

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



U.S. Citizenship
and Immigration
Services



H6

Date: NOV 29 2012

Office: GUATEMALA CITY

FILE: 

IN RE: Applicant: 

APPLICATION: Application for Waiver of Grounds of Inadmissibility pursuant to section 212(a)(9)(B)(v) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(9)(B)(v)

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,

Ron Rosenberg
Acting Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Field Office Director, Guatemala City. The matter 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 Guatemala who was found to be inadmissible to the United States pursuant to section 212(a)(9)(B)(i)(II) of the Act for having been unlawfully present in the United States for more than one year. The applicant is the son of a lawful permanent resident and seeks a waiver of inadmissibility pursuant to section 212(a)(9)(B)(v) of the Act in order to reside with his father in the United States.

The field office director found that the applicant did not submit a statement from the qualifying relative and did not submit any evidence to establish that his father would suffer hardship if the applicant's waiver application were denied.

On appeal, the applicant submits a declaration from his father.

The record contains, *inter alia*: a declaration from the applicant's father, Mr. Francisco; several letters from the applicant; letters of support; copies of the applicant's bank statements and other financial documents; copies of the applicant's report card, certificates of achievement, and other documents addressing the applicant's community service; and an approved Petition for Alien Relative (Form I-130). The entire record was reviewed and considered in rendering this decision on the appeal.

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

(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 [now the 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 Attorney General [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.

In this case, the record shows, and the applicant concedes, that he entered the United States without inspection in December 2004 when he was fourteen years old and remained until his departure in March 2011. The applicant accrued unlawful presence beginning on July 16, 2008, when he turned eighteen years old, until his departure in March 2011. Therefore, he is inadmissible to the United States under section 212(a)(9)(B)(i)(II) of the Act for being unlawfully present in the United States for a period of one year or more and seeking admission to the United States within ten years of his last departure.

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.

In this case, the applicant's father, [REDACTED] states that he would suffer extreme emotional and mental hardship if his son's waiver application were denied. According to [REDACTED] his wife and three kids will be having their interview to immigrate to the United States and, therefore, his entire family will be in the United States with him except for the applicant. [REDACTED] also contends he is suffering psychologically knowing that his son is living in Guatemala because his son's life has been threatened many times and he has been asked for money. In addition, he contends his son has gotten extremely ill in Guatemala and will lose the opportunity to attend school in the United States. [REDACTED] states he is so worried about his son that he is not functioning properly at work and is losing sleep. Furthermore, [REDACTED] states he would suffer extreme emotional, psychological, and financial hardship if he returned to Guatemala to be with his son. He contends that all of his efforts to unite his family in the United States will have been worthless and he would fear for his own safety in Guatemala.

After a careful review of the record, there is insufficient evidence to show that [REDACTED] has suffered or will suffer extreme hardship if his son's waiver application were denied. If [REDACTED] decides to stay in the United States, their situation is typical of individuals separated as a result of inadmissibility or exclusion and does not rise to the level of extreme hardship based on the record. With respect to emotional and psychological hardship, although the AAO is sympathetic to the family's circumstances, the record does not show that the applicant's situation is unique or atypical compared to other individuals in similar circumstances. See *Perez v. INS*, 96 F.3d 390 (9th Cir. 1996) (holding that the common results of deportation are insufficient to prove extreme hardship and defining extreme hardship as hardship that was unusual or beyond that which would normally be expected). Regarding [REDACTED] contention that he is worried for his son's safety and health, and that he is not functioning properly at work and is losing sleep as a result, there is no evidence to corroborate this claim. For instance, there is no evidence in the record addressing how the applicant has been in any life-threatening situations in Guatemala. Similarly, there is no letter from [REDACTED] employer or

any medical professional addressing his emotional or psychological state. Even considering all of these factors cumulatively, there is insufficient evidence showing that the hardship the applicant's father has experienced or will experience amounts to extreme hardship.

Furthermore, the record does not show that [REDACTED] would suffer extreme hardship if he returned to Guatemala to be with his son. The record shows that [REDACTED] was born in Guatemala and although [REDACTED] contends his wife and three of their children will immigrate to the United States in the near future, nonetheless, his family currently resides in Guatemala. Regarding financial hardship, there is no evidence in the record to corroborate this claim, such as evidence suggesting [REDACTED] would have a more difficult time obtaining employment in Guatemala than would normally be expected. [REDACTED] does not contend he has any physical or mental impairment that would make his readjustment to living in Guatemala any more difficult than compared to others in similar circumstances. To the extent [REDACTED] contends Guatemala is dangerous, although the AAO acknowledges that the U.S. Department of State describes that violent crime is a serious concern in Guatemala, *U.S. Department of State, Country Specific Information, Guatemala*, dated November 13, 2012, this factor alone is insufficient to show extreme hardship. In sum, the record does not show that [REDACTED] return to Guatemala would be any more difficult than would normally be expected under the circumstances. Even considering all of the evidence cumulatively, the record does not show that the applicant's father's hardship would be extreme, or that their situation is unique or atypical compared to others in similar circumstances. *Perez v. INS, supra*.

A review of the documentation in the record fails to establish the existence of extreme hardship to the applicant's father caused by the applicant's inadmissibility to the United States. Having found the applicant statutorily ineligible for relief, no purpose would be served in discussing whether he merits a waiver as a matter of discretion.

In proceedings for application for waiver of grounds of inadmissibility, the burden of proving eligibility remains entirely with the applicant. *See* 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.