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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 30 2011** Office: LOS ANGELES, CALIFORNIA 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:

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, Los Angeles, California, 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 Belize 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 her last departure from the United States. The applicant is married to a United States citizen and the mother of three United States citizen children. She 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 her spouse and children.

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 May 9, 2008.

On appeal, the applicant claims that her husband and children will suffer extreme hardship in either remaining in the United States without her or joining her in Belize. *See Form I-290B*, filed June 11, 2008. The applicant also claims that her husband's service in the armed forces is significant in determining his hardship. *See id.*

The record includes, but is not limited to, the applicant's appeal brief; statements from the applicant, her husband, and mother-in-law; employment verification for the applicant's husband; a report regarding the applicant's veteran status; utility bills, insurance documents, mortgage documents, tax documents, and a bank statement; and articles and country condition reports on Belize. 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 this case, the record reflects that the applicant entered the United States on February 21, 1996 on a B-2 nonimmigrant visa with authorization to remain in the United States until August 20, 1996. The applicant filed an Application to Register Permanent Residence or Adjust Status (Form I-485) on July 7, 1998 and was granted Advance Parole on November 12, 1998. On an unknown date after November 12, 1998, the applicant departed the United States. On February 2, 1999, the applicant was paroled into the United States.

The applicant accrued more than one year of unlawful presence from April 1, 1997, the effective date of the unlawful presence provisions under the Act, until July 7, 1998, the date that the applicant's Form I-485 was filed. The applicant's departure from the United States following this period of unlawful presence triggered the applicant's inadmissibility under section 212(a)(9)(B)(i)(II) of the Act. As noted above, the applicant was paroled into the United States on February 2, 1999. The applicant's period of authorized presence in the United States terminated on March 23, 2001 with the denial of her I-485 application. Thereafter the applicant was, once again, unlawfully present in the United States. Although the applicant's last departure from the United States was more than 10 years ago, the AAO finds that the ten-year period of inadmissibility did not continue to run once the applicant's Form I-485 application had been denied and she was unlawfully present in the United States. Thus, although the applicant's last departure from the United States was more than ten years ago, the AAO finds that he has not satisfied the ten-year period of inadmissibility stated in section 212(a)(9)(B)(i)(II) of the Act. Accordingly, the applicant is inadmissible under section 212(a)(9)(B)(i)(II) of the Act.

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 United States Citizenship and Immigration Service (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 a statement dated July 3, 2008, the applicant's mother-in-law states her son and her "grandchildren will suffer emotional, financial and cultural hardship if they return to Belize." In a statement dated July 5, 2008, the applicant states that if her husband has "to give up all that he has worked to achieve in the United States," it will cause him "terrible pain and sorrow." In a statement dated July 5, 2008, the applicant's husband states he has "adapted to the American way of life. Returning to Belize at age 40 will

be very difficult to adjust to the Belizean way of life. Finding a new job in Belize given its economy, is very challenging and [he] will have to take a pay cut.” The applicant’s mother-in-law states her son “makes a descent [sic] living and is the main financial provider in his household.” The applicant’s husband states that “the knowledge [he] [has] acquired over the years will be lost if [he] were to return to Belize because [he] will not be able to practice [his] skills.” The applicant’s mother-in-law states the applicant’s husband “will reduce his earning capacity and he will not be able to support his children” in Belize. In the applicant’s appeal brief dated July 7, 2008, the applicant claims that her children “will suffer financially if [her husband] leaves the US and moves to Belize to remain with the applicant.” The applicant’s husband states if he joins the applicant in Belize, his family will lose their medical coverage. He claims that “medical care in Belize is very poor and outdated.” The applicant’s husband states he is a disabled veteran and he visits the veteran hospital frequently, which he will not be able to do in Belize. The AAO notes that the applicant submitted a July 3, 2008 report establishing that her husband is a veteran and he suffers from a knee condition; however, the applicant’s husband’s last appointment was December 21, 2007 and there is no indication in the report that he requires frequent visits to the veteran hospital. Additionally, the AAO notes that the submitted report does not establish the severity of the applicant’s husband’s condition, what treatment is required, that treatment is unavailable in Belize, or that he has to remain in the United States to receive treatment(s).

The applicant’s husband states all of his family resides in the United States, and he will suffer emotional hardship if he is separated from them. The applicant’s mother-in-law states she “fear[s] for [her] son and grandchildren and for the life they will live if they were to return to Belize.” She states that all of their family has “migrated to the United States.” The applicant’s husband states he has nowhere “to live in Belize.” The applicant also states her oldest son will suffer in Belize as he is a “typical American pre-teen.” The AAO notes the applicant’s husband’s concerns regarding the difficulties he and his children would face in relocating to Belize.

The AAO acknowledges that the applicant’s husband has resided in the United States for many years and that relocation abroad would involve some hardship. However, the AAO notes that the applicant’s spouse is a native of Belize and it is presumed that he would be able to adapt to the culture and languages of Belize. Additionally, although the record contains articles and the [REDACTED] section on Belize, these documents are general in nature and do not establish that the applicant’s husband would be unable to obtain employment upon relocation that would allow him to use the skills he has acquired in the United States. The AAO acknowledges that the applicant’s children may suffer some hardship in Belize; however, the applicant’s children are not qualifying relatives, and the applicant has not shown that hardship to her children will elevate her husband’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 her husband would suffer extreme hardship if he relocated to Belize.

In addition, the record also fails to establish extreme hardship to the applicant’s husband if he remains in the United States. The applicant states her husband will suffer extreme hardship if her waiver application is not granted. The applicant’s husband states that without the applicant’s help, “there will be no one to provide care for [their] children” and he “cannot afford to hire live in help for [their] children.” He states that he will have “to seek government assistance to support [his] and [his] children’s living expenses.” He

claims that their household expenses include, but are not limited to, a mortgage, car payments, and childcare, and he depends on the applicant's "income to help cover the financial needs of the family." As noted above, the record includes some evidence of the applicant's and applicant's spouse's income and expenses. These include tax returns and Forms W-2, Wage and Tax Statement, for the years 2004 and 2005 and copies of mortgage, utility and insurance bills. The Forms W-2 and tax returns show that the applicant contributes significantly to the household income. However, while the household income may be reduced in the applicant's absence, there is insufficient evidence to establish that the applicant's spouse would be unable to meet his expenses or other financial obligations.

The applicant claims that her husband has "begun to show signs of stress and strain." The applicant's husband claims that he is suffering "a great deal of stress as well as many sleepless nights." He states that he "cannot imagine [his] life without [the applicant] and [their] children in it." He also states that if the applicant takes the children with her to Belize, it "will cause a detrimental separation that will affect [his] ability to provide the adequate guidance." The AAO notes the applicant's husband's concerns. However, the AAO also notes that there is nothing in the record establishing that the applicant's spouse's emotional difficulty would go beyond that normally experienced by family members of inadmissible aliens.

The AAO acknowledges that the applicant's husband may suffer some emotional problems in being separated from the applicant. However, the AAO notes that while it is understood that the separation of spouses often results in significant psychological challenges, the applicant has not distinguished her husband's emotional hardship upon separation from that which is typically faced by the spouses of those deemed inadmissible. Additionally, the AAO notes that the applicant's husband may experience some financial hardship in being separated from the applicant; however, the applicant failed to submit sufficient documentation establishing that her husband will be unable to support himself and his children in her absence. Further, the AAO notes that the applicant has submitted insufficient evidence to establish that she will be unable to obtain employment in Belize and, thereby, reduce the financial burden on her husband. While the AAO acknowledges that acting as a single parent for children is arduous, the applicant has not shown that her children would create a burden on her husband that would elevate his difficulties to an extreme level. Based on the record before it, the AAO finds that the applicant has failed to establish that her husband would suffer extreme hardship if her waiver application is denied and he 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 husband 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 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.