

identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy
PUBLIC COPY

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



U.S. Citizenship
and Immigration
Services



H6

DATE: **FEB 22 2012** Office: GUATEMALA CITY, GUATEMALA

FILE: 

IN RE: 

APPLICATION: Application for Waiver of Grounds of Inadmissibility under Section 212(a)(9)(B)
of the Immigration and Nationality Act (INA), 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 record reflects that the applicant is a native and citizen of Guatemala, the spouse of a U.S. citizen, and the beneficiary of an approved Petition for Alien Relative (Form I-130). The applicant 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 a period of more than one year, and seeking admission within 10 years of the date of her last departure. The applicant seeks a waiver of inadmissibility under section 212(a)(9)(B)(v) of the Act, 8 U.S.C. § 1182(a)(9)(B)(v), in order to reside in the United States.

The Field Office Director (FOD) denied the Application for Waiver of Grounds of Inadmissibility (Form I-601), concluding that the applicant had failed to establish that the bar to her admission would impose extreme hardship on a qualifying relative. *See Decision of the Field Office Director*, dated October 6, 2009.

On appeal, the applicant's counsel claims that the FOD's denial of the applicant's waiver application is an abuse of discretion. *See Form I-290B, Notice of Appeal or Motion*, dated October 30, 2009.

The evidence of record includes, but is not limited to: a statement from counsel; statements from the applicant's husband; statements from family and friends; utility and telephone bills; copies of receipts for money orders; and copies of relationship and identification documents. The entire record was reviewed and all relevant evidence considered in reaching this decision.

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.

The record reflects that the applicant entered the United States without inspection in April 2001 and did not depart until March 2009. Accordingly, the AAO finds that the applicant was

unlawfully present in the United States for more than one year and therefore, is inadmissible pursuant to section 212(a)(9)(B)(i)(II) of the Act.

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

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 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.

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 other family members can be considered only insofar as it results in hardship to a qualifying relative. 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).

In the present case, the record reflects that the applicant is married to a U.S. citizen. The applicant also claims five stepchildren. The applicant's husband meets the definition of a qualifying relative. The applicant's stepchildren are not qualifying relatives for purposes of the waiver sought and, therefore, any hardship they might experience as a result of the applicant's inadmissibility will be considered only to the extent it results in hardship to the applicant's 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 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, 631-32 (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, “[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., 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). 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 AAO now turns to the question of whether the applicant in the present case has established that a qualifying relative would experience extreme hardship as a result of her inadmissibility.

On appeal, counsel asserts that the letters written by the applicant’s spouse and other family members explain how the qualifying relative would suffer if the applicant’s waiver application is denied.

The applicant has submitted two statements from her spouse. In his 2009 statement, [REDACTED] reports that he has been living in Guatemala with the applicant since her return in March 2009 and that the ensuing months have been the worst of his life. He states that although he was raised in Mexico, he is unfamiliar with the culture of Guatemala. He also states that he is unable to obtain a job in Guatemala because he is not a citizen of that country, that he is unable to

support his household in the United States and that he has mortgage, car, and medical bills to pay on a monthly basis. He further states that he has lost weight due to his worries about the immigration process and his suffering is causing his children tremendous anguish. He maintains that his children would be affected psychologically if they continue to be separated from him.

also contends that his children could not relocate because their mother is aware of the crime and violence in Guatemala and would be very unlikely to give her consent. In his 2008 statement, the applicant's spouse indicates that neither he nor his children have any medical issues, but that he is certain that medical problems would develop if they are subjected to the poverty of and the unsanitary living conditions in Guatemala.

The applicant's spouse further states that he and his children would suffer hardship if they are separated from the applicant. He contends that he and the applicant have been together for seven years and that his children consider her a second mother. He asserts that he does not know what would happen to him and his children's lives if the applicant is not allowed to return to the United States.

The applicant has also submitted statements from three of her stepchildren. In his statement, asserts that he loves the applicant like his "real mom." He also states that it would be difficult for him to move to Guatemala as he is used to the lifestyle in the United States and does not want to leave the rest of his family. Similarly, expresses his love for the applicant and asks that the family not be torn apart. states that the applicant's waiver denial would be devastating because it would require her two youngest brothers to move to Guatemala with their father. The record also contains a statement from the qualifying spouse's first wife, . In her statement, states that her children love the applicant very much and that the family would be torn apart if the applicant's waiver applicant is denied. The statements from the applicant's friends attest to the loving relationships in the family.

The record also contains copies of several utility and telephone bills, a letter from the Internal Revenue Service confirming the applicant's tax identification number, copies of receipts for two money orders, and a marketing letter from an insurance company addressed to the applicant.

The AAO has considered all relevant evidence and concluded that the applicant has failed to demonstrate extreme hardship to her qualifying spouse, whether he joins her in Guatemala or resides in the United States. The assertions of the applicant's spouse are relevant evidence and have been considered. However, absent supporting documentation, these assertions are insufficient proof of hardship. *See Matter of Kwan*, 14 I&N Dec. 175 (BIA 1972) ("Information in an affidavit should not be disregarded simply because it appears to be hearsay; in administrative proceedings, that fact merely affects the weight to be afforded it."). Going on record without supporting documentary evidence generally is not sufficient for purposes of meeting the burden of proof in these proceedings. *See 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)). Similarly, without documentary evidence, the assertions of counsel will not satisfy the applicant's burden of proof. The unsupported assertions of counsel do not constitute evidence.

See 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).

We note that the record fails to provide documentary evidence that would establish that the applicant's spouse is unable to obtain employment in Guatemala because he is not a Guatemalan citizen. We also find no documentation to support the applicant's spouse's claim that the poverty in Guatemala, as well as the living conditions there, would result in medical problems for him and his children should they relocate. Moreover, the record fails to provide evidence of the applicant's spouse's claimed financial obligations in the United States, beyond several utility and telephone bills that have been submitted for the record. While the AAO notes that the record contains receipts for two 2009 money orders, both in the amount of \$868.53, neither identifies the recipient or the country to which the money orders were sent.

The AAO acknowledges that the applicant's spouse and his children have a loving relationship with the applicant, and nothing in this decision should be interpreted as suggesting otherwise. However, the record, in the absence of medical or psychological evaluations or other credible reports, does not demonstrate that the applicant's spouse's children are experiencing significant emotional hardship as a result of their separation from the applicant and their father, or how their emotional hardship is affecting their father, the only qualifying relative in this proceeding. Further, the record lacks this same documentation with regard to the emotional hardship that would be experienced by the applicant's spouse if he were to reside in the United States without the applicant.

In this case, the record does not contain sufficient evidence to show that the hardships faced by the applicant's spouse, when considered in the aggregate, rise beyond the common results of removal or inadmissibility. Accordingly, the applicant has not established eligibility for a waiver of inadmissibility under section 212(a)(9)(B)(v) of the Act. Because the applicant is 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 establishing that the application merits approval remains entirely with the applicant. *See* section 291 of the Act, 8 U.S.C. § 1361. Because the applicant has not met this burden, the appeal will be dismissed.

ORDER: The appeal is dismissed.