

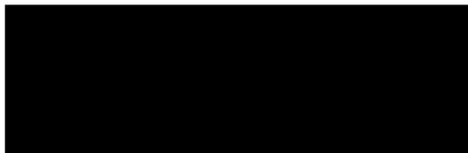
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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090
U.S. Citizenship
and Immigration
Services



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FILE: [REDACTED] Office: MEXICO CITY (PANAMA)

Date: JAN 10 2011

IN RE: Applicant: [REDACTED]

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

ON BEHALF OF APPLICANT:

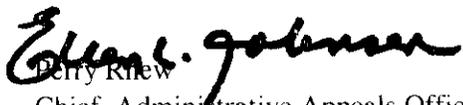


INSTRUCTIONS:

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 Riew
Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the District Director, Mexico City. The matter 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 Ecuador who was found to be inadmissible to the United States pursuant to section 212(a)(9)(B)(i)(II) of 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. The applicant is married to a lawful permanent resident and 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 with her husband and children in the United States.

The district director found that the applicant failed to establish extreme hardship to a qualifying relative and denied the application accordingly. *Decision of the District Director*, dated August 6, 2008. On appeal, counsel contends the applicant established the requisite hardship.

The record contains, *inter alia*: a copy of the marriage certificate of the applicant and her husband, Mr. [REDACTED] indicating they were married on August 8, 1993; letters from Mr. [REDACTED]; copies of the birth certificates of the couple's two U.S. citizen daughters; letters from the daughters' physicians and copies of medical records; psychological reports for the couple's daughters; documents from the daughters' school; letters from the daughters; letters of support; and an approved Petition for Alien Relative (Form I-130). The entire record was reviewed and considered in rendering this decision on the appeal.

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.

....

(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.

In this case, the record shows, and the applicant does not contest, that she entered the United States in 1994 without inspection. In October 1997, the applicant was served with a Notice to Appear and placed in removal proceedings. The applicant was granted voluntary departure until May 1, 1998, with an alternate order of removal. The applicant did not timely depart the United States and remained until she self-deported on June 27, 2007. The applicant accrued unlawful presence of more than one year, from May 2, 1998, until she departed the United States on June 27, 2007. She now seeks admission within ten years of her June 2007 departure. Accordingly, she 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 one year or more and seeking admission to the United States within ten years of her last departure.

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 her 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).

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. 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 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.

In this case, the applicant’s husband, Mr. [REDACTED] states that he and his wife have two U.S. citizen daughters. Mr. [REDACTED] contends that since his wife departed the United States, their daughters had to move to Ecuador with their mother and that he has become sad and depressed. He contends he no longer sleeps well, his work has begun to suffer, and he worries about his daughters. Mr. [REDACTED] states that his daughters are suffering in Ecuador and beg him to return to the United States. In addition, Mr. [REDACTED] states that his older daughter, [REDACTED], suffers from epileptic seizures. He contends that he and his wife want [REDACTED] to live in the United States where she can get better medical care. Furthermore, Mr.

states that his job in the United States is very good and allows for him to support his family. *Letters from* , dated August 26, 2008, and November 21, 2007.

A letter from physician states that has had two consultations with neurologists and the “presumptive diagnosis [is] childhood epilepsy.” *Letter from Dr.* , dated September 29, 2007; *see also Letter from Dr.* , dated November 13, 2006 (suspecting a “focal seizure”). A letter from a physician in Ecuador states that Azaria was in the emergency room on October 19, 2007, “presenting a convulsion crisis.” *Letter from Dr.* , dated August 19, 2008. In addition, received treatment for “a feverish condition, possibly viral” in January 2008. *Letter from Dr.* , dated August 18, 2008; *see also Letter from Dr.* , dated August 25, 2008 (stating that presented with Pityriasis Alba in October 2007, Polyparasitism in February 2008, and influenza in May 2008).

The record also contains two psychological reports for . The reports indicate that shows anxiety in every activity she does, does not feel integrated to the customs and way of life in Ecuador, has not adapted to the classroom, and has difficulty correctly understanding Spanish. The psychologist concludes that needs to return to the United States with her family. *Psychological Reports for* , dated August 25, 2008, and December 20, 2007. In addition, a letter from psychologist states that she has been attending psychological consultations since October 2007 due to issues of separation from her father and her difficulties adapting to living in Ecuador. *Letter from Dr.* , dated August 27, 2008.

A psychological report for the couple’s younger daughter, states that she is sad being apart from her father. According to the psychologist, is beginning to show insecurity and anxiety due to her family’s instability. *Psychological Report for* , dated August 25, 2008. *See also Letter from* , dated August 22, 2008 (letter from the girls’ teacher stating they are having difficulties adapting to school and often cry); *Letter from Mother* , dated August 22, 2008 (letter from a church stating the girls are sad, excessively shy, and cry often).

A letter from Mr. employer states that since his family departed the United States, Mr. “production has decreased” and “he is not working to full potential.” *Letter from* , dated August 20, 2008.

After a careful review of the record, there is insufficient evidence to show that Mr. has suffered or will suffer extreme hardship if his wife’s waiver application were denied.

The AAO recognizes that Mr. has endured hardship since the applicant departed the United States and is sympathetic to the family’s circumstances. However, aside from stating that his job in the United States is very good and allows for him to support his family, Mr. does not discuss the possibility of moving back to Ecuador, where he was born and where he married the applicant, to avoid the hardship of separation and he does not address whether such a move would represent a hardship to him. If Mr. decides to stay in the United States, their situation is typical of

individuals separated as a result of inadmissibility or exclusion and does not rise to the level of extreme hardship based on the record. Federal courts and the Board of Immigration Appeals have repeatedly held that the common results of inadmissibility or exclusion are insufficient to prove extreme hardship. For example, *Matter of Pilch, supra*, held that emotional hardship caused by severing family and community ties is a common result of deportation and does not constitute extreme hardship. In addition, *Perez v. INS*, 96 F.3d 390 (9th Cir. 1996), held that the common results of deportation are insufficient to prove extreme hardship and defined extreme hardship as hardship that was unusual or beyond that which would normally be expected upon deportation. *See also Hassan v. INS*, 927 F.2d 465, 468 (9th Cir. 1991) (uprooting of family and separation from friends does not necessarily amount to extreme hardship but rather represents the type of inconvenience and hardship experienced by the families of most aliens being deported).

Regarding [REDACTED] epilepsy, as stated above, hardship to the applicant's children can be considered only insofar as it results in hardship to Mr. [REDACTED], the only qualifying relative in this case. There is insufficient evidence in the record to show that [REDACTED] epilepsy has caused extreme hardship to Mr. [REDACTED]. Although the evidence in the record substantiates his claim that his daughter has epileptic seizures, the letters from [REDACTED] physicians fail to provide sufficient details to show extreme hardship. For instance, the letters in the record do not address the prognosis, treatment, or severity of [REDACTED] epilepsy. In addition, there is no suggestion [REDACTED] is limited in her daily activities or requires her father's assistance. Moreover, there is no evidence suggesting she is not receiving adequate medical care and treatment in Ecuador. Without more detailed information, the AAO is not in the position to reach conclusions regarding the severity of any medical condition or the treatment and assistance needed.

Similarly, with respect to the psychological evaluations, although the psychologists contend that the couple's daughters are experiencing sadness, anxiety, and difficulties in school, there are insufficient details to show extreme hardship to Mr. [REDACTED]. The psychologists do not address whether the girls' mental health might improve if Mr. [REDACTED] moved back to Ecuador to be with his family. In addition, the documentation from the psychologists fails to provide specific details showing that the girls' experience is any more difficult than would normally be expected under the circumstances. In sum, there is no allegation that the applicant's situation is unique or atypical compared to other individuals separated as a result of inadmissibility or exclusion. *See Perez v. INS, supra* (defining extreme hardship as hardship that was unusual or beyond that which would normally be expected upon deportation).

To the extent Mr. [REDACTED] contends he has suffered extreme emotional hardship, there is no evidence his hardship is any more difficult than would normally be expected under the circumstances. Mr. [REDACTED] does not contend he has been diagnosed with any mental health problem, or that he has sought or is receiving any mental health counseling or treatment.

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, 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.