

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: **OCT 24 2012** Office: SAN SALVADOR, EL SALVADOR

FILE: 

IN RE: Applicant: 

APPLICATIONS: Application for Waiver of Grounds of Inadmissibility under sections 212(a)(9)(B)(v) and 212(g) of the Immigration and Nationality Act, 8 U.S.C. §§ 1182(a)(9)(B)(v) and 1182(g); and Application for Permission to Reapply for Admission into the United States after Deportation or Removal under Section 212(a)(9)(A) of the Immigration and Nationality Act, 8 U.S.C. § 1182(a)(9)(A)

ON BEHALF OF APPLICANT:

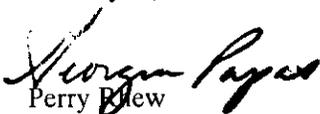
SELF-REPRESENTED

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 R. Hew

Chief, Administrative Appeals Office

being unlawfully present in the United States for a period of more than one year, and he seeks admission within ten years of his departure from the United States. The applicant does not contest his inadmissibility.

The AAO notes that the applicant may also be inadmissible under section 212(a)(2)(A)(i)(I) of the Act, 8 U.S.C. § 1182(a)(2)(A)(i)(I), for having committed crimes involving moral turpitude.¹ However, because the applicant is also inadmissible under section 212(a)(9)(B)(i)(II) of the Act, and demonstrating eligibility for a waiver under section 212(a)(9)(B)(v) of the Act also satisfies the requirements for a waiver of criminal grounds of inadmissibility under section 212(h), the AAO will not review the determination of the applicant's inadmissibility under section 212(a)(2)(A)(i)(I).

The record contains references to hardship the applicant's daughter would experience if the waiver application were denied. It is noted that Congress did not include hardship to an alien's 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's daughter will not be separately considered, except as it may affect the applicant's spouse.

In her statement dated July 9, 2010, the applicant's wife's claims that the applicant does not want her to visit him in El Salvador because of the security situation; he feels that they would be targeted for kidnapping. The applicant makes no other claim that his wife will endure hardship should she relocate to El Salvador. The AAO acknowledges that the applicant's wife is a U.S. citizen, and relocation would involve some hardship. However, the applicant's wife is a native of El Salvador, and no objective documentary evidence was submitted that demonstrates that she will experience hardship in El Salvador. Going on record without supporting documentation is not sufficient to meet the applicant's burden of proof in this proceeding. 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)). Therefore, based on the record before it, the AAO finds that, considering the potential hardships in the aggregate, the applicant has failed to establish that his wife would suffer extreme hardship if she relocated to El Salvador.

In addition, the record fails to establish extreme hardship to the applicant's wife if she remains in the United States. In her letter dated October 18, 2007, the applicant's wife states she needs the applicant's financial help, because she cannot "do it alone." The applicant's daughter states that since the applicant returned to El Salvador, her mother is suffering financial hardship. She claims that if the applicant cannot assist her mother financially, she will be unable to continue attending school. She works part-time to help her mother. The applicant's daughter states the applicant is working in El Salvador but does not earn enough to help his family in the United States. The applicant's wife states she is currently working, after she was laid off, but she earns less than before and has "a minimal health plan." She states that when the

¹ The Field Office Director did not determine if the applicant's crimes would render the applicant inadmissible under section 212(a)(2)(A)(i)(I) of the Act; however, if his crimes are determined to be crimes involving moral turpitude, they would also be considered violent and dangerous crimes, and the applicant would be subject to 8 C.F.R. § 212.7(d). Because the AAO is dismissing the applicant's appeal, it will not address the applicant's crimes at this time, though they should be thoroughly addressed in future proceedings.

applicant was employed in the United States, he had a very good medical and dental plan. She claims that she now relies on government health services for her medical treatments.

The applicant's wife states their daughter is having a difficult time. The applicant's daughter states it has been difficult growing up without the applicant in the United States. In her letter dated August 20, 2006, the applicant's daughter stated the applicant helped her with her school work and he was a "good support system." The applicant's wife states their daughter became rebellious after the applicant returned to El Salvador; however, she overcame this and is now attending college.

The applicant's wife states she misses the applicant. In a letter dated February 14, 2011, [REDACTED] diagnoses the applicant's wife with depression and insomnia, which began after the applicant was removed from the United States. Dr. [REDACTED] states the applicant's wife is taking medication and is under medical care; however, her condition would improve if she and the applicant were reunited. Additionally, the applicant's wife states she was previously diagnosed with breast cancer, which is in remission. She claims that she is currently experiencing some health issues that require examinations.

The AAO acknowledges that the applicant's wife is suffering emotional difficulties in being separated from the applicant. While it is understood that the separation of spouses often results in significant psychological challenges, the applicant has not distinguished his wife's emotional hardship upon separation from that which is typically faced by the spouses of those deemed inadmissible. With respect to the applicant's spouse's medical hardship, although the record establishes that she suffers from depression and insomnia, no medical documents have been submitted establishing that she suffers from any other medical issues. Moreover, though statements in the record refer to financial difficulties, the record does not contain evidence establishing that the applicant's wife is suffering financial hardship. Additionally, the applicant has not distinguished his wife's financial challenges from those commonly experienced when a family member remains in the United States. The AAO also notes that the applicant's daughter may be suffering some hardship in being separated from the applicant; however, the applicant has not shown that their daughter's hardship has elevated his wife's challenges to an extreme level. Based on the record before it, the AAO finds that the applicant has failed to establish that his wife would suffer extreme hardship if his waiver application is denied and she remains in the United States.

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 his U.S. citizen spouse as required under section 212(a)(9)(B)(v) of the Act. Having found the applicant statutorily ineligible for relief, the AAO finds no purpose would be served in discussing whether he merits a waiver as a matter of discretion.

The AAO notes that the Field Office Director denied the applicant's Form I-212, Application for Permission to Reapply for Admission into the United States After Deportation or Removal (Form I-212), in the same decision. *Matter of Martinez-Torres*, 10 I&N Dec. 776 (reg. Comm. 1964), held that an application for permission to reapply for admission is denied, in the exercise of discretion, to an alien who is mandatorily inadmissible to the United States under another section of the Act, and no purpose

would be served in granting the application. As the applicant is inadmissible under section 212(a)(9)(B)(i)(II) of the Act, no purpose would be served in granting the applicant's Form I-212.

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. *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.