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



U.S. Citizenship
and Immigration
Services



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DATE: **JAN 09 2012**

OFFICE: GUATEMALA CITY

FILE: 

IN RE: 

APPLICATION: Application for Waiver of Grounds of Inadmissibility under section 212(i) of the Immigration and Nationality Act, 8 U.S.C. § 1182(i) and 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:

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 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 who entered the United States pursuant to a B2 visa on January 18, 2006. The applicant subsequently departed the United States and again applied for admission on May 13, 2006. At that time, the applicant falsely claimed to be an employee of the Guatemalan Foreign Ministry with diplomatic status and was denied admission to the United States. The applicant then entered the United States without admission or parole in December 2006 and resided in the United States until her departure in May 2008. The applicant accrued over a year of unlawful presence in the United States from December 2006 to May 2008. The Field Office Director found the applicant to be inadmissible to the United States under section 212(a)(6)(C)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(6)(C)(i), for having attempted to procure entry to the United States by fraud or willful misrepresentation. The applicant was also 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 ten 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 and child.

The Field Office Director concluded that the record failed to establish the existence of extreme hardship for a qualifying relative and denied the application accordingly. *See Decision of the Field Office Director*, dated April 27, 2009.

On appeal, the applicant's spouse asserts that he is suffering from financial and emotional hardship in the absence of his wife and daughter. The applicant's spouse also contends that he cannot relocate to Guatemala because he would leave behind his home, business, and son. Additionally, the applicant states that she did not attempt to enter the United States through fraud or willful misrepresentation.

In support of the waiver application and appeal, the applicant submitted letters from herself and her spouse, family photographs, identity documents, letters between the family written in Spanish, letters of support, letters concerning the applicant's former place of employment, and financial documents. The entire record was reviewed and considered in rendering a decision on the appeal.

Section 212(a)(6)(C) of the Act provides, in pertinent part:

- (i) Any alien who, by fraud or willfully misrepresenting a material fact, seeks to procure (or has sought to procure or has procured) a visa, other documentation, or admission into the United States or other benefit provided under this Act is inadmissible.

Section 212(i) of the Act provides:

- (1) The Attorney General [now the Secretary of Homeland Security (Secretary)] may, in the discretion of the Attorney General (Secretary), waive the application of clause (i) of subsection (a)(6)(C) in the case of an immigrant who is the spouse, 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 (Secretary) that the refusal of admission to the United States of such immigrant alien would result in extreme hardship to the citizen or lawfully resident spouse or parent of such an alien...

Section 212(a)(9)(B) of the Act, in pertinent part, 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.

....

- (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.

It is noted that the Field Office Director found the applicant to be inadmissible to the United States under section 212(a)(6)(C)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(6)(C)(i), for having attempted to procure entry to the United States by fraud or willful misrepresentation, based upon the applicant's initial entry to the United States with a B2 visa on January 18, 2006. *See Decision of the Field Office Director*, dated April 27, 2009. The Field Office Director determined that the applicant had obtained her B2 visa based upon the submission of an unauthorized/forged letter from the Guatemalan Foreign Ministry and that the applicant entered on a visitor visa even though she intended to immigrate to the United States. *Id.* The record is not clear concerning the applicant's fraud or willful misrepresentation concerning her entry on January 18, 2006. However, the applicant, upon her attempted entry to the United States on May 13, 2006, claimed to be employed by the Guatemalan Foreign Ministry with diplomatic

status. The record reflects that the applicant was not in diplomatic status and her employment with [REDACTED] which was a material fact as it related to her ties to Guatemala and her possible intent to immigrate to the United States, had terminated on January 14, 2006. Accordingly, the applicant attempted to procure entry to the United States by fraud or willful misrepresentation on May 13, 2006 and is inadmissible to the United States under section 212(a)(6)(C)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(6)(C)(i). As noted above, the applicant is also inadmissible 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).

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.

The applicant's qualifying relative in this case is her U.S. citizen spouse. The record contains references to hardship the applicant's child would experience if the waiver application were denied. It is noted that Congress did not include hardship to an applicant's child as a factor to be considered in assessing extreme hardship. In the present case, the applicant's spouse is the only qualifying relatives for the waiver under section 212(i) and section 212(a)(9)(B)(v) of the Act, and hardship to the applicant's child will not be separately considered, except as it may affect the applicant's spouse.

In the present case, the record reflects that the applicant is a thirty-two year-old native and citizen of Guatemala. The applicant's spouse is a thirty-nine year-old native of Guatemala and citizen of the United States. The applicant's spouse is currently residing in Montebello, California and the applicant and their daughter are currently residing in Guatemala.

The applicant's spouse asserts that he is sad without his wife and daughter and that he needs his family back. *See Letter from* [REDACTED]. In support of his assertions, the applicant submitted letters of support indicating that the applicant's spouse is experiencing emotional hardship and missing his family. *See Letter from* [REDACTED] dated September 30, 2010; *Letter from* [REDACTED] dated September 12, 2010; *Letter from* [REDACTED] dated May 22, 2009. It is acknowledged that separation from a spouse nearly always creates a level of hardship for both parties, but there is no indication that the emotional hardship suffered by the applicant's spouse is unduly impacting his continued ability to work and perform in his daily tasks. There is insufficient evidence in the record to find that the applicant's spouse is suffering a level of emotional hardship beyond the common results of inadmissibility or removal.

The applicant's spouse asserts that he owns a construction company that is suffering because his wife used to handle the office tasks. *See Letter from* [REDACTED]. The applicant's brother states that the applicant used to handle the bookkeeping, job estimates, and client searches for her spouse's business. *See Letter from* [REDACTED] dated September 30, 2010. The applicant's spouse submitted tax records indicating an adjusted gross income of 28,789 dollars for tax year

2008 and an adjusted gross income of 37,803 dollars for tax year 2007 to demonstrate a loss of income since the departure of his wife. *See U.S. Individual Tax Returns for [REDACTED] 2007, 2008.* The applicant's spouse does not indicate any reason as to why he would be unable to hire an employee to complete his wife's former tasks. It is also noted that the applicant's spouse's income is partially based upon wages earned from another construction company. *Id.; 2008 W-2 and Earning Summary.* The applicant's spouse has submitted only one bill in the record, a bill indicating that his mortgage payment was two months overdue. *See Notice of Collection Activity, dated April 28, 2009.* The applicant departed from the United States in May 2008 and the record does not contain any other evidence concerning the applicant's spouse's inability to maintain his financial obligations since her departure. Further, though the applicant's brother asserts that the applicant's spouse is financially supporting his wife and daughter in Guatemala, the record does not contain any evidence in support of this assertion. *See Letter from [REDACTED] dated September 30, 2010.* The record contains insufficient evidence to find that the applicant's spouse would suffer financial or other hardships beyond the common consequences of inadmissibility or removal due to separation from the applicant if he remains in the United States.

The applicant's spouse asserts that he cannot leave the United States and relocate to Guatemala because he has resided in the United States since 1988. *See Letter from [REDACTED]* The applicant's spouse further states that owns a home and construction business in the United States. *Id.* It is noted that the applicant is a native of Guatemala and that the letters sent to and received from his wife and daughter are written in Spanish. It is further noted that the applicant's spouse's marriage to the applicant took place in Guatemala and the applicant's spouse's United States citizen daughter currently resides in Guatemala with his wife. *See Marriage Certificate, dated January 6, 2006.* The record does not contain any evidence concerning whether the applicant's spouse has family members currently residing in Guatemala and the nature of his relationship with any of these individuals. Though the applicant's spouse states that he has a son living Los Angeles, there is no evidence in the record concerning the identity of the applicant's spouse's son, the extent of his relationship with his son, and with whom his son resides. It is noted that the applicant has lists only his daughter as a dependent on his 2007 and 2008 tax returns. *See U.S. Individual Tax Returns for [REDACTED] 2007, 2008.* 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)).* The record contains insufficient evidence to find that the applicant's spouse would suffer hardship beyond the common consequences of inadmissibility or removal if he relocated to Guatemala.

Although the depth of concern and anxiety over the applicant's immigration status is neither doubted nor minimized, the fact remains that Congress provided for a waiver of inadmissibility only under limited circumstances. While the prospect of separation or involuntary relocation nearly always results in considerable hardship to individuals and families, in specifically limiting the availability of a waiver of inadmissibility to cases of "extreme hardship," Congress did not intend that a waiver be granted in every case where a qualifying relationship exists. U.S. court decisions have repeatedly held that the common results of removal are insufficient to prove

extreme hardship. See *Hassan v. INS*, 927 F.2d 465, 468 (9th Cir. 1991), *Perez v. INS*, 96 F.3d 390 (9th Cir. 1996); *Matter of Pilch*, 21 I&N Dec. 627 (BIA 1996) (holding that emotional hardship caused by severing family and community ties is a common result of deportation and does not constitute extreme hardship); *Matter of Shaughnessy*, 12 I&N Dec. 810 (BIA 1968) (holding that separation of family members and financial difficulties alone do not establish extreme hardship). “[O]nly in cases of great actual or prospective injury . . . will the bar be removed.” *Matter of Ngai*, 19 I&N Dec. 245, 246 (BIA 1984).

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 sections 212(i) and 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 application for waiver of grounds of inadmissibility under sections 212(i) and 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.