



U.S. Citizenship
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DATE: **JUN 18 2012** OFFICE: TEGUCIGALPA



IN RE: 

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 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,


for

Perry Rhew
Chief, Administrative Appeals Office

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

The applicant is a native and citizen of Honduras who entered the United States without admission or parole in March 2004 and remained in the United States until his departure on January 28, 2010. 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, child, and stepchild.

The Field Office Director concluded that the record failed to establish the existence of extreme hardship for a qualifying relative and that the applicant does not merit an exercise or discretion, and denied the application accordingly. *See Decision of the Field Office Director*, dated October 29, 2010.

On appeal, the applicant's spouse asserts that she was in Honduras the first time she submitted hardship information and did not have sufficient evidence to submit. The applicant's spouse further asserts that now that she is in the United States, she has submitted evidence supporting her claim of extreme hardship upon separation from the applicant. In support of the waiver application and appeal, the applicant submitted letters from his spouse, letters of support, financial documentation, and a psychological evaluation of the applicant. 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 applicant's qualifying relative in this case is his U.S. citizen spouse. The record contains references to hardship the applicant's child, stepchild, or his father-in-law would experience if the waiver application were denied. It is noted that Congress did not include hardship to an applicant's children or parents-in-law as a factor to be considered in assessing extreme hardship. In the present case, the applicant's spouse is the only qualifying relative for the waiver under section 212(a)(9)(B)(v) of the Act, and hardship to the applicant's children or parents-in-law will not be separately considered, except as it may affect the applicant's spouse.

The record reflects that the applicant is a thirty-one year-old native and citizen of Honduras. The applicant's spouse is a twenty-nine year-old native and citizen of the United States. The applicant is currently residing in Honduras and the applicant's spouse is residing in Nashville, Tennessee with her children.

The applicant's spouse asserts that her husband is needed in the United States because her father will pass away shortly and she needs her husband there for support. The applicant's spouse further asserts that it is her father's dying wish to see his son-in-law. It is noted that the record contains a list of medical conditions and medications for the applicant's father-in-law, but does not include the name of a physician, date, or current prognosis. The applicant's spouse also states that she needs the applicant in the United States for her two children, one of whom is the applicant's child. The record contains letters of support stating that the applicant's spouse and her children miss the applicant and need him to come back. As noted above, the applicant's spouse's father and children are not qualifying relatives in the context of this application, so that any hardship they suffer will be considered only insofar as it affects the applicant's spouse. 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 Honduras, the emotional hardship suffered by the applicant's spouse will be so serious that she would be unable to work and take care of her children, or otherwise be beyond the common results of removal or inadmissibility.

The applicant's spouse asserts that she needs the applicant in the United States because she cannot afford to meet her financial obligations on her own. The applicant's spouse contends that she needs to pay almost \$2000 in bills every month, but that she only earns \$1200 per month. The applicant's spouse submitted financial documentation concerning her earnings from her employer. The record contains a letter concerning a past due payment on a credit card in the name of the applicant alone. The record does not contain an accounting or evidence of the current monthly financial obligations of the applicant's spouse. It is noted that the applicant submitted a payment contract for a motor vehicle, but the payments would have completed in December 2011. The applicant's spouse also submitted a credit report in her name containing evidence of adverse information and satisfactory accounts. The adverse information includes a debt charged off as a bad debt for a credit account closed in 2008, a cable account that was placed into collections in 2006, and a loan that is past due. It is noted that the applicant's spouse departed the United States on January 28, 2010; the evidence does not indicate that the applicant's spouse was current on her financial obligations prior to his departure. Further, based on the evidence submitted by the applicant's spouse, she is currently past due on only one account, for amount of less than two hundred dollars. The letter of support submitted by the applicant's spouse's parents also indicates that they assist her with her bills as much as they can. The record contains letters of support from other family members of the applicant's spouse and there is no information concerning the extent to which they would be able to provide her with financial assistance, if necessary. 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 Honduras to reside with the applicant because she would be leaving behind her employment with its dental insurance, the insurance provided by the state to her children, her house, and her responsibilities to her disabled father. The applicant's spouse also asserts that her daughter's father is not the applicant and that she is unsure as to whether she can take her daughter out of the country. It is noted that the record reflects that the applicant's spouse has learned to speak Spanish and stayed in Honduras for a period of time. It is also noted that the letter submitted by the applicant's spouse's parents do not indicate her responsibilities in her father's care. In addition, as noted above, a submitted list concerning the physical condition of the applicant's spouse's father does not contain the name or signature of a physician or other medical professional. The record does not contain a custody order for the applicant's spouse's daughter or any indication that she would be unable to take her daughter to Honduras. The record also does not contain information concerning country conditions in Honduras, the extent of the applicant's financial obligations in Honduras, and the extent to which his family members would be able to assist with his family's relocation. 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)). In this case, the record contains insufficient evidence to show that the hardships faced by the qualifying relative, if she were to relocate to Honduras, 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.