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



U.S. Citizenship  
and Immigration  
Services



H6

DATE: JUN 20 2012 OFFICE: GUATEMALA CITY, GUATEMALA File:

IN RE: Applicant:

APPLICATION: Application for Waiver of Grounds of Inadmissibility under Section 212(9)(B)(v) of the Immigration and Nationality Act, 8 U.S.C. § 1182(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 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 dismissed.

The applicant is a native and citizen of Guatemala who 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 more than one year and seeking readmission within 10 years of his departure from the United States. The applicant seeks a waiver of inadmissibility in order to reside in the United States with his U.S. citizen spouse and father.

The Field Office Director concluded that the applicant failed to establish that extreme hardship would be imposed on a qualifying relative and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) accordingly. See *Decision of the Field Office Director*, dated April 30, 2010.

On appeal counsel asserts that the applicant's spouse is suffering severe financial, emotional and medical hardship as a direct result of the applicant's absence. See *Counsel's Brief in Support of Appeal*, received June 24, 2010.

The record contains, but is not limited to: Form I-290B and counsel's appeal brief; counsel's earlier letter in support of waiver; numerous immigration applications and petitions; hardship letters; supporting letters, personal loan letter and employment letter; birth and marriage records and family photos; medical, criminal, tax and income records; and internet news print out. The entire record was reviewed and considered in rendering this decision on the appeal.

Section 212(a)(9) of the Act 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.

The record reflects that the applicant entered the United States without inspection in or about October 2001. The applicant voluntarily departed the United States in or about April 2009. The applicant accrued unlawful presence from October 2001 until April 2009, a period in excess of one year. As the applicant is seeking admission within 10 years of his departure, he is inadmissible pursuant to section 212(a)(9)(B)(i)(II) of the Act.

A waiver of inadmissibility under section 212(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 can be considered only insofar as it results in hardship to a qualifying relative. In the present case, the applicant's spouse and father are his only qualifying relatives. 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 record reflects that the applicant's father is a 59-year-old native of Guatemala and citizen of the United States. He asserts that the applicant's departure in April 2009 has taken an emotional and financial toll on the family, and especially on him as the father. The applicant's father contends that in addition to supporting his own family, he must now support the applicant's spouse. He states that he lends her money for daily expenses and necessities, pays for the mobile home parking space on which she and his son used to reside, and sends money to his son in Guatemala for necessary expenses. No supporting financial evidence pertaining to the applicant's spouse or father has been submitted. Nor has any documentation been provided establishing that the applicant is unable to support himself in Guatemala. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *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 applicant's father further explains that it is difficult for him to see his daughter-in-law crying or extremely depressed because he has no way of consoling her. No supporting evidence of the emotional hardship referenced by the applicant's father has been provided. The AAO acknowledges that separation from the applicant may cause various difficulties for the applicant's father. However, it finds the evidence in the record insufficient to demonstrate that the challenges encountered by the qualifying relative, when considered cumulatively, meet the extreme hardship standard.

The record reflects that the applicant's spouse is a 26-year-old native and citizen of the United States. She explains that she and the applicant do not yet have children and they suffered a miscarriage several years back. On appeal, the applicant's spouse states that she has been struggling financially without her husband as she is a housewife, has never worked, he was the one who brought food to the table, and finding a job is very difficult in Vallejo, California where she lives with her parents and does not have a car. Counsel contends that the applicant's spouse worked part-time at [REDACTED] for three months but "has not been able to look for another job because she has no means of transportation." The possibility of using public transportation has not been addressed in the record. Counsel notes that the applicant's parents and father-in-law lend her money for bills and daily necessities. The record does contain a letter from [REDACTED] in which he indicates that the applicant was repaying a \$10,000 loan to him at a rate of

\$400 per month before leaving for Guatemala. No documentation establishing the applicant's spouse's current income and expenses and assets and liabilities has been provided to establish that the applicant's spouse is experiencing financial hardship.

The applicant's spouse further maintains that she has been so depressed and hardly sleeps thinking about the day her husband is back by her side. While letters from friends note that she is stressed and depressed, the record does not establish the severity of her condition or its impact on her daily life. The applicant's spouse states that the city in Guatemala where her husband is residing is not very safe, there are always robberies, and that hearing gunshots all night while you try to sleep is normal. She contends that the applicant does not have a job because of the violence there, but does not explain the correlation between the two. The only documentation provided regarding country conditions is from 2005 - more than four years prior to the appeal filing.

The AAO acknowledges that separation from the applicant may cause various difficulties for the applicant's spouse. However, it finds the evidence in the record insufficient to demonstrate that the challenges encountered by the qualifying relative, when considered cumulatively, meet the extreme hardship standard.

The possibility of the applicant's father relocating to Guatemala has not been addressed in the record and the AAO will not speculate in this regard. Accordingly, the AAO finds the evidence insufficient to demonstrate that the applicant's U.S. citizen father would suffer extreme hardship if he were to relocate to Guatemala to be with the applicant.

With regard to the applicant's spouse, counsel maintains that she was born and raised in the United States, all her family was born in Mexico and has been residing in the U.S. for many years, and she has nothing to look forward to in Guatemala. The applicant's spouse asserts that because she is a U.S. citizen she should remain in her own country and does not see herself living in Guatemala because it is very bad and has a lot of violence. An internet news article from 2005 indicates that the number of women murdered in Guatemala increased over the two years from 2003, that domestic violence accounted for about one third of the murders, with criminal elements including "mara" youth gangs also to blame. As noted above, no more recent country conditions evidence was submitted on appeal. The AAO has considered cumulatively all assertions of relocation-related hardship to the applicant's spouse including that she was born and raised in the United States and her family is from Mexico; and her close family and extended family ties in the United States. While the AAO has also considered asserted economic, employment and safety concerns related to Guatemala, it notes that these are not documented. Considered in the aggregate, the AAO finds the evidence insufficient to demonstrate that the applicant's U.S. citizen spouse would suffer extreme hardship if she were to relocate to Guatemala to be with the applicant.

The applicant has, therefore, failed to demonstrate that the challenges his spouse faces are unusual or beyond the common results of removal or inadmissibility to the level of extreme hardship. Accordingly, the AAO finds that the applicant has failed to demonstrate extreme hardship to a qualifying relative. 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.