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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 17 2012 OFFICE: LAS VEGAS 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:



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.

Thank you,

for Perry Rhew, Chief
Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Field Office Director, Las Vegas, Nevada, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained.

The applicant is a native and citizen of El Salvador who was found to be inadmissible to the United States pursuant to section 212(a)(9)(B)(i)(I) of the Immigration and Nationality Act (INA or the Act), 8 U.S.C. § 1182(a)(9)(B)(i)(I), for having been unlawfully present in the United States for more than 180 days but less than 1 year and is seeking readmission within 3 years of departure from the United States. The applicant seeks a waiver of inadmissibility under INA § 212(a)(9)(B)(v), 8 U.S.C. § 1182(a)(9)(B)(v) in order to reside in the United States with her U.S. citizen spouse.

In a decision dated October 27, 2009, the Field Office Director concluded that the required standard of proof of extreme hardship to a qualifying relative was not met and the application for a waiver of inadmissibility was denied accordingly.

On appeal, counsel for the applicant does not contest the applicant's inadmissibility, but states that the evidence of record illustrates that the applicant's spouse will, in fact, suffer from extreme hardship.

In support of the waiver application, the record includes, but is not limited to a brief prepared by applicant's counsel, an affidavit from the applicant's spouse, a psychological assessment regarding the applicant's spouse, documentation regarding the applicant's spouse's property in the United States, documentation concerning the applicant and her spouse's employment, financial documentation for the applicant and her spouse, documentation concerning the applicant's spouse's family ties in the United States, documentation concerning the applicant's spouses previous and ongoing education and training in the United States, country conditions information for El Salvador and documentation concerning the applicant's immigration history.

The AAO conducts appellate review on a *de novo* basis. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). The entire record was reviewed and considered in rendering a decision on the appeal.

The applicant is inadmissible under INA § 212(a)(9)(B)(i)(I) for having been unlawfully present in the United States for over 180 days but less than 1 year.

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

(B) ALIENS UNLAWFULLY PRESENT.-

- (i) Any alien (other than an alien lawfully admitted for permanent residence) who--
(I) was unlawfully present in the United States for a period of more than 180 days but less than 1 year, voluntarily departed the United States (whether or not pursuant to section 1254a(e) of this title) prior to the commencement of proceedings under

section 1225(b)(1) of this title or section 1229a of this title, and again seeks admission within 3 years of the date of such alien's departure or removal, or

...

(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 applicant reports that she initially entered the United States without inspection on May 10, 2000 and remained in the United States until her departure on or about May 26, 2009. The applicant filed her application for Temporary Protected Status (TPS) with the U.S. Citizenship and Immigration Services (USCIS) on March 22, 2001, and was granted TPS. The applicant, however, accrued 316 days of unlawful presence before her departure and reentry in May 2009 pursuant to advance parole. As the period of unlawful presence accrued is over 180 days but less than 1 year, the applicant is inadmissible to the United States under section 212(a)(9)(B)(i)(I) of the Act for a period of 3 years from her 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 INA § 212(a)(9)(B)(v), as the spouse of a U.S. citizen. In order to qualify for this waiver, however, she must first prove that the refusal of his admission to the United States would result in extreme hardship to a qualifying relative. The applicant's qualifying relative in this case is her U.S. citizen spouse. If extreme hardship is established, the Secretary then assesses whether an exercise of discretion is warranted.

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 deportation, 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, 885 (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.*

We observe that 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., *In re 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). All hardships must be considered in determining whether the combination of hardships takes the case beyond the consequences ordinarily associated with removal or inadmissibility. *Matter of O-J-O-*, 21 I&N Dec. at 383.

On appeal, counsel for the applicant states that the applicant’s U.S. citizen spouse will suffer extreme hardship if the applicant is not admitted to the United States. The applicant’s spouse claims emotional, physical, and financial hardship if he is separated from the applicant. In regards to emotional hardship, the applicant’s spouse submitted an affidavit in which he stated that he would worry about the safety of his wife should she have to depart the United States to live in El Salvador. USCIS currently offers TPS to nationals of El Salvador residing in the United States. TPS designation acknowledges that it is unsafe to return to a country because of ongoing armed conflict, an environmental disaster, or other extraordinary and temporary conditions. TPS for El Salvadorans was designated on March 9, 2001 and has been extended through September 9, 2013. Additionally, the AAO notes that the U.S. Department of State’s *El Salvador Country Specific Information*, December 2, 2011, states that:

The State Department considers El Salvador a critical-crime-threat country. El Salvador has one of the highest homicide rates in the world; violent crimes, as well as petty crimes are prevalent throughout El Salvador, and U.S. citizens have been

among the victims. Central America has been identified as the most violent region in the world, with El Salvador reporting the highest death rate due to armed violence. According to a recent study, El Salvador has the highest rate of violent fatalities, with over 70 deaths recorded for every 100,000 inhabitants.

The AAO finds that it is reasonable that the applicant's spouse would fear for his wife's health and safety if she were residing in that country without him. Moreover, the record illustrates that the applicant's spouse is experiencing anxiety and depression due to his concern for his wife and that he believes that his condition will worsen if his wife must live in El Salvador. In a psychological assessment dated September 9, 2009, [REDACTED] a licensed marriage and family therapist, states that the applicant's spouse has "periods of intense sadness, physical pain and sleep cycle swings" in addition to difficulty eating, back pain and fear for the future. The applicant's spouse stated that he is also concerned that he and the applicant will not be able to have children if he is separated from the applicant, and that he has not felt comfortable trying to have children while the applicant's immigration status is uncertain. The applicant's spouse is 47 years old. [REDACTED] found that the applicant's spouse was suffering from a clinically significant state of anxiety and a general state of depression with significant sadness. She stated that she believes that the applicant's spouse's condition is due to his wife's immigration status. Although the applicant's spouse also claims financial hardship if he is no longer able to rely on his wife's financial contribution to their household and has submitted a detailed assessment of the financial deficit that he would face in his wife's absence, the AAO does not find that any financial hardship claimed by the applicant's spouse would be extreme in and of itself. The applicant's spouse earns \$76,500 per year and it is not demonstrated that he would be unable to provide for himself, and possibly support the applicant in El Salvador as well, should she be unable to find employment. Nonetheless, the record establishes that the emotional hardship the applicant's spouse would experience, exacerbated by concerns for his spouse's security, if he remained in the United States while the applicant resided in El Salvador, when combined with other hardship factors, would be extreme.

As to whether the applicant's spouse would suffer extreme hardship if he were to relocate to El Salvador with the applicant, the evidence, in the aggregate, also shows that the hardship that would be experienced by the applicant's spouse in that circumstance would be extreme. The applicant's spouse states that he does not speak Spanish and that he believes that residing in El Salvador would be "devastating" for him due to the conditions there. Further, the record establishes that the applicant's spouse has resided his entire life in the United States and has significant family, employment, educational, and property ties to Nevada, where he currently resides. Due to the country conditions in El Salvador noted above, the record establishes that the applicant's spouse would likely face economic challenges there consistent with his claims. Furthermore, the designation of El Salvador as a "critical crime-threat country" with significant threats to U.S. citizens indicates that if the applicant's spouse moved to El Salvador, he would likely suffer hardship in the form of threats to his welfare and safety. The AAO finds that hardship that the applicant's spouse would suffer if he were to relocate to El Salvador, when considered in the aggregate, is beyond the hardship typically experienced and rises to the level of extreme hardship.

A review of the documentation in the record, when considered in its totality, reflects that the applicant has established that her U.S. citizen spouse would suffer extreme hardship were the applicant unable to reside in the United States. Accordingly, the AAO finds that the situation presented in this application rises to the level of extreme hardship.

Extreme hardship is a requirement for eligibility, but once established it is but one favorable discretionary factor to be considered. *Matter of Mendez-Moralez*, 21 I&N Dec. 296, 301 (BIA 1996). For waivers of inadmissibility, the burden is on the applicant to establish that a grant of a waiver of inadmissibility is warranted in the exercise of discretion. *Id.* at 299. The adverse factors evidencing an alien's undesirability as a permanent resident must be balanced with the social and humane considerations presented on his behalf to determine whether the grant of relief in the exercise of discretion appears to be in the best interests of this country. *Id.* at 300.

In *Matter of Mendez-Moralez*, in evaluating whether section 212(h)(1)(B) relief is warranted in the exercise of discretion, the BIA stated that:

The factors adverse to the applicant include the nature and underlying circumstances of the exclusion ground at issue, the presence of additional significant violations of this country's immigration laws, the existence of a criminal record and, if so, its nature, recency and seriousness, and the presence of other evidence indicative of an alien's bad character or undesirability as a permanent resident of this country. . . . The favorable considerations include family ties in the United States, residence of long duration in this country (particularly where the alien began his residency at a young age), evidence of hardship to the alien and his family if he is excluded and deported, service in this country's Armed Forces, a history of stable employment, the existence of property or business ties, evidence of value and service to the community, evidence of genuine rehabilitation if a criminal record exists, and other evidence attesting to the alien's good character (e.g., affidavits from family, friends, and responsible community representatives)...

Id. at 301. The BIA further states that upon review of the record as a whole, a balancing of the equities and adverse matters must be made to determine whether discretion should be favorably exercised. The equities that the applicant must bring forward to establish a favorable exercise of administrative discretion is merited will depend in each case on the nature and circumstances of the ground of inadmissibility sought to be waived and on the presence of any additional adverse matters, and as the negative factors grow more serious, it becomes incumbent upon the applicant to introduce additional offsetting favorable evidence. *Id.* at 301.

The favorable factors in this matter are the extreme hardship the applicant's U.S. citizen spouse would face if the applicant were to reside in El Salvador, regardless of whether they accompanied the applicant or remained in the United States, the applicant's community ties in the United States, gainful employment while in the United States, her payment of taxes and her apparent lack of a

criminal record. The unfavorable factors in this matter are the applicant's initial entry into the United States without inspection and her period of unlawful presence in the United States.

The immigration violations committed by the applicant are serious in nature and cannot be condoned. Nonetheless, the AAO finds that the applicant has established that the favorable factors in his application outweigh the unfavorable factors. Therefore, a favorable exercise of the Secretary's discretion is warranted.

In proceedings for an application for waiver of grounds of inadmissibility under section INA § 212(a)(9)(B)(v), the burden of proving eligibility remains entirely with the applicant. Section 291 of the Act, 8 U.S.C. § 1361. Here, the applicant has met that burden. Accordingly, the appeal will be sustained.

ORDER: The appeal is sustained.