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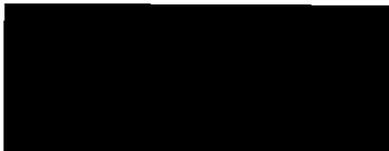
DATE: **JUN 19 2012** Office: GUATEMALA CITY, GUATEMALA

FILE:

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 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,

Perry Rnew  
Chief, Administrative Appeals Office

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

The applicant is a native and a citizen of Guatemala who 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 admission within 10 years of his last departure. The applicant is the spouse of a U.S. citizen and a beneficiary of an approved Petition for Alien Relative. He seeks a waiver under section 212(a)(9)(B)(v) of the Act, 8 U.S.C. § 1182(a)(9)(B)(v), in order to reside in the United States with his spouse.

The director concluded that the applicant had failed to establish that the bar to his admission would impose extreme hardship on his qualifying relatives and denied the Form I-601, Application for Waiver of Grounds of Inadmissibility, accordingly. *See Field Office Director's Decision*, dated January 20, 2010.

On appeal, the applicant's counsel contends that the director erred in denying the applicant's waiver application because the applicant's spouse has demonstrated that she would suffer extreme hardship if the applicant is not allowed to return. The appeal also includes additional evidence of the applicant's spouse's hardship.

The evidence of record includes, but is not limited to: statements from the applicant's spouse; letters from family and friends; a letter from a healthcare provider; financial documents; information on country conditions for Guatemala; and photographs. The entire record was reviewed and considered in rendering a decision on the appeal.

Section 212(a)(9) of the Act states in pertinent part:

(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.

(ii) Construction of unlawful presence.- For purposes of this paragraph, an alien is deemed to be unlawfully present in the United States if the alien is

present in the United States after the expiration of the period of stay authorized by the Attorney General or is present in the United States without being admitted or paroled.

The record reflects that the applicant entered the United States in June 2000 without inspection and remained in the United States until March 2009. The AAO finds that the applicant accrued unlawful presence of more than one year and, because he is seeking admission within 10 years of his 2009 departure, he is inadmissible to the United States pursuant to section 212(a)(9)(B)(i)(II) of the Act. The applicant does not contest his inadmissibility.

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 other family members 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). In the present case, the applicant's U.S. citizen spouse is the qualifying relative.

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, 631-32 (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, "[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., *In re 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 AAO now turns to the question of whether the applicant in the present case has established that his spouse would experience extreme hardship as a result of his inadmissibility.

Counsel states that the applicant's spouse "is always sad . . . in a constant state of anxiety [and] her worry has affected her daily activities and is nearly unbearable." Counsel contends that the applicant's age and lack of skills limit his employment prospects, and therefore he needs his

spouse's income to survive. She further contends that the applicant's spouse would have "a very limited earning ability in Guatemala" as well, due to her age and inability to speak Spanish. Counsel also states that the applicant's spouse's children will not accompany their mother if she relocates and they would "suffer tremendously" without her.

On appeal, the applicant's spouse states that she is "miserable" without the applicant. She states that initially, "being alone was like a nightmare." She could not sleep, cried all night, and did not want to do anything after work. She feels as if she has "a cloud over" her all the time. Her supervisors told her that she was "not performing in the same capacity." She also states that the applicant is a "very important male father figure" for her three adult children, whose biological father was murdered. The applicant's absence reminds them of their father's murder. She states that she and her children suffered a great deal after her first husband's murder and after her second marriage ended in divorce. She states that the applicant helps her to keep the family together.

The record contains a letter from a healthcare provider, dated March 13, 2009, in which he states that the applicant's spouse is "suffering from a depressive state, seems to be functioning poorly in her work and is suffering from lack of sleep." He recommends medical therapy and indicates that the applicant's spouse agreed to contact providers for counseling services.

The applicant's spouse works full-time at Mystic Lake Casino and part-time at Wal-Mart. Evidence in the record indicates that she has credit-card debt, which she is paying monthly while paying their mortgage, rent for their mobile-home lot, utilities, and an unspecified amount for car payments and insurance. The record also contains receipts of money transfers from the applicant's spouse to the applicant.

The applicant's spouse states that relocating to Guatemala to be with the applicant would be very difficult for her because she does not speak the language, does not know the culture, would miss her children and would be unable to support them, her siblings, and her parents. She visited the applicant once and "got sick a couple of times" while she was there. She is also concerned about finding a job in Guatemala. She has filed a family petition for her parents, who live in the Philippines, to immigrate to the United States, and relocating would make it difficult for her to continue with the process.

Letters from family and friends attest to the loving and supportive relationship that the applicant and his spouse have. They indicate that the applicant's spouse misses him, feels lonely and sad without him, and that their separation has been difficult for her. They also refer to the applicant's good character.

The AAO concludes that the applicant has failed to demonstrate extreme hardship to his spouse resulting from their separation. Regarding the applicant's spouse's financial concerns, the record lacks evidence demonstrating the applicant's spouse's total income and expenses, the applicant's financial contribution to their household income while he was in the United States, and how the applicant's absence is affecting the applicant's spouse financially. Evidence of money transfers

from the applicant's spouse to the applicant demonstrates some financial support for him. The record, however, does not demonstrate that the applicant's spouse is having financial difficulties related to the applicant's absence. The record also lacks evidence showing whether the applicant is employed in Guatemala and their household expenses there. The record indicates that the applicant's spouse and her daughter purchased a mobile home together. However, the record lacks evidence indicating whether the applicant's spouse's daughter financially contributes to the mortgage. Moreover, though all three adult children of the applicant's spouse are employed and living with her, the record lacks evidence demonstrating their financial contributions to their household expenses. The record also does not demonstrate the applicant's spouse's financial support for her children, parents and siblings. The assertions of the applicant's spouse are relevant evidence and have been considered. However, absent supporting documentation, these assertions are insufficient proof of hardship. See *Matter of Kwan*, 14 I&N Dec. 175 (BIA 1972) ("Information in an affidavit should not be disregarded simply because it appears to be hearsay; in administrative proceedings, that fact merely affects the weight to be afforded it."). 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)). The evidence submitted does not demonstrate that the applicant's absence has caused his spouse financial hardship.

Regarding the applicant's spouse's emotional concerns, the record indicates that a healthcare provider diagnosed the applicant's spouse with atypical depressive disorder. However, no evidence in the record demonstrates that the applicant's spouse followed the recommended treatments the healthcare provider notes in his letter. The record also lacks documentary evidence showing that the applicant's spouse's adult children are experiencing emotional hardship resulting from the applicant's absence and the effects of their hardship on the qualifying relative. The AAO acknowledges that the applicant and her spouse have a loving relationship, and nothing in this decision should be interpreted as suggesting otherwise. However, the record does not demonstrate that emotional hardship that the applicant's spouse is experiencing is extreme.

The AAO finds that the applicant has also failed to demonstrate that his spouse would experience extreme hardship if she joins him in Guatemala. We note that the record fails to provide documentary evidence to establish that the applicant and his spouse are unable to obtain employment in Guatemala. The AAO notes that the record also lacks documentary evidence demonstrating that the applicant's spouse financially supports her adult children, parents and siblings. Although the applicant's spouse expresses concerns about the quality of medical care in Guatemala, the record lacks evidence demonstrating that she was unable to receive the necessary medical care when she became ill there. Absent supporting documentation, these assertions are insufficient proof of hardship. Furthermore, although evidence regarding country conditions in Guatemala is informative, the AAO finds it is insufficient to show that the applicant's spouse would experience extreme hardship if she relocates to Guatemala.

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. Accordingly, the applicant has not established eligibility for a waiver of inadmissibility under section 212(a)(9)(B)(v) of the Act.

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.