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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: **FEB 08 2012** Office: TEGUCIGALPA, HONDURAS

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:

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 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, 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 Honduras. 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 ten years of her last departure. She has a United States citizen fiancé and has one U.S. citizen child. 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. fiancé, and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) on September 8, 2009.

On appeal, the applicant's spouse requests oral argument before the AAO and submits additional evidence concerning the medical condition of his son. *Form I-290B*, received on October 22, 2009.

Although the applicant has requested an oral hearing, the regulations provide that the requesting party must explain in writing why oral argument is necessary. U.S. Citizenship and Immigration Services (USCIS) has the sole authority to grant or deny a request for oral argument and will grant argument only in cases involving unique factors or issues of law that cannot be adequately addressed in writing. *See* 8 C.F.R. § 103.3(b). In this instance, the applicant has identified no unique factors or issues of law to be resolved. In fact, the applicant set forth no specific reasons why oral argument should be held. The written record of proceedings adequately represents the facts and issues in this matter. Consequently, the request for oral argument is denied.

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 without inspection in November 1997 and remained until she departed in 2005. The applicant applied for Temporary Protected Status on March 5, 1999, which was subsequently approved. Therefore, the applicant accrued

unlawful presence from November 1997 through March 5, 1999, a period of over one year. The applicant departed the United States in 2004. As the applicant has resided unlawfully in the United States for over a year and is now seeking admission within ten years of her last departure from the United States, she is inadmissible under section 212(a)(9)(B)(i)(II) of the Act.

The record includes, but is not limited to, a statement from the applicant's spouse; copy of a foreclosure notice for a property owned by the applicant's spouse; prescription receipt related to the applicant's son; a picture of the applicant's son highlighting evidence of a skin condition; two statements in Spanish;¹ a handwritten prescription notice from the desk of [REDACTED] dated September 24, 2009.

The entire record was reviewed and all relevant evidence considered in rendering this decision.

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 her children 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

¹ The regulations at 8 C.F.R. § 103.2(b)(3) require that any document containing foreign language submitted to USCIS 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. As two of the documents submitted are in Spanish, the AAO cannot accord them any weight for the purpose of this proceeding.

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 has submitted a statement asserting that he is experiencing extreme hardship due to separation from the applicant and his child. *Statement of the Applicant's Spouse*, dated October 7, 2009. He explains that, due to the nature of his employment, he is unable to stay in one place for any period of time and for this reason their child currently resides in Honduras with the applicant. He asserts that the child has a skin condition inherited from his mother which is exacerbated by the environmental conditions in Honduras and that he is unable to receive adequate treatment for his condition there. The applicant's spouse also asserts that the political and security conditions in Honduras are terrible and that his son and wife are in danger due to the crime rate. He also states that his son is experiencing cultural racism at the schools in Honduras because his father is an American citizen. He further explains that he does not speak any Spanish and that he has a good job with seniority in the aviation industry in the United States which he would lose if he had to relocate.

The applicant's spouse has made a number of assertions concerning hardship impacts on the applicant and on their son. However, as noted above, children are not qualifying relatives in this proceeding, and as such, any hardship to them is only relevant to the extent that it impacts the qualifying relative, in this case the applicant's spouse. Hardship to the applicant may not be considered in this proceeding. The AAO will examine the factual assertions of the applicant's spouse, but if the record fails to demonstrate that they rise above the common impacts to a degree that they would indirectly impact the applicant's spouse, who in this case resides in the United States, then such impacts may not be considered in order to establish extreme hardship.

With regard to the applicant's spouse's assertion that his son suffers from a medical condition exacerbated by the environmental conditions in Honduras, the record contains a prescription notice and prescription receipt. There is no documentation in the record which provides a medical diagnosis of his son's condition. While the prescription notice and receipt establish that he takes some form of medication, these documents are not sufficiently probative to establish: 1) that the applicant's son has been diagnosed with a skin condition; 2) the degree and severity of the impact of any such condition on his son; 3) that his son requires treatment which is not available in Honduras; or 4) that his son's conditions are exacerbated by the environmental conditions in Honduras. Further, the AAO notes that the prescription notice submitted into the record is from a doctor in Honduras, which is inconsistent with the assertion that the applicant's son will not have access to adequate medical resources. The record does not contain any evidence or documentation to corroborate the assertion that the applicant's son is experiencing cultural racism. The record does not contain sufficient documentation to establish that the applicant's spouse will experience any indirect hardship factor due to the medical condition of his son or due to cultural racism.

The AAO notes that on January 5, 1999, Honduras was been designated by the Attorney General for Temporary Protected Status due to Hurricane Mitch which struck the country in 1998. The status was extended through July 5, 2012. 76 Fed. Reg. § 68488, November 4, 2011.

The AAO acknowledges that the applicant's spouse is gainfully employed in the United States and that the applicant's spouse claims he does not speak any Spanish. In light of the social and economic conditions in Honduras, when the hardships upon relocation are considered in the aggregate with the common impacts of relocation the AAO can determine that the applicant's spouse would experience uncommon hardship rising to the degree of extreme upon relocation.

Although the applicant has established that a qualifying relative would experience extreme hardship upon relocation, the applicant must also establish that her spouse will experience extreme hardship due to separation.

The applicant's spouse asserts that he is experiencing financial hardship without the applicant in the United States and emotional hardship because he has to remain separated from his son as well. *Statement of the Applicant's Spouse*, dated October 7, 2009. He states that he is living paycheck to paycheck and is now in jeopardy of losing his house. He further states that he is experiencing emotional hardship due to the separation from his spouse and son.

The record contains a notice of foreclosure on a property owned by the applicant's spouse. While this indicates that he may own a property which is in foreclosure, it is not sufficiently probative to establish that the foreclosure is related to a lack of income or is part of a greater impact arising from the financial impact of the applicant's departure. The record does not contain any documentation verifying the income of the applicant's spouse, does not contain any documentation establishing the current financial obligations of the applicant's spouse, or even that he is required to travel and is therefore unable to care for his son in the United States. There is no evidence that, based on his income, the applicant's spouse would be unable to afford child care for his son if he were to reside in the United States. There is nothing which documents that the applicant's spouse has been supporting two households, or that he has expended money to visit the applicant and his son in Honduras. 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)).

Without evidence which is more probative of the degree and severity of financial impact on the applicant's spouse, the AAO cannot determine from the evidence in the record that he is experiencing any uncommon financial hardship due to separation from his spouse.

With regard to emotional hardship, the AAO acknowledges that the applicant's spouse may experience some emotional impact due to his spouse's absence. However, the record does not provide any basis to distinguish the emotional impact on the applicant's spouse from that which is commonly experienced by the relatives of inadmissible aliens.

Even when the hardship impacts upon separation are considered in aggregate, the record does not contain sufficient documentation to establish that they rise above the common impacts experienced by the relatives of inadmissible aliens, and as such fail to establish extreme hardship upon separation.

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 remain in the United States and thereby suffer extreme hardship as a consequence of separation can easily be made for purposes of the waiver even where there is no intention to separate in reality. *See Matter of Ige*, 20 I&N Dec. 880, 886 (BIA 1994). Furthermore, to separate and suffer extreme hardship, where relocating abroad with the applicant would not result in extreme hardship, is a matter of choice and not the result of inadmissibility. *Id.*, *see also 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. 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.