



U.S. Citizenship
and Immigration
Services

H6

[REDACTED]

DATE: NOV 06 2012

OFFICE: PANAMA CITY

FILE: [REDACTED]

IN RE: [REDACTED]

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:

[REDACTED]

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 applicant is a native and citizen of Ecuador who claims to have entered the United States without admission or parole in August 1999. She reached the age of [REDACTED] on September 1, 1999. The applicant was subsequently granted voluntary departure by an immigration judge on August 26, 2009 and departed from the United States on December 20, 2009. The applicant was found to be inadmissible to the United States pursuant to section 212(a)(9)(B)(i)(II) of 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 her 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 her spouse and child.

The Field Office Director concluded that the record failed to establish the existence of extreme hardship for a qualifying relative. The Field Officer Director denied the application accordingly. *See Decision of the Field Office Director*, dated April 14, 2011.

On appeal, counsel for the applicant asserts that the applicant's spouse is suffering emotional and financial hardship without the applicant. Counsel further asserts that the applicant's spouse would have concern for his safety and finances if he relocated to Ecuador to reside with the applicant.

In support of the waiver application and appeal, the applicant submitted an affidavit, affidavits from her spouse, background information concerning Ecuador, school records for the applicant's spouse, identity documents, financial documentation, employment letters for the applicant and her spouse, a psychological evaluation of the applicant's spouse, and letters of support. 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 her U.S. citizen spouse. The record contains references to hardship the applicant or her child would experience if the waiver application were denied. It is noted that Congress did not include hardship to an applicant or her child 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 or her child will not be separately considered, except as it may affect the applicant's spouse.

The record reflects that the applicant is a 31 year-old native and citizen of Ecuador. The applicant's spouse is a 29 year-old native of Ecuador and citizen of the United States. The applicant is currently residing in Ecuador with their child and the applicant's spouse is residing in Corona, New York.

The applicant's spouse asserts that he has been experiencing enormous grief upon separation from the applicant and their child. The record contains a psychological evaluation of the applicant's spouse stating that he reports that he has difficulty sleeping, eating, and concentrating without his family. The applicant's spouse further stated that he has had thoughts of suicide, but would not follow through on these thoughts for the sake of his family. The psychological evaluation found evidence of the applicant's spouse suffering from major depressive disorder and panic disorder without agoraphobia due to separation from the applicant. The applicant's spouse contends that he cannot afford to visit the applicant and their child in Ecuador and that it is difficult of him to speak with them on the phone due to the cost. It is noted that the included psychological evaluation indicates that the applicant's spouse reports speaking with the applicant and their daughter every day. It is acknowledged that separation from a spouse or child nearly always creates a level of hardship for both parties and the record indicates that the applicant's spouse is suffering a degree of emotional hardship upon separation from the applicant. It is also

noted that the applicant's spouse's employer submitted evidence of his employment and there is no indication that the applicant's spouse has had difficulty performing in his work.

The applicant's spouse asserts that he is suffering from financial hardship in the absence of the applicant because he is supporting two households with his income. The applicant's spouse submitted documentation indicating that he sends money to the applicant in Ecuador. The applicant's spouse also submitted financial documentation evidencing his current income and financial obligations without the applicant. However, there is no indication that the applicant's spouse is past due on any of his monthly payments or otherwise unable to meet his financial obligations. In the aggregate, there is insufficient evidence in the record to support that the applicant's spouse is suffering from hardship due to separation from the applicant that is beyond the common results of inadmissibility or removal of a spouse.

The applicant's spouse asserts that he and the applicant would not be able to financially support their family if he relocated to Ecuador and he would be concerned for his family's well-being. The applicant submitted an affidavit asserting that she has had no success finding employment in Ecuador after a year of searching. However, it is noted that the applicant's spouse, in his affidavit, states the applicant has received offers of part-time, temporary, and occasional contract assignments. It is also noted that the applicant's spouse, like the applicant, is a native of Ecuador who is familiar with its language and culture.

In his psychological evaluation, the applicant's spouse asserts that he is concerned about educational and medical resources for his child in Ecuador. The applicant's spouse states that the applicant and their child do not live nearby a hospital and the water in Ecuador sickens their daughter. The record contains medical documentation from Ecuador for both the applicant and her daughter, which demonstrates their ailments, but also reflects that they have access to medical care. In addition, though the record contains medical letters stating that the applicant's daughter suffered from diarrhea, destabilization, and a skin condition in July 2010, there is no other information indicating any treatment or causes for her illness. There is also no follow-up evidence concerning the applicant's daughter's physical condition. However, the AAO gives due consideration to the applicant's spouse's concern for the applicant and their daughter, and the resulting emotional difficulty for him.

Counsel for the applicant asserts that Ecuador suffers from a level of crime and violence that would impact the applicant's spouse if he relocated to Ecuador. The record contains background information concerning country conditions in Ecuador. It is noted that the applicant's spouse does not make any assertions concerning his safety in Ecuador in either his affidavits or his psychological evaluation. It is also noted that the U.S. Department of State has not issued any travel warnings concerning travel to Ecuador. In this case, the record contains insufficient evidence to show that the hardships faced by the qualifying relative, if he were to relocate to Ecuador, 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 her 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.