

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 sustained.

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. 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, her U.S. citizen spouse, and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) on March 18, 2010.

On appeal, counsel for the applicant states that the Field Office Director's decision was in error, that the decision failed to consider various hardship impacts on the applicant's spouse, failed to accord proper weight to hardship impacts and failed to consider the hardship impacts in the aggregate. *Form I-290B*, received on April 6, 2010; *see also Memorandum in Support of Appeal*, dated April 24, 2010.

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 February 2004 and remained until she departed on July 11, 2009. As the applicant 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.

The record includes, but is not limited to, counsel's briefs; a statement from the applicant's spouse; extensive medical records, lab reports and examinations related to the applicant's spouse's younger sister; a July 23, 2010, submission containing medical records pertaining to the applicant's daughter, receipts for the cost of medical treatment, and prescription notices and receipts for medications; and copies of country condition materials on Honduras.

The entire record was reviewed and all relevant evidence considered in rendering this decision.

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 his children can be considered only insofar as it results in hardship to a qualifying relative. The applicant's spouse is the only 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-Morales*, 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, the AAO considers the totality of the circumstances in determining whether denial of admission would result in extreme hardship to a qualifying relative.

Counsel has asserted that the applicant’s spouse would experience extreme physical, financial and emotional hardship upon relocation to Honduras. *Brief in Support of Waiver*, dated July 9, 2009. On appeal, counsel disputes the Field Office Director’s conclusions and asserts that the endemic crime, environmental conditions and the economic situation in Honduras would result in a multitude of hardships on the applicant’s spouse, including lack of adequate medical care, employment opportunities and a lower quality of life than what is commonly experienced upon relocation.

The applicant’s spouse has submitted a statement in which he asserts that he would suffer emotionally, economically, professionally, and educationally upon relocation, as well as in terms of his health and in terms of his safety. *Statement of the Applicant’s Spouse*, dated July 8, 2009. He contends that he would experience discrimination in Honduras since he is originally from El Salvador. He also states that he has no family ties to Honduras, that his family ties are to the United States, that there would be a lack of educational opportunities in Honduras and that he has no employment skills that would transfer to Honduras. He further asserts that he suffers from tension headaches and gastrointestinal difficulties, and would not have access to quality health care in Honduras.

In his statement, the applicant's spouse also asserts that he would experience extreme financial hardship and details his monthly expenses. He explains that he would worry about the applicant and his daughter given the conditions in Honduras, and that he fears a medical impact on the applicant if she is not able to find adequate health care for post-partum depression.

The AAO notes that on January 5, 1999, Honduras was designated by the Attorney General for Temporary Protected Status (TPS). 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. TPS status for Honduras is based on the damage the country suffered from Hurricane Mitch in 1998 has been extended through July 5, 2012. 76 Fed. Reg. § 68488, November 4, 2011.

The AAO takes note of other impacts asserted in the record as well, such as the lack of family ties in Honduras, the presence of family ties in the United States, and the medical condition of the applicant's three-year-old daughter. When these hardship factors are considered in the aggregate, the AAO finds that the applicant's spouse would experience extreme hardship upon relocation.

The AAO also finds that the applicant's spouse would experience extreme hardship if he were to remain in the United States without the applicant. This finding is based on the emotional stress he would experience due to the applicant's return to Honduras, a country that has been designated for TPS based on the damage done by a devastating hurricane and where the infrastructure has yet to recover. We have also noted the medical documentation submitted on appeal, which indicates that the applicant's three-year-old daughter suffers from febrile seizures, requires medication and recently underwent a CRT scan to look for neurological damage. The record also provides documentation of the medical costs associated with her care. When these hardships and the hardships normally created by separation are considered in the aggregate the AAO finds the applicant to have established that separation would result in extreme hardship for her spouse.

Based on the evidence in the record, and the Temporary Protected Status for Hondurans due to the conditions in their country, the AAO finds the record to establish that a qualifying relative would experience extreme hardship both upon relocation and upon separation.

Although the applicant has established that a qualifying relative would experience extreme hardship, it must still be determined whether the applicant warrants a waiver as a matter of discretion.

In discretionary matters, the alien bears the burden of proving eligibility in terms of equities in the United States which are not outweighed by adverse factors. *See Matter of T-S-Y*, 7 I&N Dec. 582 (BIA 1957).

In evaluating whether section 212(h)(1)(B) relief is warranted in the exercise of discretion, the factors adverse to the alien 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 and seriousness, and the presence of other evidence indicative of the 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 alien began 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 or service in 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).

See Matter of Mendez-Moralez, 21 I&N Dec. 296, 301 (BIA 1996). The AAO must then "balance the adverse factors evidencing an alien's undesirability as a permanent resident with the social and humane considerations presented on the alien's behalf to determine whether the grant of relief in the exercise of discretion appears to be in the best interests of the country." *Id.* at 300 (Citations omitted).

The AAO finds that the unfavorable factors in this case include the applicant's unlawful presence and her entry without inspection. The favorable factors in this case include the applicant's U.S. citizen spouse and daughter, the extreme hardship the applicant's spouse would experience if the waiver application is denied, the medical needs of the applicant's daughter, and the absence of any criminal record in the United States. Although the applicant's immigration violations are a serious matter, the favorable factors in this case outweigh the negative factors. Therefore, favorable discretion will be exercised.

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 met that burden. Accordingly, the appeal will be sustained.

ORDER: The appeal is sustained.