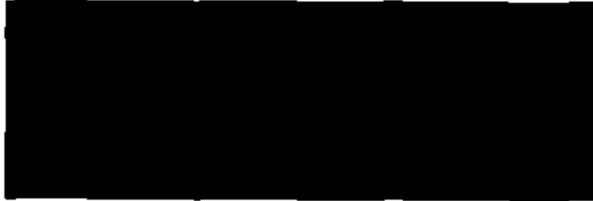


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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals
20 Massachusetts Avenue, N.W., MS 2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services



H6

DATE: JUL 09 2012

OFFICE: PANAMA CITY

FILE: [REDACTED]

IN RE: [REDACTED]

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.

If you believe the AAO inappropriately applied the law in reaching its decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen with the field office or service center that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$630. The specific requirements for filing such a motion can be found at 8 C.F.R. § 103.5. **Do not file any motion directly with the AAO.** Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires any motion to be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

f-

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Field Office Director, Panama City, Panama, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native and citizen of Ecuador who entered the United States without admission or parole on June 17, 1995. The applicant was ordered deported by an immigration judge on April 23, 1996 and removed from the United States on April 5, 2007. 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 more than one year and seeking readmission within ten years of his last departure from the United States. The applicant is a beneficiary of an approved Petition for Alien Relative, as a spouse of a U.S. citizen, who seeks a waiver of inadmissibility in order to reside in the United States with his U.S. citizen spouse and stepchild.

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 29, 2010.

On appeal, counsel for the applicant asserts that the applicant has demonstrated extreme hardship to his spouse based on her ties to the United States and recent injury in an accident. In support of the waiver application and appeal, the applicant submitted letters from his spouse, medical documentation concerning his spouse, legal documentation, financial documentation, and identity documents. The entire record was reviewed and considered in rendering a decision on the appeal.

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.

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 record reflects that the applicant is a forty-three year old native and citizen of Ecuador. The applicant's spouse is a fifty-two year old native of Ecuador and citizen of the United States. The applicant is currently residing in Ecuador and the applicant's spouse is residing in [REDACTED] with her daughter.

The applicant's spouse asserts that she has emotionally suffered greatly since her husband's departure and that she was only able to see him twice since his departure in 2007. The applicant's spouse notes that she was laid off from a position in September 2007 so that she did not have the means to visit her husband often in Ecuador. She asserts that she is nervous and stressed in the absence of the applicant. It is acknowledged that separation from a spouse nearly always creates a level of hardship for both parties, but there is not sufficient evidence to show that if the applicant remains in Ecuador, the emotional hardship suffered by the applicant's spouse will be so serious that she would be unable to work and perform in her daily life, or otherwise be beyond the common results of removal or inadmissibility.

The applicant's spouse asserts that she had an accident in a supermarket on April 15, 2010 so that she is currently unable to work. Accordingly, the applicant's spouse asserts that it is much more difficult to meet her mortgage payments without the assistance of the applicant. The record reflects that the applicant's spouse is still running a daycare out of her home, despite her accident, with the assistance of her daughter. The applicant's spouse submitted financial documentation and there is no indication that she is past due on any payments or otherwise unable to meet her financial obligations without the applicant. Further, the courts considering the impact of financial detriment on a finding of extreme hardship have repeatedly held that, while it must be considered in the overall determination, it is not enough by itself to justify an extreme hardship determination. *See INS v. Jong Ha Wang*, 450 U.S. 139 (1981) (upholding BIA finding that economic detriment alone is insufficient to establish extreme hardship). There is insufficient evidence in the record to find that the applicant's spouse is, in the aggregate, suffering a level of hardship beyond the common results of inadmissibility or removal because of separation from the applicant.

The applicant's spouse asserts that she cannot relocate to Ecuador because she would be leaving behind her ties in the United States including her home, business, and daughter. The applicant's spouse further asserts that she needs to remain in the United States because her accident makes

travel to Ecuador uncomfortable and her medical bills would not be covered. It is noted that the applicant's spouse's daughter is currently an adult. There is no indication that applicant's spouse's daughter would be unable to visit the applicant's spouse in Ecuador. The applicant's spouse submitted proof of mortgage payments for her home and states that she is operating a daycare business out of her home, with the help of her daughter.

The applicant's spouse asserts that due to her accident in a supermarket in 2010, she is currently in physical therapy for her injuries. The applicant's spouse also asserts that she underwent cornea surgery in August 2007 and does not know if she might need surgery in the future. The applicant's spouse further contends that she cannot sit on a plane to travel due to the condition of her back and neck. The applicant's spouse submitted a note from her physician stating that she was disabled from April 15, 2010 to August 5, 2010 and most recently treated on June 17, 2010. According to her physician, she was diagnosed with traumatic cervical and lumbar pain syndrome and unable to work. It is noted that the doctor's letter is dated June 24, 2011 and there is no indication that the applicant's spouse visited her physician at any time between June 17, 2010 and June 24, 2011. There is no evidence that the applicant's spouse is currently undergoing physical therapy or that she is unable to travel to due to injury. There is further no indication that the applicant's spouse would be unable to receive medical care, as needed, if she relocated to Ecuador.

The applicant's spouse submitted a letter stating that a liability insurance claim is being investigated on behalf of the supermarket in which she had an accident. The applicant's spouse also submitted medical bills. There is no evidence that she would be unable to pursue her liability claim against the supermarket if she resided in Ecuador. 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)). It is further noted that the applicant's spouse is a native of Ecuador and the record reflects that the applicant is currently employed in Ecuador. In this case, the record contains insufficient evidence to show that the hardships faced by the qualifying relative, if she were to relocate to Ecuador, rise to the level of extreme hardship.

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 his U.S. citizen spouse as required under section 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 section 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.