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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
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Washington, DC 20529-2090

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**U.S. Citizenship
and Immigration
Services**



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Date: **SEP 01 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, 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.

Thank you,

A handwritten signature in black ink, appearing to read "Perry Rhew".

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 sustained. The waiver application will be approved.

The record reflects that 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 ten years of his last departure from the United States. The record indicates that the applicant is married to a United States citizen and the beneficiary of an approved Petition for Alien Relative (Form I-130). 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 United States citizen spouse.

The Field Office Director found that the applicant had failed to establish that extreme hardship would be imposed on the applicant's spouse and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) accordingly. *Decision of the Field Office Director*, dated June 9, 2009.

On appeal, counsel asserts that the applicant has established extreme hardship to his United States citizen spouse. Counsel submits a brief and additional evidence. *See Form I-290B and counsel's brief and attachments.*

The record includes, but is not limited to, statements from the applicant's spouse, describing the hardships claimed; statements from the pastor at the church attended by the applicant, a co-worker of the applicant's spouse and friends of the applicant and his spouse; a letter from the applicant's spouse's employer; numerous financial records, including 2007 and 2008 income tax returns, Form W-2 earnings statements, bank statements, personal loan documents, mortgage, property tax, and home owner insurance statements, money transfer receipts, various household bills, including telephone, electric, gas, water, insurance, and medical bills; travel records, including airline travel tickets; and counsel's briefs and attachments. The entire record was reviewed and considered in arriving at 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.

In the present application, the record indicates that the applicant entered the United States in January 2001 without inspection. On August 18, 2006 the applicant was apprehended and placed in removal proceedings. On April 24, 2008 an Immigration Judge granted the applicant voluntary departure with an alternate order of removal if the applicant failed to depart by August 22, 2008. The applicant voluntarily departed the United States on August 19, 2008.

Based on the evidence of record, the applicant accrued unlawful presence from January 2001 until August 19, 2008 when he departed the United States. The applicant is seeking admission to the United States within ten years of his last departure. The applicant is, therefore, 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 more than one year.

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 his child can be considered only insofar as it results in hardship to a qualifying relative. The applicant's husband and the applicant's mother are the only qualifying relatives 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 spouse states that she is suffering emotional and financial hardship without the applicant. She states that since the applicant departed to Honduras she has taken new loans to pay bills; that although she has been given assistance to help her manage her bills, she may lose their home; and that she needs the applicant here to contribute towards the household bills; that she is struggling to pay for bare necessities and cannot afford to pay her medical bills. The applicant's spouse also states that she is struggling to help her family members, particularly her mother and

sister who are ill and need help; that she has to send money to help support the applicant because he has had difficulty finding employment in Honduras and works as a field hand for about US\$4.24 per day; and that several trips to Honduras to visit the applicant, with tickets costing about \$589.00 each, have drained her finances. A June 23, 2009 statement from [REDACTED] the applicant's spouse's co-worker, indicates that the responsibility for paying all the household bills is very stressful for the applicant's spouse who lives from paycheck to paycheck. A June 16, 2009 statement from [REDACTED] and [REDACTED] the applicant's spouse's neighbors, reports that the applicant's absence "has left the [applicant's spouse] very bad financially."

Financial documentation in the record pertaining to the applicant's spouse's finances includes a June 19, 2009 employment verification letter showing her annual salary as \$45,700.00; a June 6, 2009 earnings statement showing \$1,302.39 as her net bi-weekly pay; and numerous financial records, including 2007 and 2008 income tax returns and Form W-2s, bank statements, personal loan documents, mortgage, property tax, and home owner insurance statements, various household bills, including telephone, electric, gas, water, insurance, and medical bills; travel records, including airline travel tickets; and money transfer receipts. The documentation of record indicates that the applicant's spouse has approximately \$2,604.00 net income and approximately \$2,165.00 in monthly recurring expenses. It is noted that the applicant's income is considerably above the federal poverty guidelines. However, it appears that the applicant's spouse's earnings are relatively low to cover these monthly expenses and she is left with about \$440.00 disposable income to cover other items, such as food, clothing, transportation, medical bills, and travel expenses. Despite her income, the applicant's spouse is experiencing financial hardship as the evidence of record indicates that several of the applicant's bills are with collection agencies, she has been unable to pay her medical bills, and she has been borrowing money to pay her bills. Also, statements from the applicant's spouse's neighbors and her co-worker indicate that since the applicant's absence she is being overwhelmed financially.

The record also indicates that the applicant's spouse has several past due medical bills and several of her bills are with collection agencies.

The applicant's spouse also asserts that she needs the applicant's emotional support. She states in her June 25, 2009 statement that she has been under stress since the applicant departed to Honduras and that she has traveled to Honduras with her daughter three times in the last year to visit him. In her June 21, 2009 statement the applicant's spouse states that the stress of separation has caused her to have anxiety attacks because she is not able to handle the situation and she has been having difficulty sleeping. In her statement [REDACTED] asserts that the "[applicant's spouse's] mood has changed and she is not the happy, cheerful person that [they] know and [became] fond of." [REDACTED] also states she has seen the applicant's spouse crying many times because she feels that there is no solution to her family's problem. [REDACTED] state that they have "seen [the applicant's spouse] deep in her sadness crying often," because she misses her husband a lot and they are concerned that she will become depressed and that "she is always upset and troubled."

The applicant's spouse also states that she has been under additional stress without the applicant to assist her because her mother is disabled and unable to work, and suffers from various illnesses, including diabetes, kidney failure and arthritis in her hands and knees and is able to walk when assisted and has major issues because she is extremely obese; that her mother has no medical insurance and she relies on governmental assistance; and that she and the applicant assisted her mother by doing her grocery shopping, taking her to the doctor, and assisting her financially. In addition, the applicant's spouse states that she has had to assist her sister and her two young children because she was recently diagnosed with uterine cancer.

The record, however, lacks documentation of the applicant's family's medical condition, and a medical report indicating why the applicant's spouse would need the assistance of the applicant in caring for her mother and her sister's children. It is also noted that the record does not establish that the applicant's spouse has ongoing medical problems.

The AAO finds the record to support significant financial hardship. When the applicant's spouse's financial hardship is considered with the normal hardships created by separation, the record establishes extreme hardship.

Counsel asserts that if applicant's spouse relocates to Honduras due to the applicant's inadmissibility, she will experience extreme hardship there. The applicant's spouse states that she cannot join the applicant in Honduras. She states that on the occasions she visited the applicant in Honduras she and her daughter became ill with parasites due to unsanitary conditions in the country; that she will not be able to help her mother and the rest of her family from Honduras; that she will not find employment in Honduras because her Spanish is not good enough and she does not speak their dialect, that she and her family will live in extreme poverty; and that it will be difficult for her to adjust socially. The applicant's spouse also states that she fears for her and her daughter's lives in Honduras because of crime, including gang violence. The applicant's spouse also states that she suffers from a bicornuate uterus and uterine fibroids, that Honduras does not have the technology to treat these conditions, and if she gets pregnant her health would be in danger.

The AAO notes that Honduras has been designated as a Temporary Protected Status (TPS) country based on extensive damage to the country caused by natural disasters, and its designation as such does not expire until January 5, 2012. Based on the designation of TPS for Hondurans, the United States is not returning Hondurans to Honduras, and when added to the normal hardships created by relocation, establishes extreme hardship.

It has thus been established that the applicant's spouse would suffer extreme hardship were she to relocate abroad to reside with the applicant due to his inadmissibility.

However, the grant or denial of the waiver does not turn only on the issue of the meaning of "extreme hardship." It also hinges on the discretion of the Secretary and pursuant to such terms, conditions and procedures as she may by regulations prescribe.

The favorable factors in this matter are the applicant's U.S. citizen spouse and U.S. citizen child; the extreme hardship his spouse would suffer if the waiver application is denied; the absence of a criminal record, the passage of several years since the applicant's entry to the United States; the applicant's compliance with the grant of voluntary departure; the applicant's compliance with the terms of his immigration bond; and the statement from the applicant's pastor attesting to his character. The unfavorable factors in this matter are the applicant's unlawful residence and employment in the United States; and the applicant's arrest for violation of a motor vehicle law.

While the AAO does not condone the applicant's actions, the AAO finds that the mitigating factors in the applicant's case outweigh the unfavorable factors. Therefore, a favorable exercise of the Secretary's discretion is warranted.

In proceedings for application for waiver of grounds of inadmissibility under section 212(a)(9)(B)(v), the burden of establishing that the application merits approval remains entirely with the applicant. Section 291 of the Act, 8 U.S.C. § 1361. The applicant has sustained that burden. Accordingly, this appeal will be sustained and the application approved.

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