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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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Date: **SEP 02 2011** Office: **TEGUCIGALPA , HONDURAS**

FILE: [REDACTED]

IN RE: Applicant: [REDACTED]

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.

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, 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 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 applicant is married to a United States citizen and the father of a United States citizen child. He is 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 spouse and child.

The Field Office Director found that the applicant had failed to establish that extreme hardship would be imposed on the applicant's qualifying relative and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) accordingly. *Decision of the Field Office Director*, dated April 3, 2009.

The applicant, through counsel, claims that United States Citizenship and Immigration Services (USCIS) "erred in finding that the applicant's spouse would not suffer extreme hardship." *Form I-290B*, dated April 30, 2009.

The record includes, but is not limited to, counsel's appeal brief; statements from the applicant's wife, his mother-in-law, and his sister-in-law; a psychological evaluation for the applicant's wife; medical documents for the applicant's daughter and mother-in-law; a letter from the applicant's wife's supervisor; and financial records including a retirement account statement, household bills, and student loan statements. 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.
  - ....
- (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 application, the record indicates that in November 2003, the applicant entered the United States without inspection. On April 1, 2008, the applicant departed the United States.

The applicant accrued unlawful presence from November 2003, the date the applicant entered the United States without inspection, until April 1, 2008, when he departed the United States. The applicant is attempting to seek admission into the United States within ten years of his April 1, 2008 departure from the United States. 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 and seeking admission within 10 years of his 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 his child 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).

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 of Immigration Appeals (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.

In counsel’s appeal brief filed May 27, 2009, counsel states “it is not possible for [the applicant’s wife] to relocate to Honduras to join [the applicant].” Counsel states the applicant’s wife “would not have a support system in Honduras.” She claims that the applicant’s wife “has spent a great deal of time and money in furthering her education. As a result of her hard work, she has obtained gainful employment as a research assistant.” In a statement dated May 9, 2008, the applicant’s wife states she researches microbial biology, and she “would not be able to work in [her] field because there are no research institutes or hospitals conducting this type of research.” Additionally, she states she does not know scientific terms in Spanish. Counsel claims that the applicant’s wife “would not be able to make the kind of living in Honduras that she does here in the United States with her profession.” The applicant’s wife states she could not afford to pay off her financial obligations if she moved to Honduras, her credit would be ruined, and she would lose her retirement. She claims that she has rental properties in Florida and she could not afford to travel to her properties from Honduras. Additionally, she states she wants to go back to school to study nursing. The applicant’s wife states “[i]t is most likely that [she] would not find a job in [Honduras]; therefore, [the applicant] would be the only source of income.” The applicant’s wife states she wants her daughter to have “the best in regards to healthcare, education, and safety.” She claims that “[h]ealthcare in Honduras is very limited by access to and quality of services and drugs,” and “[a]ccess to healthcare...is related to the income levels of its citizens.” She states that her daughter has health insurance in the United States and in Honduras they could not afford health insurance. The applicant’s

wife states her daughter “would not receive adequate healthcare” as the town that the applicant resides in, does not have a “hospital or major [clinic] with appropriate [equipment] and services.” The applicant’s wife states if they had an illness, they would have to travel to the capital and that “would cause higher expenses and stress.” She states that in the town the applicant resides in, there is no “adequate water and sewage system” and “nutrients are of low quality.” The AAO notes the applicant’s wife’s concerns regarding the difficulties she and her daughter would face in relocating to Honduras.

Counsel states the applicant’s wife “is the only person who is able to support and care for her elderly mother...who needs physical assistance as well as financial support from [the applicant’s wife].” In a letter dated May 25, 2009, [REDACTED] the applicant’s mother-in-law, states the applicant’s wife “has been taking care of [her] since [she] was not able to find a job.” The applicant’s wife states she has a “financial obligation with [her] mother,” since they live together, and she could not assist her from Honduras. She also states that even though it has not been diagnosed, her mother suffers from depression. [REDACTED] states that she has diabetes and carpal tunnel syndrome, and she was scheduled to have surgery on her hands in June 2009. The AAO notes that the record establishes that the applicant’s mother-in-law has diabetes and carpal tunnel syndrome. However, no medical documentation was submitted establishing that the applicant’s mother-in-law was having surgery on her hands in June 2009. Additionally, no documentary evidence was submitted establishing that the applicant’s mother-in-law requires physical assistance from her daughter. In a letter dated May 25, 2009, [REDACTED], the applicant’s sister-in-law, states the applicant’s wife cares for their mother, and she cannot financially assist her mother. The AAO notes that other than the submitted statements, no documentary evidence was submitted establishing that the applicant’s mother-in-law relies on the applicant’s wife for financial support. The AAO acknowledges that the applicant’s mother-in-law may suffer some hardship in being separated from her daughter; however, the AAO notes that the applicant’s mother-in-law is not a qualifying relative, and the applicant has not shown that hardship to his mother-in-law will elevate his wife’s challenges to an extreme level. However, the AAO notes the concerns for the applicant’s mother-in-law.

The AAO acknowledges that the applicant’s wife is a citizen of the United States and that she may experience some hardship in joining the applicant in Honduras. However, the AAO notes that the record does not contain documentary evidence, e.g., country conditions reports on Honduras, that demonstrate that the applicant’s wife would be unable to obtain employment upon relocation that would allow her to use the skills she has acquired in the United States. Additionally, the AAO notes that the record does not establish that the applicant’s wife could not pursue her nursing degree in Honduras. The AAO acknowledges that the applicant’s daughter may suffer some hardship in Honduras; however, the AAO finds that the applicant has not shown that hardship to his daughter will elevate his wife’s challenges to an extreme level. Therefore, based on the record before it, the AAO finds that, even considering the potential hardships in the aggregate, the applicant has failed to establish that his wife would suffer extreme hardship if she relocated to Honduras.

In addition, the record also fails to establish extreme hardship to the applicant’s wife if she remains in the United States. Counsel states the applicant’s wife “is in great need of [the applicant’s] moral and emotional support as since his departure she has become a single mother with an infant who also has to

care for her elderly mother without any help from other members of her family, as well as works full time to support herself, her child, and her mother.” The AAO notes that in her statement, the applicant’s wife states she has two older siblings who live near her and her mother, and they help each other financially. Additionally, no documentary evidence has been submitted establishing that neither of the applicant’s wife’s siblings can help their mother with her finances.

In a psychological evaluation dated May 5, 2009, [REDACTED] indicates that the applicant’s wife’s “life has changed significantly ever since [the applicant] was forced to leave the country.” He reports that the applicant’s wife has symptoms of worry, anxiety, and depression, and she has crying spells. [REDACTED] diagnosed the applicant’s wife with depressive disorder. Counsel claims the applicant’s wife’s “symptoms are a direct result of the separation from [the applicant].” [REDACTED] states the applicant’s wife “has been over-burdened emotionally and psychologically by [the applicant’s] absence.” He also indicates that the applicant’s daughter is “suffering by missing half of her parenting cohort.” The AAO acknowledges that the applicant’s daughter may be suffering some hardship in being separated from the applicant; however, as noted above, the applicant’s daughter is not a qualifying relative, and the applicant has not shown that hardship to his daughter will elevate his wife’s challenges to an extreme level. The AAO notes the mental health concerns of the applicant’s wife.

[REDACTED] indicates that the applicant’s wife is not “financially dependent on [the applicant]” and she “is able to support herself financially without [the applicant].” However, [REDACTED] reports that the applicant provided coverage for their daughter while the applicant’s wife worked. [REDACTED] states that the applicant’s wife’s “main loss appears to have been a psychological/emotional one rather than a financial one.” The AAO notes the applicant’s wife’s concerns.

The AAO acknowledges that the applicant’s wife may be suffering some emotional problems in being separated from the applicant. The AAO has carefully considered the psychological evaluation regarding the emotional difficulties experienced by the applicant’s wife. While it is understood that the separation of relatives often results in significant psychological challenges, the applicant has not distinguished his wife’s emotional hardships upon separation from that which is typically faced by the spouses of those deemed inadmissible. Based on the record before it, the AAO finds that the applicant has failed to establish that his wife would suffer extreme hardship if his waiver application is denied and she remains in the United States.

A review of the documentation in the record fails to establish the existence of extreme hardship to the applicant’s wife caused by the applicant’s inadmissibility to the United States. Having found the applicant statutorily ineligible for relief, the AAO finds no purpose would be served in discussing whether he 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.