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



U.S. Citizenship
and Immigration
Services



H6

DATE: AUG 24 2012

OFFICE: SAN SALVADOR

FILE: 

IN RE: 

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 AAO inappropriately applied the law in reaching its decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen in accordance with the instructions on Form I-290B, Notice of Appeal or Motion, with a fee of \$630. The specific requirements for filing such a motion can be found at 8 C.F.R. § 103.5. **Do not file any motion directly with the AAO.** Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires any motion to be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

for Perry Rhew

Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Acting Field Office Director, San Salvador, El Salvador, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native and citizen of El Salvador who entered the United States without admission or parole in November 1998. The applicant applied for temporary protected status (TPS) on May 18, 2001, which was denied on July 25, 2002. On September 25, 2003, the applicant was granted voluntary departure by an immigration judge until January 23, 2004. The applicant departed from the United States in January 2004. The applicant 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.¹ The applicant is a beneficiary of an approved Petition for Alien Relative, as a spouse of a U.S. citizen, who seeks a waiver of inadmissibility in order to reside in the United States with his U.S. citizen spouse and children.

The Acting Field Office Director concluded that the record failed to establish the existence of extreme hardship for a qualifying relative and denied the application accordingly. *See Decision of the Acting Field Office Director*, dated March 31, 2010.

On appeal, the applicant's spouse asserts that she and her family are suffering extreme financial and emotional hardship without the applicant. The applicant's spouse also asserts that if she relocated to El Salvador, she and her family would be in fear for their safety and suffer medical, emotional, and financial hardship. In support of the waiver application and appeal, the applicant submitted identity documents, a letter from his spouse, medical letters concerning the applicant's spouse and children including letters without translation from El Salvador,² a psychological report concerning the applicant's spouse, family photographs, traffic dispositions for the applicant, and background information concerning country conditions in El Salvador. The entire record was reviewed and considered in rendering a decision on the appeal.

Section 212(a)(9)(B) of the Act, in pertinent part, provides:

¹ The record reflects that the applicant's criminal record includes a charge for the manufacture, sale, or possession of a fictitious operator's license with an unclear disposition. The applicant's rap sheet also indicates a charge for the fraudulent use of a birth certificate or driver's license with a conviction for false statement to defraud an insurance company. The record does not contain any further documentation for these crimes. Subject to the records concerning this conviction, the applicant may also be inadmissible pursuant to 212(a)(2)(A)(i)(I) of the Act, 8 U.S.C. § 1182(a)(2)(A)(i)(I), for having committed a crime involving moral turpitude.

² According to 8 C.F.R. § 103.2(b)(3), "[a]ny document containing foreign language submitted to USCIS shall be accompanied by a full English language translation which the translator has certified as complete and accurate, and by the translator's certification that he or she is competent to translate from the foreign language into English."

(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 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 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. No court shall have jurisdiction to review a decision or action by the Attorney General regarding a waiver under this clause.

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 his U.S. citizen spouse. The record contains references to hardship the applicant’s children would experience if the waiver application were denied. It is noted that Congress did not include hardship to an applicant’s children as a factor to be considered in assessing extreme hardship. In the present case, the applicant’s spouse is the only qualifying relative for the waiver under section 212(a)(9)(B)(v) of the Act, and hardship to the applicant’s children will not be separately considered, except as it may affect the applicant’s spouse.

The record reflects that the applicant is a 32-year old native and citizen of El Salvador. The applicant’s spouse is a 27-year old native and citizen of the United States. The applicant is

currently residing in El Salvador. As of the filing of the applicant's Form I-290B, the applicant's spouse was residing in El Salvador with the applicant and their two children.³

The applicant's spouse asserts that when she is separated from her husband, she is emotionally lost and it is difficult for her to take care of her responsibilities. The record contains a letter from a social worker stating that the applicant's spouse can be disorganized and unfocused based upon her upbringing and that the applicant could help stabilize their family. The applicant's spouse claims to suffer from depression, but this assertion is not supported by any medical document that can be considered in this decision.⁴ It is acknowledged that separation from a spouse nearly always creates some hardship for both parties. However, there is not sufficient evidence to show that if the applicant remains in El Salvador, the emotional hardship suffered by the applicant's spouse will be so serious that she would be unable to perform in her daily life or care for her children.

The applicant's spouse asserts that she has been unable to financially provide for her family in the absence of the applicant. The applicant's spouse contends she has been depending on family members for financial assistance and no longer receives medical assistance. The record reflects that the applicant's spouse, throughout her life, has never been employed. The applicant's spouse states that she has been living off of the government and family members for a long time. There is no evidence in the record concerning the applicant's spouse's housing situation when she lived with the applicant in the United States. There is no supporting documentation concerning the applicant's income in the United States. Further, there is no documentation concerning governmental assistance or the extent to which the applicant's spouse is receiving financial assistance from her family members. It is noted that the applicant's mother paid for the applicant's spouse and two of her children to travel to El Salvador to reside with the applicant for several months. The courts considering the impact of financial detriment on a finding of extreme hardship have repeatedly held that, while it must be considered in the overall determination, it is not enough by itself to justify an extreme hardship determination. *See INS v. Jong Ha Wang*, 450 U.S. 139 (1981) (upholding BIA finding that economic detriment alone is insufficient to establish extreme hardship). There is insufficient evidence in the record to find that the applicant's spouse is, in the aggregate, suffering a level of hardship beyond the common results of inadmissibility or removal because of separation from the applicant.

The applicant's spouse asserts that she cannot relocate to El Salvador to reside with her husband because she would have to leave her oldest son behind in the United States. The applicant's spouse claims that her oldest son's biological father would not allow their son to reside in El Salvador. It is noted that the record does not contain any documentation concerning custody arrangements for the applicant's oldest son. The record also does not contain any supporting documentation evidencing her oldest son's father's intent to keep their child in the United States.

³ The applicant and his spouse have two children in common. The applicant's spouse's oldest child has a different biological father and was residing in the United States at the time of the applicant's appeal.

⁴ The applicant's spouse states that she was treated for depression in El Salvador by a medical practitioner. However, the medical letters submitted from El Salvador are in Spanish and not accompanied by an English translation as required by 8 C.F.R. § 103.2(b)(3).

It is noted that the assessment from a social worker states that the applicant's spouse's oldest son has suffered the loss of an absent father and there is no other information concerning the extent of his presence in his son's life.

The applicant's spouse asserts that her children are suffering from medical issues so that they would be unable to reside with her if she relocated to El Salvador. The record contains letters submitted by physicians stating that the applicant's two younger children have been treated for chronic asthma and experienced medical issues while travelling abroad. The applicant's middle child has been diagnosed with a urology problem and her growth and development is lower than average for her age. The physicians' letters also state that the children are monitored and taking medication for their health conditions, but would be unable to access the same level of medical care in El Salvador. However, the record reflects that the applicant's spouse was able to receive medical care for herself and her two children while residing in El Salvador. Accordingly, there is no indication that the applicant's family would be unable to receive the medical care they require if they relocated to El Salvador.

The applicant's spouse asserts that her financial security and safety would be in jeopardy if she resided in El Salvador. Specifically, the applicant's spouse states that she has been the victim of crime in El Salvador and that her husband has been threatened by gangs. It is noted that the record does not contain any police reports or other supporting evidence concerning the applicant's spouse's claims. The applicant submitted a Department of State travel advisory concerning El Salvador. It is noted that the Department of State has not issued any travel warnings for El Salvador. The record reflects that the applicant is working as a fisherman in El Salvador. There is no information concerning the extent of his financial expenses in El Salvador and how the applicant and his family have been supporting themselves during the applicant's spouse's stay in El Salvador. 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)). In this case, the record contains insufficient evidence to show that the hardships faced by the qualifying relative in the aggregate, if she were to relocate to El Salvador, rise to the level of extreme hardship.

Although the depth of concern and anxiety over the applicant's immigration status is neither doubted nor minimized, the fact remains that Congress provided for a waiver of inadmissibility only under limited circumstances. While the prospect of separation or involuntary relocation nearly always results in considerable hardship to individuals and families, in specifically limiting the availability of a waiver of inadmissibility to cases of "extreme hardship," Congress did not intend that a waiver be granted in every case where a qualifying relationship exists. U.S. court decisions have repeatedly held that the common results of removal are insufficient to prove extreme hardship. *See Hassan v. INS*, 927 F.2d 465, 468 (9th Cir. 1991), *Perez v. INS*, 96 F.3d 390 (9th Cir. 1996); *Matter of Pilch*, 21 I&N Dec. 627 (BIA 1996) (holding that emotional hardship caused by severing family and community ties is a common result of deportation and does not constitute extreme hardship); *Matter of Shaughnessy*, 12 I&N Dec. 810 (BIA 1968) (holding that separation of family members and financial difficulties alone do not establish

extreme hardship). “[O]nly in cases of great actual or prospective injury . . . will the bar be removed.” *Matter of Ngai*, 19 I&N Dec. 245, 246 (BIA 1984).

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 his U.S. citizen spouse as required under section 212(a)(9)(B)(v) 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)(v) of the Act, the burden of proving eligibility remains entirely with the applicant. 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.