

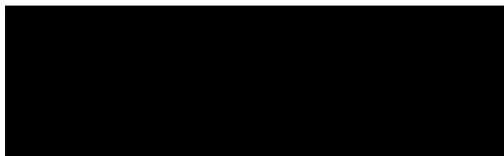
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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services



H6

DATE: **APR 18 2012** Office: TEGUCIGALPA, HONDURAS

FILE: [Redacted]

IN RE: Applicant: [Redacted]

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,

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. 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 Nicaragua 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's spouse and two stepchildren are U.S. citizens. He seeks a waiver of inadmissibility in order to reside in the United States.

The field office director found that the applicant had failed to establish extreme hardship to a qualifying relative and the application was denied accordingly. *Decision of the Field Office Director*, dated October 2, 2009.

On appeal, the applicant's spouse asserts that she will experience financial, medical and emotional hardship based on the applicant's absence from the United States. *Form I-290B*, dated November 20, 2009.

The record includes, but is not limited to, the applicant's statements, medical records, country conditions information, education records and financial records. The entire record was reviewed and considered in rendering a decision on the appeal.

The record reflects that the applicant entered the United States without inspection in July 2004, he was issued a voluntary departure grant on July 7, 2008 with an expiration date of November 4, 2008, and he departed the United States pursuant to this order on October 29, 2008. The applicant accrued unlawful presence from July 2004, the date he entered the United States without inspection, until July 7, 2008, the date of his voluntary departure order. The AAO notes that unlawful presence does not accrue during the voluntary departure period. The applicant is 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 readmission within ten years of his October 29, 2008 departure from the United States.

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 Attorney General [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.

A section 212(a)(9)(B)(v) waiver of the bar to admission resulting from section 212(a)(9)(B)(i)(II) of the Act is dependent first upon a showing that the bar imposes an extreme hardship to the U.S. citizen or lawfully resident spouse or parent of the applicant. Hardship to the applicant or his stepchildren is not considered in section 212(a)(9)(B)(v) waiver proceedings unless it causes hardship to a qualifying relative, in this case the applicant's spouse. Once extreme hardship is established, it is but one favorable factor to be considered in the determination of whether the Secretary should exercise discretion. *See Matter of Mendez*, 21 I&N Dec. 296 (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 able to provide health insurance for her younger daughter; she and the applicant are able to provide a home, food and transportation for their family; and they would not be able to provide the same basic needs due to the economic state in Nicaragua. *Applicant’s Spouse’s Statement*, dated November 12, 2008.

The applicant’s spouse states that basic food and shelter is difficult to obtain in Nicaragua; the average per capita income is \$1,123; the applicant rents a shack with an outside bath and no kitchen; Nicaragua is a socialist country; she gets anxiety and panic attacks knowing that she would have to be separated from her children and grandson to be with the applicant; she would be separated from her parents, brothers and sisters; she would not be able to afford medical care in Nicaragua; she speaks Spanish but would have difficulty adjusting to the Nicaraguan customs and beliefs; her younger daughter would not have basic quality healthcare in Nicaragua; the educational opportunities in the United States are far superior to those in Nicaragua; they would experience financial hardship in Nicaragua; she provides financial support and insurance for her older child; her older child needs her support and guidance; her father has Parkinson’s disease and her mother has high blood pressure and diabetes; and her younger daughter is extremely close to her older daughter. *Applicant’s Spouse’s Appeal Letter*, undated.

The record reflects that the applicant's spouse underwent extensive surgery on July 7, 2008 and will require homecare. *Applicant's Spouse's Medical Records*, dated July 7, 2008. The record includes country conditions information on Nicaragua, including information on the economic situation; an insurance card for the applicant's younger daughter; and evidence of her parents' stated medical conditions. The AAO notes that Nicaragua is currently listed as a country whose nationals are eligible for Temporary Protected Status due to the damage done to the country from Hurricane Mitch and subsequent storms, and the subsequent inability of Nicaraguans to handle the return of its nationals. *Federal Register*, Volume 76, No. 214, pp. 68493-68498, Wednesday, November 11, 2011, Notices.

The record reflects that the applicant's spouse would be separated from her family in the United States, including her older daughter and her ill parents. The record reflects that she may experience financial hardship in Nicaragua. In addition, she would be raising her younger daughter in a foreign country with significantly different standards than the United States. Considering the unique factors presented, including the country conditions in Nicaragua, the AAO finds that the applicant's spouse would suffer extreme hardship upon relocation to Nicaragua.

The applicant's spouse states that her younger daughter's teacher has indicated a behavior change due the absence of the only father she knows; her daughter expresses disappointment that the applicant cannot attend her school activities; her daughter complains of headaches and inability to sleep; she is suffering from lack of sleep and is concerned about her mental well-being; she had abdominal surgery and is dependent on the applicant's help in recovering; Hurricane Ike damaged her home's fence and siding; she needs the applicant's help in fixing the damage; she needs his assistance in repairing her car; she is responsible for supporting the applicant in Nicaragua; she is having trouble paying her bills without the applicant's income; the applicant is supportive of her as a parent and spouse; and the applicant is her best friend. *Applicant's Spouse's Statement*.

The applicant's spouse states that she is under a doctor's care for anxiety and depression; she has been prescribed medicine for depression, panic disorder and obsessive-compulsive disorder; the stress of being separated from the applicant has caused her to take prescription medication; she has developed a tic resulting in a clenched jaw, severe headaches and moodiness; she is attending counseling, which does not substitute for the applicant listening to her daily life experiences; she sends the applicant money for support; and she needs the applicant to help pay off their debts, including the mortgage on their home. *Applicant's Spouse's Appeal Letter*. The record reflects that the applicant's spouse is \$2,917.64 past due on her mortgage payment and includes evidence of other expenses such as home repair, western union fees, calling card and plane expenses. However, the record also reflects that, as of September 18, 2009, the applicant's spouse earned a salary of \$63,841.00. The record does not include evidence of income earned by the applicant while in the United States. Although the record reflects that the applicant's spouse is past due on her mortgage payment and has other expenses, the AAO finds that the evidence in the record is insufficient to establish that the spouse is unable to support herself or that she is otherwise experiencing financial hardship which goes beyond that normally experienced by family members of inadmissible aliens.

The record includes prescription records for the applicant's spouse for panic and anxiety disorder, and depression. The applicant's spouse's physician states that she has been prescribed Ambien for sleep issues, but it no longer helps her due to her increased stress level; she has lost about 30 pounds in the last year; she has developed a tic from her stress; and he is treating her for anxiety and depression. *Letter from [REDACTED]*, dated November 20, 2009. The record reflects that the applicant's spouse has seen a counselor three times. The applicant's younger daughter's teacher states that her reading level has decreased and she upset about her situation at home. *Teacher's Letter*, dated November 3, 2009. However, as noted above, hardship to the applicant's spouse's children is only considered insofar as it causes hardship to the applicant's spouse, the only qualifying relative in this case.

The record reflects that the applicant's spouse is experiencing some emotional hardship without the applicant. However, the record lacks sufficient documentary evidence of emotional, financial, medical or other types of hardship that, in their totality, establish that he would suffer extreme hardship upon remaining in the United States.

We can find extreme hardship warranting a waiver of inadmissibility only where an applicant has demonstrated extreme hardship to a qualifying relative in the scenario of separation *and* the scenario of relocation. A claim that a qualifying relative will relocate and thereby suffer extreme hardship can easily be made for purposes of the waiver even where there is no actual intention to relocate. *Cf. Matter of Ige*, 20 I&N Dec. 880, 886 (BIA 1994). Furthermore, to relocate and suffer extreme hardship, where remaining the United States and being separated from the applicant would not result in extreme hardship, is a matter of choice and not the result of inadmissibility. *Id.*, also *cf. Matter of Pilch*, 21 I&N Dec. 627, 632-33 (BIA 1996). As the applicant has not demonstrated extreme hardship from separation, we cannot find that refusal of admission would result in extreme hardship to the qualifying relative in this case.

In proceedings for application for waiver of grounds of inadmissibility under section 212(i) 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.