

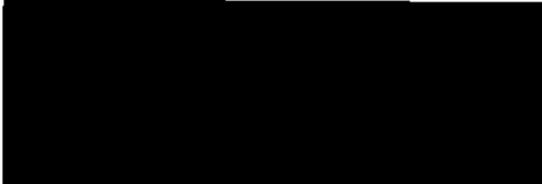
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Administrative Appeals Office

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**

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DATE: JUN 08 2012

Office: GUATEMALA CITY 

IN RE: 

APPLICATION: Application for Waiver of Grounds of Inadmissibility under sections 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.

Thank you,



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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 sustained. The waiver application will be approved.

The record establishes that the applicant is a native and citizen of Guatemala who entered the United States without authorization in December 2003 and did not depart the United States until July 2008. The applicant was thus 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. The applicant does not contest this finding of inadmissibility. Rather, he seeks a waiver of inadmissibility in order to reside in the United States with his U.S. citizen spouse.

The field office director concluded that the applicant had failed to establish that extreme hardship would be imposed on a qualifying relative and denied the Form I-601, Application for Waiver of Ground of Inadmissibility, accordingly. *Decision of the Field Office Director*, dated March 12, 2010.

In support of the appeal, counsel for the applicant submits a brief. The entire record was reviewed and considered in rendering this decision.

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

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 [now the Secretary of Homeland Security (Secretary)] 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 (Secretary) 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. The applicant's U.S. citizen spouse is the only qualifying relative in this case. Hardship to the applicant or his wife's grandparents 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).

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 U.S. citizen spouse asserts that she will suffer emotional, physical and financial hardship were she to remain in the United States while the applicant continues to reside abroad due to his inadmissibility. In a declaration she explains that her husband is her main support system and without him she has become severely depressed. In addition, the applicant's spouse details that she has taken on the responsibility for caring for her two elderly grandparents, currently in their early 90s, as no other family members are available to help care for them and she thus needs her husband to help her with their daily care. Finally, the applicant's spouse details that due to her caregiver obligations to her grandparents, she is unable to obtain full-time employment and thus needs her husband to contribute to the finances of the household. *Letter from Ashley Guerra*, dated April 27, 2009.

In support, documentation has been provided establishing that the since her husband's relocation abroad, the applicant's spouse has been in treatment for depression and anxiety. [REDACTED] outlines that the applicant's spouse has loss of appetite, headaches, decreased energy and problems sleeping. [REDACTED] notes that the applicant's spouse has been prescribed Lexapro, an antidepressant, and Ambien CR, for insomnia, and must continue with counseling in order to help her adjust to her current situation. *Letter from Janita M. Ardis and Ann Edlis, L.P.C.*, dated March 25, 2009. Evidence of the above-referenced prescriptions has also been provided. In addition, extensive documentation has been provided concerning the applicant's spouse's grandparents' numerous medical conditions, and the role the applicant's spouse plays in their daily care. As noted in a letter from the applicant's spouse's grandparents, the applicant's spouse cares for them on a daily basis, spending multiple nights a week with them and most days with them. The letter further details that their other children and grandchildren are unable to care for them due to their own family obligations or age. As noted, the applicant's spouse drives them where they need to go, takes them grocery shopping and to other errands, helps with the housework, takes them to their weekly appointments, ensures that they take their medicine daily, does therapy and exercises, assists with their hygiene, makes sure bills are paid on time and repairs household problems. *Letter from Leah Ruth Becker*

and John Becker, dated April 10, 2009. [REDACTED], the applicant's spouse's grandfather's treating physician, confirms that the applicant's spouse's grandfather requires continuous care and the applicant's spouse is his primary caregiver. [REDACTED] also notes that his wife is unable to help her husband with his daily care due to her advanced age. *Letter from [REDACTED]*, dated June 17, 2009. Moreover, numerous letters have been provided from the applicant's and his spouse's friends and family outlining the emotional and financial hardships the applicant's spouse is experiencing as a result of her husband's relocation abroad due to his inadmissibility. Finally, the record establishes the applicant's gainful employment while in the United States.

The record reflects that the cumulative effect of the emotional, physical and financial hardship the applicant's spouse would experience due to the applicant's inadmissibility rises to the level of extreme. The AAO thus concludes that were the applicant unable to reside in the United States due to his inadmissibility, the applicant's spouse would suffer extreme hardship if she remains in the United States.

With respect to relocating abroad, the applicant's spouse explains that she was born in the United States and has no ties to Guatemala. Moreover, she asserts that she does not know how to read or write in Spanish. Further, the applicant's spouse contends that as a result of the problematic economy in Guatemala, she would not be able to maintain her standard of living. Finally, the applicant's spouse contends that she worries about her safety in Guatemala due to the high rates of crime and violence. The record establishes that the applicant's U.S. citizen spouse was born and raised in the United States and has no ties to Guatemala. She is unfamiliar with the language, culture and customs of the country. She would have to leave her parents, her grandparents, her siblings and other family members, her friends and her community. Moreover, the U.S. Department of State confirms that about 51% of the population in Guatemala lives on less than \$2 a day and 15% on less than \$1 a day. *Background Note-Guatemala, U.S. Department of States*, dated January 19, 2012. Finally, the U.S. Department of State notes that Guatemala has one of the highest violent crime rates in Latin America. *Country Specific Information-Guatemala, U.S. Department of State*, dated April 30, 2012. It has thus been established that the applicant's spouse would suffer extreme hardship were she to relocate abroad to reside with the applicant due to his inadmissibility.

A review of the documentation in the record, when considered in its totality, reflects that the applicant has established that his U.S. citizen spouse would suffer extreme hardship were the applicant unable to reside in the United States. Accordingly, the AAO finds that the situation presented in this application rises to the level of extreme hardship. However, the grant or denial of the waiver does not turn only on the issue of the meaning of "extreme hardship." It also hinges on the discretion of the Secretary and pursuant to such terms, conditions and procedures as she may by regulations prescribe. 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 . . . 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-Morales, 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 favorable factors in this matter are the extreme hardship the applicant's U.S. citizen spouse would face if the applicant were to remain in Guatemala, regardless of whether she accompanied the applicant or stayed in the United States; the applicant's gainful employment in the United States; support letters from friends and family; community ties; and the passage of more than eight years since the applicant's entry to the United States without authorization. The unfavorable factors in this matter are the applicant's entry to the United States without authorization and unlawful presence and unauthorized employment while in the United States.

The immigration and criminal violations committed by the applicant are serious in nature and cannot be condoned. Nonetheless, the AAO finds that the applicant has established that the favorable factors in his application outweigh the unfavorable factors. Therefore, a favorable exercise of the Secretary's discretion is warranted.

In proceedings for application for waiver of grounds of inadmissibility, the burden of establishing that the application merits approval remains entirely with the applicant. Section 291 of the Act, 8 U.S.C. § 1361. The applicant has sustained that burden. Accordingly, this appeal will be sustained and the I-601 waiver application approved.

ORDER: The appeal is sustained. The waiver application is approved.