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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**



*H6*

Date: **OCT 28 2011**

Office: TEGUCIGALPA

FILE 

IN RE:



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

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.

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. The matter 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 again seeking admission within ten years of her last departure from the United States. The applicant is the spouse of a United States citizen. She seeks a waiver of inadmissibility in order to reside in the United States.

The Field Office Director concluded that the applicant failed to establish that a bar to her admission to the United States would result in extreme hardship to the qualifying relative. The Field Office Director denied the application accordingly. *See Decision of the Field Office Director* dated July 14, 2009.

On appeal, the applicant's spouse asserts in the Notice of Appeal (Form I-290B) that he is unable to relocate to Honduras due to the country conditions and because he is responsible for paying child support for his children. In the qualifying spouse's letter, he also states that he is experiencing emotional, medical and financial hardships as a result of his separation from the applicant.

The record contains the following documentation: the original Application for Waiver of Grounds of Inadmissibility (Form I-601), Form I-290B, copies of child support checks, the applicant's birth certificate, an approved Petition for Alien Relative (Form I-130), a letter from the qualifying spouse, photographs, a letter from a chiropractor regarding the qualifying spouse, a health insurance statement regarding the healthcare expenses from the qualifying spouse's car accident and prescriptions for the qualifying spouse's respiratory issues. The entire record was reviewed and considered in rendering 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.

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. 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).

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 applicant’s qualifying relative in this case is her husband, who is a United States citizen. The record indicates that the applicant entered the United States without inspection in July 2004 and voluntarily departed on August 23, 2008. The applicant accrued unlawful presence from July 2004 until August 23, 2008, when she voluntarily departed. In applying for an immigrant visa, the applicant is seeking admission within ten years of her 2008 departure from the United States. The applicant has not disputed her inadmissibility. Therefore, the applicant is inadmissible to the United States under section 212(a)(9)(B)(i)(II) of the Act for having been unlawfully present in the United States for a period of more than one year.

The documentation provided that specifically relates to the qualifying spouse’s hardship includes Form I-601, Form I-290B, copies of child support checks, a letter from the qualifying spouse, a letter from a chiropractor regarding the qualifying spouse, a health insurance statement and the qualifying spouse’s prescriptions for his respiratory issues. The entire record was reviewed and considered in rendering a decision on the appeal.

As aforementioned, the applicant’s spouse asserts that he is unable to relocate to Honduras due to the country conditions and because he is responsible for paying child support for his children. The qualifying spouse also states that he is experiencing emotional, medical and financial hardships as a result of his separation from the applicant.

The AAO finds that the applicant has failed to establish that her qualifying spouse will suffer extreme hardship as a consequence of being separated from him. The applicant’s spouse indicates that he is experiencing emotional hardships, such as depression, as a result of the applicant’s

inadmissibility. However, other than the letter provided by the qualifying spouse, there is no documentation to support these assertions. Further, the record fails to provide detail explaining how the qualifying spouse's emotional and psychological hardships are outside the ordinary consequences of removal. With regard to the qualifying spouse's financial hardships, he indicates in his letter that he is assisting the applicant financially as well as paying child support for his children. He also lists his expenses. The record contains copies of checks made to his ex-wife for his two children. However, there is no documentation confirming his income or the expenses stated in his letter. Assertions are evidence and will be considered. However, going on record without supporting documentary evidence generally is not sufficient for purposes of meeting the burden of proof in these proceedings. *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 qualifying spouse also indicates that he has various medical issues including respiratory issues, such as asthma, and back and neck pain resulting from a car accident. The record contains the qualifying spouse's prescriptions for his respiratory issues and letters from his health insurance and chiropractor regarding a car accident in which he was involved. The chiropractor indicated that the qualifying spouse has "Permanent Impairment to his lumbar spine" and that he has "problems with activities of daily living." However, there was no clear explanation as to the specific limitations imposed on the qualifying spouse by his conditions, and whether, if the qualifying spouse requires assistance, he could receive assistance from someone other than the applicant.

The applicant also failed to establish that the qualifying spouse would experience hardship upon relocation to Honduras. The applicant's spouse indicates that he has a job in the United States and that he has two children to support here. Further, he also states that he cannot relocate to Honduras due to the country conditions and safety concerns. However, the record contains no evidence regarding the country conditions in Honduras to support such assertions. Further, no explanation or evidence was provided as to why the qualifying spouse could not earn a living in Honduras. As previously stated, going on record without supporting documentary evidence generally is not sufficient for purposes of meeting the burden of proof in these proceedings. *See Matter of Soffici, supra*, at 165. Further, the applicant does not address whether the applicant or the qualifying spouse has family in Honduras, who could assist the qualifying spouse if he relocated to Honduras. As such, the applicant has not met her burden of demonstrating that her qualifying spouse will suffer extreme hardship in the event that he relocates to Honduras.

In this case, the record does not contain sufficient evidence to show that the hardships faced by the qualifying relative, considered in the aggregate, rise beyond the common results of removal or inadmissibility to the level of extreme hardship. The AAO therefore finds that the applicant has failed to establish extreme hardship to her qualifying spouse as required under section 212(a)(9)(B) 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) of the Act, the burden of proving eligibility remains entirely with the applicant. *See* section 291 of

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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.