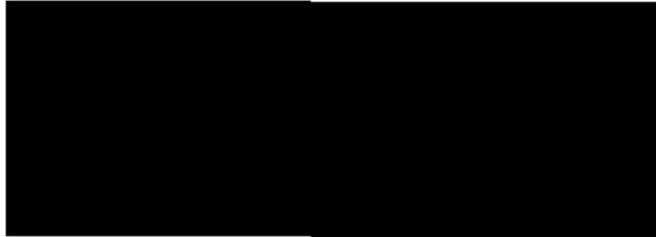


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U.S. Department of Homeland Security  
U.S. Citizenship and Immigration Services  
Administrative Appeals Office (AAO)  
20 Massachusetts Ave., N.W., MS 2090  
Washington, DC 20529-2090



U.S. Citizenship  
and Immigration  
Services



716

DATE: **OCT 25 2011** Office: TEGUCIGALPA, HONDURAS

File:

IN RE: Applicant

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

ON BEHALF OF APPLICANT:

SELF-REPRESENTED

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,

Perry Rhew

Chief, Administrative Appeals Office

**DISCUSSION:** The waiver application was denied by the Field Office Director, Tegucigalpa, Honduras. 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 Honduras. She 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 one year or more and seeking admission within ten years of her last departure. She is married to a United States citizen and has two U.S. citizen daughters. She 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).

The Field Office Director concluded that the applicant had failed to establish that the bar to her admission would impose extreme hardship on a qualifying relative, her U.S. citizen spouse, and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) on May 6, 2009.

On appeal, the applicant's spouse states that he is suffering from depression due to the applicant's inadmissibility, that his mother is suffering because it was the applicant who previously cared for her and that he is struggling to maintain the family's finances in the applicant's absence. *Form I-290B*, received on June 15, 2009.

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.

....

The record indicates that the applicant entered the United States in June 1996. The applicant filed a Form I-821 Application for Temporary Protected Status (TPS) on or about March 31, 1999. The applicant no longer accrued unlawful presence in the United States once the Form I-821 was filed and subsequently approved. See Memorandum from Donald Neufeld, Acting Assoc. Dir., Domestic Ops. Directorate, US Citizenship and Immigration Services, US Dept. Homeland Sec., to Field Leadership, *Consolidation of Guidance Concerning Unlawful Presence for Purposes of Sections 212(a)(9)(B)(i) and 212(a)(9)(C)(i)(I) of the Act* (May 6, 2009). The applicant departed the United States in August, 2008. As such, the applicant was unlawfully present for over a year from April 1, 1997, the effective date of the unlawful presence provision of the Act until March 31, 1999, the date she filed her Form I-821, and is now seeking admission within ten years of her last departure from the United States.

Accordingly, the applicant is inadmissible to the United States under section 212(a)(9)(B)(i)(II) of the Act. The applicant does not contest this finding.

The record includes, but is not limited to, statements from the applicant's spouse; statements from the applicant's daughters; a statement from the applicant's spouse's mother; photographs of the applicant, her spouse and their family; copies of a medical records pertaining to the applicant's spouse's mother; copies of mortgage documents as evidence of a refinance; and statements from the teachers of the applicant's youngest daughter.

The entire record was reviewed and all relevant evidence considered in rendering this decision.

Section 212(a)(9)(B)(v) of the Act provides for a waiver of section 212(a)(9)(B)(i) inadmissibility as follows:

The Attorney General [now Secretary of Homeland Security] 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 . . . 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 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 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.

The AAO takes notice of the fact that Honduras has been designated for Temporary Protected Status by the Secretary of Homeland Security. The Secretary of Homeland Security may designate a country for TPS due to conditions in the country that prevent persons from returning there safely; in this case the Secretary designated Honduras a TPS country due to an environmental disaster, Hurricane Mitch in 1998. This would present an uncommon hardship factor on the applicant's spouse and family if they were to relocate to Honduras. The AAO can determine that this hardship

factor, in conjunction with the common impacts of relocation, would constitute an extreme hardship for the applicant's spouse if he were to relocate to Honduras with the applicant.

With regard to hardship upon separation, the AAO notes that the designation of Honduras as a TPS country can also be considered an uncommon emotional hardship factor impacting the applicant's spouse knowing that his spouse will have to endure these conditions during her residence there. The AAO will consider this factor when aggregating the impacts on the applicant's spouse upon separation.

The applicant's spouse has submitted a statement asserting that he will also experience physical, emotional and financial hardship due to separation from the applicant. *Statement of the Applicant's Spouse*, dated August 25, 2008. On appeal, the applicant's spouse explains that he was hospitalized due to depression following the denial of his wife's waiver application. He further states that the applicant was primarily responsible for caring for his elderly mother and their two daughters, and that without her present to assist financially he has had to refinance their home and depend on his young daughter to care for his mother.

While there is nothing which documents that the applicant's spouse has been diagnosed with depression, testimony in the record indicates that he is experiencing significant emotional stress due to the inadmissibility of his spouse. There is photographic evidence of the applicant's spouse in a hospital setting and a hospital record dated May 11, 2009. There are also financial documents indicating that he has had to refinance his house.

The applicant's spouse's mother attests to the fact that the applicant was the one who helped care for her during periods of sickness. The record also contains medical records and prescription notes as well as photographic evidence that the applicant's spouse's mother is elderly and experiencing health conditions.

Based on this evidence the AAO can determine that the applicant's spouse will experience some physical hardship from having to care for their two daughters and his elderly mother without the assistance of the applicant. The record does not contain sufficient evidence to establish any uncommon financial hardship.

When the hardship impacts asserted due to separation are examined in the aggregate, the emotional stress of the applicant's removal to Honduras, a TPS designated country, as well as the physical hardship of the applicant's spouse in caring for their two daughters and elderly mother, constitute an uncommon hardship rising to the level of extreme hardship.

As the applicant has established that a qualifying relative will experience extreme hardship upon relocation and separation, the AAO may now move to consider whether she warrants a waiver 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-Morales*, 21 I&N Dec. 296, 301 (BIA 1996). The AAO must then "balance 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 AAO finds that the unfavorable factors in this case include the applicant's entry without inspection, unlawful presence and unauthorized employment. The favorable factors in this case include the presence of the applicant's spouse, the presence of her U.S. citizen children and the hardships her spouse and family would experience, and the lack of any criminal record during her record here. Although immigration violations are serious and cannot be condoned, the favorable factors in this case outweigh the negative factors, therefore favorable discretion will be exercised. The director's decision will be withdrawn and the appeal will be sustained.

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 rests with the applicant. *See* section 291 of the Act, 8 U.S.C. § 1361. Here, the applicant has met that burden. Accordingly, the appeal will be sustained.

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