AAO notes that the record contains a

“Verification of Positive Pregnancy Test” dated July 16, 2008, from [REDACTED] Capital Hill, Pennsylvania, indicating a positive pregnancy test for the applicant and an expected delivery date of March 12, 2009, however, no further information has been provided about the pregnancy. Accordingly, the AAO finds that the applicant has failed to establish that the challenges his wife would face as a result of family separation rises beyond the common results of removal or inadmissibility to the level of extreme hardship.

Regarding relocation, counsel asserts that the applicant’s wife cannot relocate to El Salvador because she was born in the United States, that she has family ties in the United States and no family ties in El Salvador except for the applicant. The applicant’s wife asserts that the applicant takes care of his mother financially and that if he is removed from the United States, he will not be able to meet that obligation. *See Statement by [REDACTED] dated August 8, 2007.* Counsel asserts that the conditions in El Salvador are very poor, salaries are low and that “extreme hardship would be the result to Petitioner and her unborn child if she were forced to move to El Salvador with her husband.” *See Petitioner and Beneficiary’s Brief in Support of Appeal, dated August 21, 2008,* as submitted by counsel on appeal. As indicated above, no further information has been provided about the applicant’s pregnancy. The record contains a copy of a U.S. Department of State Country Report on Human Rights Practices on El Salvador, for 2007, and a copy of Country Specific Information on El Salvador, dated May 1, 2008.

The AAO acknowledges that the applicant’s wife was born in the United States and has family ties here, however, the evidence in the record is insufficient to establish that the applicant’s wife would suffer extreme hardship if she relocated to El Salvador with the applicant. The country report information in the record provides a general overview of conditions in El Salvador, but does not demonstrate that the applicant or his wife will be targeted for abuse or crime and violence there, or that she would be unable to obtain employment with good wages there. The reports provide information on the minimum wage in El Salvador, but do not establish that the applicant and/or his wife would be limited to minimum wage employment. The AAO notes that other than the statement from counsel, the record does not contain any evidence of financial, medical, emotional or other types of hardship that the applicant’s wife would experience if she relocated to El Salvador with the applicant. Accordingly, the AAO does not find the record before it to demonstrate that the applicant’s wife would suffer extreme hardship upon relocation to El Salvador.

In this case, although the applicant’s wife claims hardship due to family separation, the evidence in the record does not support a finding that the challenges she faces as a result of the applicant’s inadmissibility when considered in the aggregate, rises beyond the common results of removal or inadmissibility to the level of extreme hardship. *See Perez, 96 F. 3d at 392; Matter of Pilch, 21 I&N Dec. at 631.* Although the distress caused by separation from one’s family is not in question, a waiver of inadmissibility is only available where the resulting hardship would be unusual or beyond that which would normally be expected upon removal. *See id.* The AAO therefore finds that the applicant has failed to establish extreme hardship to his wife as required under section 212(a)(9)(B)(v) of the Act. 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.

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. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.