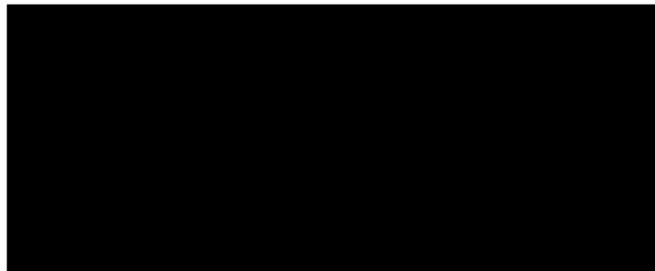




H6



DATE: DEC 20 2012

Office: PANAMA CITY, PANAMA

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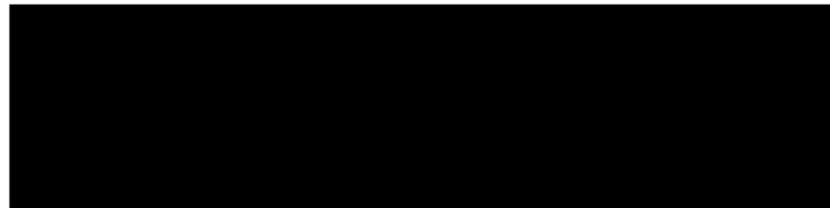


IN RE: Applicant:



APPLICATION: Application for Waiver of Grounds of Inadmissibility pursuant to 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 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 with the field office or service center that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$630. The specific requirements for filing such a request 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,

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Ron Rosenberg
Acting Chief, Administrative Appeals Office

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

The applicant is a native and citizen of Ecuador 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 10 years of her last departure from the United States. The applicant seeks a waiver of inadmissibility in order to reside in the United States with her U.S. citizen parents.

The Field Office Director concluded that the applicant had failed to demonstrate extreme hardship to her U.S. citizen parents and denied the application accordingly. *See Decision of Field Office Director*, dated August 11, 2011.

On appeal, counsel for the applicant asserts that the Director failed to consider fully the medical, financial, emotional, social, and safety concerns which amount to extreme hardship for the applicant's U.S. citizen parents. Additionally, counsel states that since the filing of the waiver application, the applicant's parents have suffered increased hardship because they have been forced to move to Ecuador with the applicant. Furthermore, the applicant's father and her U.S. citizen daughter both were recently diagnosed with additional medical problems.

The evidence includes, but is not limited to: statements from the applicant's parents; medical records relating to the applicant's parents and daughter; letters from the applicant's employer, friends, and coworkers; financial records; and country conditions information. The entire record was reviewed and considered in rendering a decision on the appeal.

Section 212(a)(9) 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 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.

In the present case, the record reflects that the applicant entered the United States without inspection in March 2003 and remained until October 2010. Therefore, the applicant accrued more than one year of unlawful presence and is inadmissible under section 212(a)(9)(B)(i) of the Act for a period of 10 years from her last departure from the United States. The applicant does not contest this finding of inadmissibility on appeal.

The applicant is eligible to apply for a waiver of this ground of inadmissibility under section 212(a)(9)(B)(v) of the Act as the daughter of two U.S. citizens. In order to qualify for this waiver, however, she must first prove that the refusal of her admission to the United States would result in extreme hardship to her qualifying relatives. Hardship to the applicant or the applicant's U.S. citizen daughter is not directly relevant under the statute and will be considered only insofar as it results in hardship to the applicant's parents. 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 U.S. 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 v. INS*, 138 F.3d 1292, 1293 (9th Cir. 1998) (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.

On appeal, counsel asserts that the applicant’s U.S. citizen parents would suffer extreme hardship if the inadmissibility waiver were denied. He asserts that the applicant’s parents suffer from serious health problems for which they would not receive adequate treatment in Ecuador. Furthermore, counsel claims that the applicant’s parents would be vulnerable to crime in Ecuador. Counsel also alleges that the applicant’s young U.S. citizen daughter requires treatment in the United States for serious health issues and that she, too, would be subject to financial hardship and safety concerns in Ecuador. Counsel also states that the applicant’s parents need her financial support and daily assistance in order to receive the proper medical care in the United States. Finally, he notes that the applicant is the only one of her siblings who is not living in the United States and that separation from her and her young daughter is very difficult for the family.

The AAO finds that the applicant’s parents would suffer extreme hardship if they were to relocate to Ecuador. Medical documentation in the record reflects that the applicant’s mother has been diagnosed with diabetes, which she is struggling to control, as well as high cholesterol, hypertension, and gastritis. The documentation also notes that the applicant’s mother may have depression and that she may have had strokes in the past, resulting in memory loss, and that she is

predisposed to future strokes. The applicant's mother is taking prescription medication for her illnesses and her doctor has noted that she "needs constant close following and treatment," without which she could suffer "serious impairment." Medical documentation also establishes that the applicant's father has been diagnosed with diabetes and Parkinson's disease and that he had prostate surgery in June 2011.

A letter from the applicant's mother indicates that she and her husband had been living in Ecuador to provide emotional support to the applicant. During that time, the applicant's mother had trouble paying for her diabetes medications so she sought assistance from a local center. The center provided her with a different medication, which caused her to lose consciousness due to an extreme drop in her blood sugar. A letter from a diabetes specialist confirms that the applicant's mother was taking unprescribed medication and that she experienced hypoglycemia as a result. *Letter from [REDACTED] dated April 5, 2012.* The applicant's mother states that because she and her husband were unable to afford necessary medications and appropriate care in Ecuador, they had to return to the United States on May 20, 2012. Receipts for the medication and emergency treatment she received are included in the record.

The applicant's parents have also been living in the United States for several years and the majority of their support network is here. Five of their seven children are U.S. citizens who live nearby, and a sixth child is a lawful permanent resident. Furthermore, country conditions information indicates that crime in Ecuador occurs "at a dramatically high rate and is often violent." *U.S. Department of State, Ecuador Country Specific Information*, dated January 26, 2010. Violent kidnappings, robberies, home invasions, and other crimes have frequently occurred against U.S. citizens. In the aggregate, the applicant's parents' serious health problems, separation from their close family members in the United States, and dangerous conditions in Ecuador would create extreme hardship for them if they were to relocate.

However, the applicant has not demonstrated that her U.S. citizen parents would suffer extreme hardship on separation from the applicant. Despite the applicant's parents' claim that they rely on her for financial support in the United States, there is insufficient evidence in the record to support that claim. As mentioned *supra*, the applicant's parents have six other adult children, five of whom live near them in the United States. While the applicant has been in Ecuador, her parents have been living with two of their other children. According to the applicant's parents' statement, the applicant held only a part time job in the United States and one of their sons was also contributing to their finances. Two of their sons now assist with their medical bills. The applicant's mother also states that she receives financial assistance from a local church, which covers the entire cost of her medications. Although they also indicate that it would be difficult for them and their other children to support the applicant and her daughter in Ecuador, there is no evidence in the record that the applicant will need such support or that the family's income would be insufficient to provide it. The only financial documentation in the record consists of letters from the applicant's siblings' employer documenting their income, pay stubs for the applicant's mother, and photocopies of retail receipts and phone cards. This evidence is insufficient to establish that the applicant's financial contributions are necessary, or that the applicant's siblings cannot provide sufficient support to their parents. While the applicant's parents also claim that they do not know how to manage their finances and fear that they will forget to pay their bills

without the applicant's assistance, there is no evidence that the two adult children with whom they currently reside cannot manage those responsibilities. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *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)).

Finally, the applicant's parents claim that they lack companionship during the day because the applicant was the only one of their children who worked only at night. Although the AAO recognizes that the applicant's parents miss her and would like her company, there is no evidence that they require her full-time supervision during the day. The medical records indicate that the applicant's parents need regular medical care but do not recommend constant monitoring. While counsel also claims that the applicant used to drive her parents to doctor's appointments and that her siblings have had trouble taking over that responsibility, there is no evidence in the record to support that claim. Without documentary evidence to support a claim, the assertions of counsel will not satisfy the petitioner's burden of proof. The unsupported assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980).

The AAO also recognizes that the applicant's parents wish to be together with the applicant and her daughter in the United States for emotional reasons. The applicant's parents and all of her siblings are living in the United States and it is difficult for them to be separated. However, family separation is a common result of inadmissibility or removal of a close relative and typically does not rise to the level of extreme hardship. *See generally Matter of Cervantes-Gonzalez*, 22 I&N Dec. at 568; *Matter of Pilch*, 21 I&N Dec. 627, 632-33 (BIA 1996). The evidence does not support a finding that the emotional difficulties of such separation, even when considered in the aggregate with the family's financial and medical concerns, would constitute extreme hardship as required for a waiver.

The record also contains significant information regarding the applicant's U.S. citizen daughter. However, the applicant's daughter is not a qualifying relative for purposes of a waiver under section 212(a)(9)(B)(v), so hardship to her can only be considered insofar as it affects the applicant's parents. The applicant's parents express concern about the applicant's daughter's health and safety while living in Ecuador, as well as the possibility that she would lose educational opportunities. However, there is no indication that any hardship to the applicant's daughter would be so severe as to create extreme hardship for the applicant's parents.

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 in 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. at 632-33. The AAO therefore finds

that the applicant has failed to establish extreme hardship to her U.S. citizen parents 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 an 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.