

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: **DEC 21 2012** Office: PANAMA CITY, PANAMA

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 (the Act), 8 U.S.C. section 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 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,

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Field Office Director, Panama City, Panama. 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 Ecuador. She was found to be inadmissible to the United States pursuant to section 212(a)(9)(B)(i)(II) of the Act, 8 U.S.C. § 1182(a)(9)(B)(i)(II), for having been unlawfully present in the United States for one year or more and seeking admission within 10 years of her last departure. She is married to a United States citizen. She 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).

The Field Office Director concluded that the applicant had failed to establish that the bar to her admission would impose extreme hardship on a qualifying relative, her U.S. citizen spouse, and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) on October 27, 2011.

On appeal, counsel for the applicant asserts the Field Office Director improperly focuses on one allegation of hardship and failed to properly consider other hardship impacts on the applicant's spouse. *Form I-290B*, received on November 30, 2011.

The record includes, but is not limited to, the following documentation: a statement from counsel; statements from the applicant and her spouse; medical documents related to medical tests administered to the applicant's spouse; a psychological assessment of the applicant's spouse by [REDACTED] LPC, dated November 9, 2010; country conditions materials pertaining to Ecuador, including a report issued by the United States Department of State, internet articles on violence and crime in Ecuador and photographs of the living conditions for the applicant and their daughter; a statement from [REDACTED] pertaining to the applicant's spouse, undated; a statement from [REDACTED] pertaining to the applicant's spouse, undated; a copy of an apartment lease and other bills in the applicant's spouse's name. The entire record was reviewed and all relevant evidence considered in rendering this decision.

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

(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. . . .

The record indicates that the applicant entered the United States with a B-2 visa as a visitor for pleasure on January 14, 2004, but remained beyond her authorized period of stay until she departed

on March 19, 2009. Therefore, the applicant was unlawfully present in the United States for over one year, and is now seeking admission within 10 years of her last departure from the United States. Accordingly, the applicant is inadmissible to the United States under section 212(a)(9)(B)(i)(II) of the Act. The applicant does not contest this finding.

Section 212(a)(9)(B)(v) of the Act provides for a waiver of section 212(a)(9)(B)(i) inadmissibility as follows:

The Attorney General [now Secretary of Homeland Security] 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 . . . 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 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 spouse 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 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.

On appeal, counsel for the applicant asserts the Field Office Director only considered the evidence of psychological hardship and failed to properly consider evidence of the applicant’s spouse’s dangerous heart condition. *Statement in Support of Appeal*, received November 30, 2011. An examination of the record reveals three documents related to counsel’s assertion that the applicant’s spouse has a dangerous heart condition, two letters from medical doctors and an insurance claim approval notice. In the first statement, by [REDACTED], [REDACTED] states that the applicant was seen for chest pain and an abnormal EKG, and that he was due to have a nuclear stress test. In a second statement, [REDACTED] states that the applicant was seen for tonsillitis and allergic rhinitis, and that, after referral to a cardiologist for an abnormal EKG his tests were returned as normal.

The AAO does not find this evidence sufficient to establish that the applicant’s spouse is suffering from any serious medical condition relating to his heart. Without evidence which clearly indicates that he has been diagnosed with a medical condition, and what impact that condition will have on his

ability to function on a daily basis, the AAO cannot make a determination that this will be a significant hardship factor.

The applicant's spouse asserts he has no family ties in Ecuador and would not be able to find commensurate employment and income to support his spouse and daughter in Ecuador. *Statement of the Applicant's Spouse*, received November 30, 2011. He further states that the applicant and his daughter are suffering hardship due to the conditions in Ecuador, and that his daughter suffers from asthma. He asserts that his daughter needs medical care and medications which are hard to get in Ecuador, and that he and his entire family would have to endure extreme physical conditions upon relocation to Ecuador.

The record contains country conditions materials on Ecuador. These materials document the national social, economic and political trends in the country, as well as the trends in crime, national pay wage and the murder rate in Ecuador. While the AAO finds the materials sufficient to demonstrate that the quality of life in Ecuador is lower than that of the United States, they are not sufficiently probative with regard to the applicant's spouse to establish that he would experience extreme hardship based on the conditions alone. Nonetheless, the AAO will give some consideration to the quality of life in Ecuador when aggregating the impacts on the applicant's spouse upon relocation.

The applicant's spouse asserts that he has numerous financial obligations which would have to be severed if he relocated to Ecuador, and that this could damage his credit. The record does contain evidence corroborating that the applicant's spouse has financial obligations, however, having to sever these and other common ties is a common impact related to relocation. The applicant has not significantly distinguished the financial impact of departure on her spouse from the common consequences of relocation.

The AAO notes above that children are not qualifying relatives in this proceeding, nonetheless, hardships to an applicant's child may be relevant to the extent they impact the qualifying relative, in this case the applicant's spouse. The record contains a medical statement pertaining to the applicant's spouse's daughter indicating that she has been treated for allergy-related respiratory problems while residing in Ecuador. While the applicant's spouse asserts they have to travel two hours to retrieve her medicines, the record does not indicate that her condition is untreatable in Ecuador or related to her residence there. The AAO notes that the applicant's daughter is not required to reside in Ecuador, and it is not clear that residence in Ecuador is related to any medical problem she is enduring. The record does not clearly establish that the impacts on the applicant's daughter are a result of the applicant's inadmissibility. The applicant has not shown that her daughter is facing challenges that raise the hardship of the applicant's spouse to an extreme level.

When the hardships asserted upon relocation are examined in the aggregate, the AAO finds that they rise above the common hardships of relocation to a degree constituting extreme hardship.

With regard to hardship due to separation, the applicant's spouse has asserted that he will experience extreme physical, emotional and financial hardship due to the applicant's inadmissibility. *Statement of the Applicant's Spouse*, received November 30, 2011.

The applicant's spouse asserts that he is suffering emotionally due to separation from the applicant. The record includes a psychological examination of the applicant's spouse by [REDACTED] in which [REDACTED] states that the applicant's spouse is suffering from adjustment disorder with anxious and depressed mood. While the AAO recognizes the value of expert testimony with regard to the mental health condition of qualifying relatives, in this case, [REDACTED] evaluation makes clear that the applicant's spouse's reaction is a "normal emotional reaction to a severe negative drastic change in his family life." The AAO finds this evidence sufficient to corroborate that the applicant's spouse will experience some emotional impact due to the applicant's inadmissibility, however, it does not appear to distinguish the emotional impact on the applicant's spouse from that which is commonly experienced by the relatives of inadmissible aliens who remain in the United States. While the AAO will give some consideration to the applicant's emotional condition as a common impact, it does not find the record to establish that the applicant's spouse will experience an uncommon emotional impact due to separation.

The applicant's spouse also asserts he suffers from high blood pressure and that his family has a history of cardiac problems. As discussed above, the evidence submitted with regard to any heart condition is inconclusive, and does not support the applicant's spouse's assertions.

The applicant's spouse states that he is unable to afford the cost of frequent travel to Ecuador to visit the applicant and their daughter and that it takes all of his income to send the applicant and their daughter money for support each month. The record includes copies of an apartment lease and other financial obligations, but there is no documentation which establishes what the applicant's spouse earns in terms of income. Without such documentation the AAO cannot make a determination that the applicant's spouse is unable to meet his financial obligations or that he will experience any significant financial impact due to the applicant's inadmissibility. Although documentation of income is not required to establish extreme hardship, if it is asserted that a qualifying relative is going to experience financial hardship then sufficient evidence should be submitted to corroborate that assertion.

When the hardship impacts upon separation are considered in the aggregate, the AAO does not find them sufficient to establish that the applicant's spouse would experience impacts rising to the degree of extreme hardship due to separation.

The record, reviewed in its entirety and in light of the *Cervantes-Gonzalez* factors cited above, does not support a finding that the applicant's husband faces extreme hardship if his wife is refused admission. The AAO recognizes that the applicant's spouse may experience some emotional impact. This and other assertions, however, are common hardships associated with removal and separation, and do not rise to the level of "extreme" as informed by relevant precedent. U.S. court decisions have repeatedly held that the common results of removal or inadmissibility are insufficient

to prove extreme hardship. *See Hassan v. INS*, 927 F.2d 465, 468 (9th Cir. 1991). In addition, *Perez v. INS*, 96 F.3d 390 (9th Cir. 1996), held that the common results of deportation are insufficient to prove extreme hardship and defined extreme hardship as hardship that was unusual or beyond that which would normally be expected upon deportation. The AAO therefore finds that the applicant has failed to establish extreme hardship to her U.S. citizen spouse as required under section 212(a)(9)(B)(v) of the Act. Having found the applicant statutorily ineligible for relief, 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 rests 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.