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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals
20 Massachusetts Ave. NW MS 2090
Washington, DC 20529-2090
**U.S. Citizenship
and Immigration
Services**



H6

DATE: **FEB 01 2012** OFFICE: GUATEMALA CITY

FILE:

IN RE: APPLICANT:

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:

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, Guatemala City, Guatemala, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native and citizen of Guatemala 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 spouse.

The Field Office Director concluded that the applicant failed to provide sufficient evidence of extreme hardship to a qualifying relative and denied the application accordingly. *See Decision of Field Office Director* dated August 6, 2009.

On appeal, counsel for the applicant submits a brief in support of appeal, a letter from a psychologist, medical records and a letter from a physician, other letters in support, evidence of the applicant's spouse's visits to the applicant, and copies of money orders. In the brief, counsel discusses the circumstances which led to the applicant's voluntary departure in 2006, as well as the events leading up to the applicant's and her spouse's marriage. *Brief in support of appeal*, August 31, 2009. Counsel contends the evidence is sufficient to show the extreme hardship caused by separation from the applicant. *Id.*

The record includes, but is not limited to, the documents listed above, evidence of birth and citizenship, evidence related to the applicant's removal proceedings, and other petitions and applications filed on behalf of the applicant. The entire record was reviewed and considered in rendering a decision on the appeal.

Section 212(a)(9) of the Act provides:

(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.

(ii) Construction of unlawful presence.- For purposes of this paragraph, an alien is deemed to be unlawfully present in the United States if the alien is present in the United States after the expiration of the period of stay authorized by the

Attorney General or is present in the United States without being admitted or paroled.

....

(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.

The record reflects the applicant entered the United States without inspection on October 4, 2004 near Brownsville, Texas.¹ *Form I-831, Notice to Appear*, October 6, 2004. The applicant conceded removability as charged on the Notice to Appear and was granted voluntary departure until October 26, 2005. *Respondent's pleadings*, June 28, 2005, *Order of Immigration Judge*, June 28, 2005. Before the expiration of the voluntary departure period, counsel for the applicant requested an extension from the District Director until January 15, 2005; however, no response was sent. *Letter from [REDACTED]* October 19, 2005. The applicant remained in the United States past her voluntary departure date, and past the date requested in the extension. A motion to reopen the applicant's case before the immigration judge was granted, and the applicant was granted voluntary departure with safeguards until December 29, 2006. *Order of Immigration Judge*, November 29, 2006. The applicant complied with this grant of voluntary departure and returned to Guatemala before December 29, 2006. The applicant accrued unlawful presence from the date of her entry without inspection, October 4, 2004, until she was first granted voluntary departure, on June 28, 2005. The applicant also accrued unlawful presence from the date she failed to depart, October 26, 2005, until she was again granted voluntary departure by an immigration judge, November 29, 2006.² The applicant has therefore accrued more than one year of unlawful presence and is inadmissible under section 212(a)(9)(B)(i)(II) of the Act. The applicant's qualifying relative for a waiver of this inadmissibility is her U.S. Citizen spouse.

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

¹ The record also reflects the applicant was previously in the United States, although the date of her initial entry is uncertain. The applicant admitted under oath that she was arrested in 1994 by immigration officials, and complied with a grant of voluntary departure prior to April 1, 1997, the effective date of the unlawful presence provisions.

² Both these periods of time count towards the applicant's unlawful presence for purposes of section 212(a)(9)(B)(i)(II) of the Act as they occurred during a single visit. See *Memorandum by Donald Neufeld, Acting Associate Director, Domestic Operations Directorate; Lori Scialabba, Associate Director, Refugee, Asylum and International Operations Directorate; Pearl Chang, Acting Chief, Office of Policy and Strategy*, dated May 6, 2009.

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 indicates he has had to go to his doctor to cope with the loss of the applicant, and that he has suffered greatly. *Letter from applicant's spouse*, January 7, 2009. A licensed social worker confirms she has been treating the spouse for depression caused by the applicant's removal to [REDACTED]. *Letter from [REDACTED]*, August 25, 2009. A physician indicates the applicant's spouse suffers from depression, high blood pressure, and abdominal pain. *Letter from [REDACTED]*, August 13, 2009. Medical records are attached in support. *See medical records.*

A letter from the applicant's spouse's employer also indicates he suffers from depression, as well as financial hardship. *Letter from [REDACTED]*, August 17, 2009. The applicant submits evidence of the costs of travel to Guatemala as well as copies of money orders to support a finding of financial hardship. *See travel documents and money orders.*

Despite submission of evidence on travel expenses and money sent to the applicant in Guatemala, the record does not contain sufficient evidence of the spouse's or the applicant's household expenses to support assertions of financial hardship. The applicant further fails to provide any evidence regarding her spouse's and her own employment and earnings, and whether the applicant would be able to contribute financially if she could join her spouse in the United States. Without sufficient details of the family's expenses and income, the AAO is unable to assess the nature and extent of financial hardship, if any, the applicant's spouse will face.

Although there is a letter from the spouse's physician indicating the applicant's spouse has high blood pressure and abdominal pain, the record lacks documentation from a medical services provider with details about the severity of the spouse's complete medical condition and how it affects his quality of life to allow an assessment of the spouse's medical needs and whether the applicant can assist with those needs. Absent an explanation in plain language from the treating physician of the exact nature and severity of any condition and a description of any treatment or family assistance needed, the AAO is not in the position to reach conclusions concerning the severity of a medical condition or the treatment needed, or the nature and extent of any hardship the applicant's spouse would suffer as a result of the applicant's inadmissibility.

The record supports an assertion that the applicant's spouse is being treated for depression. *Letter from [REDACTED]*, August 13, 2009, *Letter from [REDACTED]*, August 25, 2009. While the AAO acknowledges that the applicant's spouse would face difficulties as a result of the applicant's inadmissibility, we do not find evidence of record to demonstrate that his hardship would rise above the distress normally created when families are separated as a result of inadmissibility or removal. In that the record fails to provide sufficient evidence to establish the financial, medical, emotional or other impacts of separation on the applicant's spouse are cumulatively above and beyond the hardships commonly experienced, the AAO cannot conclude that he would suffer extreme hardship if the waiver application is denied and the applicant remains in Guatemala without her spouse.

The record does not contain assertions on hardship the applicant's spouse would experience upon relocation to Guatemala. Without assertions and supporting evidence, the AAO cannot find that the applicant's spouse would experience extreme hardship upon relocation.

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 her 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 a 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.