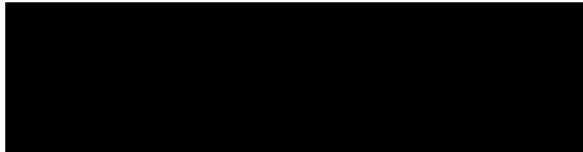


U.S. Department of Homeland Security
U. S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services

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DATE: JUN 15 2012 Office: SAN SALVADOR

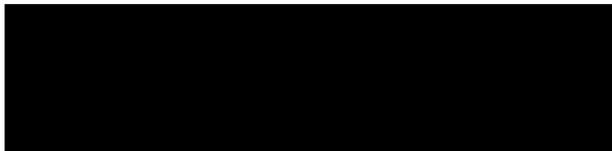


IN RE: Applicant:



APPLICATIONS: 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. § 1182(a)(9)(B)(v), and Application for Permission to Reapply for Admission under section 212(a)(9)(A)(iii) of the Act, 8 U.S.C. § 1182(a)(9)(A)(iii).

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,

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The waiver application and application for permission to reapply for admission were denied by the Acting Field Office Director, San Salvador, El Salvador, and are now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained.

The applicant is a native and citizen of El Salvador who entered the United States without inspection on November 29, 1999. She was placed in removal proceedings and ordered removed *in absentia* by the immigration judge on July 25, 2000. The applicant departed the United States on January 21, 2009 to pursue an immigrant visa application, and was found to be inadmissible to the United States under 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 one year or more, and under section 212(a)(9)(A)(ii) of the Act, 8 U.S.C. § 1182(a)(9)(A)(ii) as an alien previously removed.¹ The applicant is seeking a waiver of inadmissibility and permission to reapply for admission in order to reside in the United States with her U.S. citizen husband.

The acting field office director concluded the applicant had failed to establish that extreme hardship would be imposed on a qualifying relative and, accordingly, denied the Application for Waiver of Grounds of Inadmissibility (Form I-601), as well as the Application for Permission to Reapply for Admission Into the United States after Deportation or Removal (Form I-212). *Decision of Acting Field Office Director*, April 26, 2010.

On appeal, counsel for the applicant contends that the denial decision erred in overlooking the extreme hardships that the applicant's husband will suffer as a result of the applicant's inadmissibility. In support of the appeal, counsel submits new documentation including, but not limited to: an updated hardship statement and other support statements; birth, naturalization, and marriage certificates; medical and financial records; a psychological evaluation; and an employment letter. The record also contains documentation submitted in support of the original waiver request and request for permission to reapply for admission. The entire record was reviewed and 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.

....

¹ According to the record the applicant may also be inadmissible for a period of five years under section 212(a)(6)(B) of the Act for failure to attend her removal proceedings, but the record does not clearly indicate whether the applicant was found to be inadmissible under this provision for failure to attend the removal hearing without reasonable cause.

(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) 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 U.S. citizen 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 applicant has established extreme hardship to a qualifying relative. 22 I&N Dec. 560, 565 (BIA 1999). 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; the Board added that not all of these factors need be analyzed in any given case and emphasized that the list is 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, while 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, or cultural readjustment 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, although 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)); conversely, *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 case-by-case whether denial of admission would result in extreme hardship to a qualifying relative.

The applicant’s husband contends he will continue to suffer physical, emotional, and financial hardship if the applicant is unable to reside in the United States. He claims to have type 2 diabetes and hypertension, and to have relied on his wife to help him maintain his regimen of medication and special diet. While there is no documentation of his dietary needs, the record reflects that he is taking prescription medications, his doctor is monitoring his overall health several times a year, and he undergoes regular blood testing as part of ongoing medical evaluation and treatment. The emotional hardship claim focuses on the qualifying relative’s assertion that he suffers from depression due to separation from the applicant, as well as from having become a single parent to their three children as a result. He reports that his nearly 20 year-old son reacted to his stepmother’s departure by running away from home two years ago and, despite returning, is displaying signs of depression that add to his father’s worries. He also expresses desperation at feeling unable to properly nurture two daughters, who he states need their mother. *Psychological Evaluation*, ca. May 13, 2010. The psychologist diagnoses the applicant’s husband as suffering stress-related major depression, but indicates no prognosis or recommended treatment.

An employment letter supports the applicant’s husband’s claim that emotional turmoil at home due to his wife’s absence caused him such a lack of concentration at work that he had to give up a managerial position to better to cope with parenting responsibilities. The record does not reflect any family ties available to help him adapt to life in the United States without his wife of six years. Rather, in support of the initial waiver request, he states that while his mother lives with him, she herself is a single-leg amputee due to complications of diabetes who requires constant care. We note

his doctor's concern that he has become a diabetic noncompliant patient who is not taking any of his medications and the psychologist's observation that he is on the verge of losing control.

Regarding the financial hardship caused by the separation, the applicant's husband contends that his wife's expenses in El Salvador have destroyed his finances. Supporting his claim to be unable to support two households, the evidence reflects that he is behind in a number of payment obligations that have been referred to collection agencies and his home is in foreclosure proceedings. Although there is no evidence that the applicant contributed wages to household income, the evidence suggests a negative impact from her departure and having to support two households. The psychological evaluation describes the applicant as exhausted and having no time for himself, since he divides his life between working full time and caring for his children, and as someone who "views the future with profound pessimism."

For all these reasons, the cumulative effect of the physical, emotional, and financial hardships the applicant's husband is experiencing due to his wife's inadmissibility rises to the level of extreme. The AAO concludes based on the evidence provided that, were her husband to remain in the United States without the applicant due to her inadmissibility, he would suffer extreme hardship beyond those problems normally associated with family separation.

The qualifying relative contends that he would experience hardship if he relocated abroad to reside with the applicant. Regarding ties to the United States, all three of the applicant's husband's children were born here and he claims they, along with his mother, live in his home. Although there is little evidence regarding any other ties, support network, or specific plans here, the record reflects that he emigrated from Mexico in 1988 at the age of 17, has spent his entire adult life in the United States and is a naturalized citizen. He has no ties to El Salvador besides his wife. His doctor confirms the claim that his diabetic condition has worsened, while the El Salvador Country Specific Information on the website of the U.S. Department of State (DOS) supports his concern that healthcare is less advanced than in the United States: medical care falls short of U.S. standards and is recommended only until stateside return can be arranged; medication and treatment are expensive and up-front payment often required; and U.S. medical insurance may not offer coverage.

Besides worrying about the harm to his own health from moving to El Salvador, the applicant's husband claims to fear for his children's safety there. Although DOS has no current travel advisories for the country, its website substantiates his concern by stating that "[r]andom and organized violent crime is endemic throughout El Salvador," and:

CRIME: The State Department considers El Salvador a critical-crime-threat country. El Salvador has one of the highest homicide rates in the world; violent crimes, as well as petty crimes are prevalent throughout El Salvador, and U.S. citizens have been among the victims. Central America has been identified as the most violent region in the world, with El Salvador reporting the highest death rate due to armed violence. According to a recent study, El Salvador has the highest rate of violent fatalities, with over 70 deaths recorded for every 100,000 inhabitants.

El Salvador—Country Specific Information, December 2, 2011.

The qualifying relative suggests that due to his lack of country contacts and sixth grade education his future prospects in El Salvador are poor. As documentation supports these claims, the record reflects that the cumulative effect of the applicant's husband's ties to the United States and absence of ties elsewhere, his residence and naturalization in the United States, and his health concerns, were he to relocate, rises to the level of extreme. We observe that his fears regarding personal safety are substantiated by U.S. government information on the country. Based on a totality of the circumstances, the AAO concludes the applicant has established that her husband would suffer extreme hardship were he to relocate abroad to reside with the applicant.

Review of the documentation on record, when considered in its totality, reflects that the applicant has established that her 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-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 favorable factors in this matter are the extreme hardships the applicant's husband and children would face if the applicant were to reside in El Salvador, regardless of whether they accompanied the applicant or remained here; the applicant's lack of any criminal convictions; supportive statements; employment offer in the United States; and passage of more than 12 years since the applicant's unlawful entry into the United States. The only unfavorable factors in this matter are the applicant's unexcused failure to attend her July 25, 2000 removal hearing incident to her 1999 entry without inspection and consequent unlawful presence.

Although the applicant's violations of the immigration laws cannot be condoned, the positive factors in this case outweigh the negative factors. Given the passage of time since the applicant's violations of immigration law, the AAO finds that a favorable exercise of discretion is warranted.

The AAO notes that the acting field office director also denied the applicant's Application for Permission to Reapply for Admission Into the United States After Deportation or Removal (Form I-212) in the same decision based solely on the denial of the Form I-601. As the AAO has now found the applicant eligible for a waiver of inadmissibility under section 212(a)(9)(B)(v) of the Act, it will withdraw the field office director's decision on the Form I-212 and render a new decision.

Section 212(a)(9)(A) provides, pertinent part:

(i) Arriving Aliens. – Any alien who has been ordered removed under section 235(b)(1) or at the end of proceedings under section 240 initiated upon the alien's arrival in the United States and who again seeks admission within 5 years of the date of such removal ... is inadmissible.

(ii) Other Aliens. – Any alien not described in clause (i) who—

- (I) has been ordered removed under section 240 or any other provision of law, or
- (II) departed the United States while an order of removal was outstanding,

and who seeks admission within 10 years of the date of such alien's departure or removal ... is inadmissible.

(iii) Exception. – Clauses (i) and (ii) shall not apply to an alien seeking admission within a period if, prior to the date of the alien's reembarkation at a place outside the United States or attempt to be admitted from foreign contiguous territory, the Attorney General [now, Secretary, Department of Homeland Security] has consented to the alien's reapplying for admission.

On July 25, 2000, an Immigration Judge ordered the applicant removed from the United States. The applicant departed voluntarily on January 21, 2009, with the removal order outstanding. As such,

she is inadmissible under section 212(a)(9)(A) of the Act and must obtain permission to reapply for admission.

A grant of permission to reapply for admission is a discretionary decision based on the weighing of negative and positive factors. The AAO has found that the applicant warrants a favorable exercise of discretion related to the adjudication of the Form I-601. For the reasons stated in that finding, the AAO finds that the applicant's Form I-212 should also be granted as a matter of discretion.

In proceedings for application for waiver of grounds of inadmissibility and for consent to reapply for admission, the burden of proving eligibility remains entirely with the applicant. Section 291 of the Act, 8 U.S.C. § 1361. Here, the applicant has met that burden and, accordingly, the appeal will be sustained.

ORDER: The appeal is sustained. The waiver application and application for permission to reapply are granted.