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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: Office: TEGUCIGALPA, HONDURAS

File:

FEB 29 2012

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 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 is married to a United States citizen 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, his U.S. citizen spouse, and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) on September 8, 2009.

On appeal, counsel for the applicant asserts that the Field Office Director erred in his decision, applied an overly strict interpretation of the extreme hardship standard and that ample evidence was provided to establish the applicant's spouse would experience extreme hardship when the impacts are considered in the aggregate. *Attachment, Form I-290B* (received October 13, 2009).

The record includes, but is not limited to, counsel's brief; a statement from the applicant's spouse; country conditions materials for Honduras, including a July 24, 2009, Travel Alert published by the U.S. Department of State, Bureau of Consular Affairs; copies of 3 patient assessment notes by [REDACTED]; copy of a Mayo Clinic article printed from the Internet on Psoriasis.

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 without inspection in June 2006 and remained until she departed on February 17, 2009. 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.

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 child can be considered only insofar as it results in hardship to a qualifying relative. The applicant's spouse is the 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-Moralez*, 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.

Counsel for the applicant asserts on appeal that the applicant’s spouse would experience extreme emotional and financial hardship if he were to relocate to Honduras with the applicant. *Attachment, Form I-290B*, dated September 30, 2009. Counsel asserts that the applicant’s spouse would have to sever family ties with his entire family that resides in the United States, that he would be unable to find employment in Honduras and that he would experience physical hardship due to the conditions which exist in the country at the moment.

The AAO notes that on January 5, 1999, Honduras was designated by the Attorney General for Temporary Protected Status. The authority to designate TPS now rests with the Secretary of Homeland Security, who may designate a country for TPS due to conditions in the country that prevent persons from returning there safely, in this case due to the damage suffered in Honduras due to Hurricane Mitch in 1998. The status was extended through July 5, 2012. 76 Fed. Reg. § 68488, November 4, 2011. Based on this the AAO can establish that the applicant’s spouse would experience uncommon hardships upon relocation due to the conditions in Honduras.

The AAO also takes note of the fact that the applicant's spouse would have to sever family ties in the United States upon relocation, and that, based on the conditions in Honduras, the applicant would not have adequate access to medical facilities to treat his skin condition. These factors will be given consideration when aggregating the impacts on the applicant's spouse.

When the evidence of hardships upon relocation are examined in the aggregate, the AAO can determine that they rise above the common hardships associated with relocation to a degree of extreme hardship.

Although the record establishes that a qualifying relative will experience extreme hardship upon relocation, it must still be established that the applicant's spouse would experience extreme hardship upon separation.

Counsel asserts that the applicant's spouse will experience physical, emotional and financial hardship due to the applicant's inadmissibility. *Attachment, Form I-290B*, dated September 30, 2009. Counsel asserts that the applicant's spouse has a skin condition which causes the applicant's spouse great pain and suffering, which is compounded by the emotional impact of separation from the applicant. Counsel also asserts that the applicant's spouse would suffer emotionally due to separation from his daughter, currently residing with the applicant in Honduras, and that their daughter will suffer emotionally from the separation of the parents. Counsel further asserts that the applicant's spouse will not be able to financially support himself – or his daughter if she returned to the United States – the applicant in Honduras, and his own family who depend on him for financial support. Counsel also asserts that the applicant's spouse would not be able to visit the applicant in Honduras.

With regard to the medical hardship experienced by the applicant's spouse, the AAO does not find the evidence in the record to support counsel's assertion of the degree the condition impacts the applicant. The record includes several visitation logs from the applicant's spouse's doctor and a background article on psoriasis, the skin condition affecting the applicant's spouse. General background materials on a medical condition is not sufficient to establish that a particular applicant or qualifying relative is experiencing certain symptoms, nor is it sufficient to establish the degree or severity of a condition and its impact on a particular person. The visitation logs indicate that the applicant's spouse has been prescribed some topical creams, but that the condition was not otherwise impacting the applicant's spouse's or that he requires physical assistance to care for his condition or function on a daily basis. Counsel for the applicant has asserted that the presence of the condition is exacerbated by the stress of the applicant's situation and adds to the emotional stress of the applicant's spouse. Although the unsupported assertions of counsel do not constitute evidence, in this case there is sufficient evidence to establish that the applicant's spouse does have mild psoriasis. The AAO will give some consideration of the heightened emotional impact the condition might cause the applicant's spouse due to separation.

With regard to financial hardship, the AAO notes that the applicant has not submitted sufficient evidence to corroborate counsel's assertion of financial hardship. Counsel asserts that the applicant

only earns \$62 more than his monthly expenses, and that the expense of supporting two households and his brothers and sisters is resulting in a hardship impact on the applicant's spouse. The record does not contain any documentation of the applicant's spouse's income, his financial obligations, or that he has been financially supporting the applicant as well as his brothers and sisters in the United States.

Although counsel asserts that the applicant's spouse is experiencing extreme emotional impact due to the applicant's absence, the record does not contain any evidence which distinguishes the emotional impact on the applicant's spouse from that which is commonly experienced by the relatives of inadmissible aliens. Counsel for the applicant asserts the applicant's spouse will experience heightened emotional impact due to the fact that his daughter is living in Honduras with the applicant because he cannot support her in the United States. As noted above, the record does not contain sufficient evidence to establish that the applicant's spouse would be unable to support their daughter in the United States. Without additional evidence which distinguishes the emotional impact on the applicant's spouse from that which is commonly experienced due to separation, the AAO does not find the record to establish that the applicant's spouse will experience uncommon emotional hardship due to separation.

Even when the hardship impacts asserted upon separation are considered in the aggregate, there is insufficient evidence to establish that they rise to the degree of extreme hardship.

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 relocate and thereby suffer extreme hardship can easily be made for purposes of the waiver even where there is no actual intention to relocate. *Cf. Matter of Ige*, 20 I&N Dec. 880, 886 (BIA 1994). Furthermore, to relocate and suffer extreme hardship, where remaining in the United States and being separated from the applicant would not result in extreme hardship, is a matter of choice and not the result of inadmissibility. *Id.*, also *cf. Matter of Pilch*, 21 I&N Dec. 627, 632-33 (BIA 1996). As the applicant has not demonstrated extreme hardship to a qualifying relative from separation, we cannot find that refusal of admission would result in extreme hardship to the qualifying relative in this case.

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.