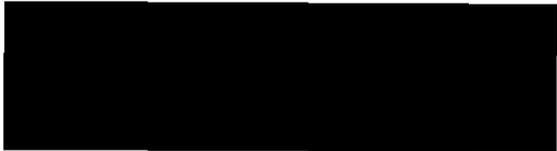




U.S. Citizenship
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Services

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DATE: JUN 25 2012 Office: PANAMA CITY, PANAMA

FILE:

IN RE:

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

ON BEHALF OF APPLICANT:

SELF REPRESENTED

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 in accordance with the instructions on 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, Panama City, Panama and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The record reflects that the applicant is a native and citizen of Colombia, the spouse of a U.S. citizen, and the beneficiary of an approved Petition for Alien Relative (Form I-130). 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 a period of more than one year, and seeking admission within 10 years of the date of her last departure. The applicant seeks a waiver of inadmissibility 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 her U.S. citizen spouse and daughter.

The director denied the Application for Waiver of Grounds of Inadmissibility (Form I-601), concluding that the applicant had failed to establish that the bar to her admission would impose extreme hardship on a qualifying relative. *See Decision of the Field Office Director*, dated May 4, 2010.

On appeal, the applicant submitted new hardship evidence for consideration and requested that her waiver application be approved. The applicant also states that the evidence submitted on appeal demonstrates that she and her spouse have maintained their relationship after her departure. *See Form I-290B, Notice of Appeal or Motion*, dated May 27, 2010.

The evidence of record includes, but is not limited to: statements from the applicant and her spouse; medical documents for the applicant; copies of receipts for money transfers and other financial documents; lists of phone calls and e-mails; copies of travel documents; copies of relationship and identification documents; family photographs; and documents in Spanish.

8 C.F.R. § 103.2(b) states:

(3) Translations. Any document containing foreign language submitted to USCIS shall be accompanied by a full English language translation which the translator has certified as complete and accurate, and by the translator's certification that he or she is competent to translate from the foreign language into English.

As such, the Spanish-language documents without English translations cannot be considered in analyzing this case. However, the rest of the record was reviewed and all relevant evidence was considered in reaching a decision on the appeal.

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

The record reflects that the applicant entered the United States in May 2000.¹ The applicant departed the United States in December 2003. Accordingly, the AAO finds that the applicant was unlawfully present in the United States for more than one year and therefore, is inadmissible pursuant to section 212(a)(9)(B)(i)(II) of the Act. The applicant does not contest her inadmissibility.

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

The Attorney General [now 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 [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. 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-Moralez*, 21 I&N Dec. 296, 301 (BIA 1996).

In the present case, the record reflects that the applicant is married to a U.S. citizen. The applicant's husband meets the definition of a qualifying relative. The applicant's child is not a qualifying relative for purposes of the waiver sought and, therefore, any hardship she might

¹ The record contains conflicting information regarding the applicant's entry in May 2000. She either entered without inspection or with a nonimmigrant visa. These inconsistencies are inconsequential to the unlawful presence determination, because relying on either manner of entry, the applicant accrued more than one year of unlawful presence.

experience as a result of the applicant's inadmissibility will be considered only to the extent it results in hardship to the applicant's spouse.

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 a qualifying relative would experience extreme hardship as a result of her inadmissibility.

On appeal, the applicant states that though she and her spouse continue to maintain their relationship, their separation is affecting the marriage, and they are incurring financial expenses to “maintain this long distance relationship.” She states that she has developed gastritis and depression as a result of stress. Medical evidence indicates that she is taking medications for her illnesses and also has received hypnotherapy. The applicant states that her daughter is depressed and is seeing a school psychologist.

The applicant’s spouse states that since learning about the applicant’s inadmissibility, he “began an emotional and physical downward spiral.” He has a high level of stress, headaches, back pain, and insomnia that “impedes [him] from carrying out [his] daily functions.” He indicates that relocating to Mexico or Colombia would be “financially distressing” because of his debt in the United States; he would not be able to find a job with a comparable salary. Additionally, he would lose his medical and retirement benefits. He also states that he and the applicant have many dreams, including buying a house.

The AAO concludes that the applicant has failed to demonstrate that her spouse is experiencing extreme hardship as a result of his separation from her. The AAO acknowledges that the applicant and her spouse have a loving relationship and continue to maintain their relationship, and nothing in this decision should be interpreted as suggesting otherwise. However, the applicant failed to submit documentary evidence supporting her spouse’s claims of his psychological and medical conditions and their effect on his daily life. The medical evidence submitted indicates instead that the applicant is being treated for depression, without demonstrating that her depression causes her spouse hardship. The record, in the absence of medical or psychological evaluations or other objective reports, does not demonstrate that the applicant’s spouse is experiencing extreme emotional hardship as a result of their separation. Similarly, the record lacks evidence corroborating the applicant’s statement that her daughter is experiencing emotional hardship and showing how her hardship affects the applicant’s spouse, who is the qualifying relative in this case. Furthermore, regarding the applicant’s spouse’s financial concerns, the record lacks evidence reflecting his current income and total household

expenses with sufficient detail to permit evaluating the extent of his financial hardship. Evidence of money transfers from the applicant's spouse to the applicant demonstrates he financially supports her but not that he has financial difficulties as a result of her inadmissibility. The record also lacks evidence demonstrating whether the applicant is employed in Colombia and their household expenses there. In the absence of supporting evidence, the AAO will not speculate on the state of the applicant's spouse's financial status and therefore concludes that, considering the evidence of hardship in the aggregate, the applicant has failed to establish that her spouse is experiencing extreme hardship due to separation.

The AAO finds that the applicant also failed to demonstrate extreme hardship to her spouse if he joins her in Colombia. The AAO notes that the applicant's spouse is from Mexico, speaks Spanish, and according to the applicant, has visited Colombia at least twice a year. The record lacks documentary evidence showing that the applicant's spouse is unable to obtain employment there. The AAO also notes the applicant's spouse's concern about losing retirement and healthcare benefits should he relocate; the record, however, lacks documentary evidence demonstrating that he receives such benefits. 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 applicant and her spouse do not raise other hardship concerns should the applicant's spouse relocate.

In this case, the record does not contain sufficient evidence to show that the hardships faced by the applicant's spouse, when considered in the aggregate, rise beyond the common results of removal or inadmissibility. Accordingly, the applicant has not established eligibility for a waiver of inadmissibility under section 212(a)(9)(B)(v) of the Act. Because the applicant is statutorily ineligible for relief, no purpose would be served in discussing whether she 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 establishing that the application merits approval remains entirely with the applicant. *See* section 291 of the Act, 8 U.S.C. § 1361. Because the applicant has not met this burden, the appeal will be dismissed.

ORDER: The appeal is dismissed.