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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: SEP 13 2012

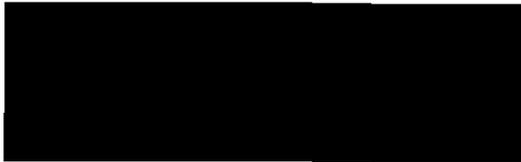
Office: TEGUCIGALPA

FILE: 

IN RE: Applicant: 

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


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Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Field Office Director, Tegucigalpa, Honduras, who also dismissed a motion to reopen the denial decision, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The record reflects that the applicant, a native and citizen of Honduras, entered the United States without authorization in November 2001 and did not depart the United States until September 15, 2009. At his immigrant visa interview, a consular officer thus found him 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 one year or more. The applicant does not contest this finding of inadmissibility. Rather, as the beneficiary of an approved Petition for Alien Relative (Form I-130), he seeks a waiver of inadmissibility under section 212(a)(9)(B)(v) of the Act, 8 U.S.C. § 1182(a)(9)(B)(v), to reside in the United States with his lawful permanent resident father.

The field office director concluded that the applicant had 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. *Decision of the Field Office Director*, June 2, 2010.

In support of the appeal, the applicant provides a supporting brief and new evidence, including, but not limited to: a psychological evaluation; support letters; financial information, including a bankruptcy discharge order; and country condition information. The record also contains documents submitted in support of an application to adjust status and petition for alien relative, including: financial information, such as tax returns and W-2 forms, bank statements, a business license and contract, and mortgage documents; birth, marriage, and naturalization certificates; and copies of passport pages. The entire record was reviewed and considered in rendering this decision.

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...

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.¹ Hardship to the applicant can be considered only insofar as it results in hardship to a qualifying relative. The applicant's U.S. citizen spouse is the only qualifying relative in this case. 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

¹ The AAO notes that the applicant also lists "Misrepresentation of material fact to procure TPS status," pursuant to Section 212(a)(6)(C) of the Act, as another inadmissibility ground on his Form I-601. As the record is otherwise silent on this issue and where the same extreme hardship standard applies under the applicable waiver provision of Section 212(i) of the Act, we need not consider further whether the applicant is subject to inadmissibility for fraud.

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.

Counsel for the applicant’s wife contends that she is suffering great hardship by remaining in the United States while the applicant resides abroad due to his inadmissibility. Counsel asserts that the qualifying relative needs her husband to provide financial support by helping run her businesses, and claims that his absence contributed to the failure of the businesses. Through counsel, the applicant’s wife also claims that his absence has made her depressed.

Regarding emotional hardship, the record contains a social worker’s diagnosis of the qualifying relative as having “Atypical Depressive Reaction, NOS (not otherwise specified),” based on the patient’s self-reported insomnia, nightmares, compulsive eating, and lapses in concentration and memory. The therapist reports that her psychological issues began in 2008 when business reversals caused stress, but that she has no other underlying medical conditions. The June 19, 2010 psychological evaluation indicates she began a recommended course of psychotherapy for her condition, and that her prognosis was good. Although the therapist identifies the qualifying relative’s loss of her businesses, husband, and family home as factors making her psychologically vulnerable, the record contains no statement from the applicant’s wife explaining the impact on her mental state of her husband’s 2009 departure and inability to return.²

Regarding financial hardship, counsel contends that the applicant contributed his handyman skills to maintain his wife’s businesses and, therefore, that his absence contributed to the business failures

² On July 18, 2012, the AAO telefaxed to the applicant’s counsel a request that copies of three categories of evidence already on record, including “Hardship Letters of Qualifying Relative and Applicant,” be returned within five business days. The AAO has received no response. Rather than summarily dismiss the appeal, we issue this decision based on the evidence in the case file.

leading to her 2009 bankruptcy. Other than mention in the psychological evaluation that the applicant used training as a plumber and electrician to help maintain his wife's restaurants, the record contains no indication that he contributed economically to the household, nor any evidence that he had the background to perform the work claimed. All tax returns on record show his wife filing individually or as head of household, and there is no evidence of the applicant's earned income or payment of taxes. There is no evidence that the applicant has been unable to find work in Honduras or that his wife has had to support him financially overseas, only that jobs are hard to find and poorly compensated in that country. Therefore, the record lacks any indication of either the applicant's income, assets, or expenses, or of details about the qualifying relative's post-bankruptcy financial situation. Due to the lack of documentation establishing the applicant's past financial contribution to the household,³ his wife's remittance of any funds to support him, or the burden he represents, there is no evidence that the qualifying relative is experiencing any financial hardship due to the absence of her husband. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings.

The AAO recognizes that the applicant's wife will endure hardship as a result of separation from the applicant. However, her situation, if she remains in the United States, is typical to individuals separated as a result of removal or inadmissibility and does not rise to the level of extreme hardship based on the record.

The record contains sufficient evidence to satisfy the applicant's burden of proving the claimed hardship to be incurred upon relocating abroad to reside with the applicant. Regarding the qualifying relative's U.S. ties, the therapist's report notes that her parents and 10 of 11 siblings (and their families) live here. The record likewise contains indirect evidence of the loss of her home to foreclosure and her businesses to bankruptcy, leaving uncertain what assets she retains. While there is no evidence of the applicant's income, either in the United States or in Honduras, prior to his emigration from that country, the record contains information suggesting that local conditions both in Honduras and in the qualifying relative's native El Salvador establish a safety and security risk involved in moving to either country.

Official U.S. government sources confirm that the threat of violent crime against both persons and property is high in both countries. The U.S. Department of State (DOS) reports that Honduras has the highest per capita homicide rate in the world, including over 100 U.S. citizen victims since 1995 (six in the first half of 2012 alone). Although there is no current travel warning regarding the country, DOS observes that:

Crime is widespread in Honduras and requires a high degree of caution by U.S. visitors and residents alike. U.S. citizens have been the victims of a wide range of crimes, including murder, kidnapping, rape, assault, and property crimes. Widespread poverty and unemployment, along with significant street gang and drug trafficking activity, have contributed to the extremely high crime rate. In January

³ Counsel for the applicant has not responded to the AAO's request for "Tax Returns, W-2s, Income Statements of Applicant."

2012, the [REDACTED] suspended its program in order to review the safety and security of its volunteers.

Honduras—Country Specific Information, U.S. Department of State, July 10, 2012.

DOS notes that, while there is no evidence that U.S. citizens are being specifically targeted in Honduras, “foreigners have been targeted for crime due to their perceived wealth.” Similarly, DOS considers El Salvador a “critical-crime-threat country” and reports that it has one of the highest homicide rates in the world (including at least 13 U.S. citizens since 2010), “with El Salvador reporting the highest death rate due to armed violence” and “the highest rate of violent fatalities.” Also, “[e]xtortion is on the rise and U.S. citizens and their family members have been victims in various incidents.” *El Salvador—Country Specific Information*, DOS, December 2, 2011.

In the United States since 1990, the applicant’s wife has spent her entire adult life here, and there is no indication she has ever returned to where she was born. Regarding the fact that the applicant lives in Honduras, while his wife is from El Salvador, we note the applicant bears the burden of showing that relocation would represent extreme hardship to a qualifying relative, but observe that there is no indication his wife would be allowed to join the applicant in his native country, or vice versa. Finally, even if residency issues in their respective countries can be resolved, the record supports counsel’s assertion that the qualifying relative’s job prospects in both countries are poor, making it potentially problematic for her to survive economically abroad.

The record reflects that the cumulative effect of the applicant’s wife’s ties to the United States and absence of ties to her husband’s country, her long residence in the United States, and her personal safety and security risks, were she to relocate, rises to the level of extreme. The AAO thus concludes that were the applicant unable to reside in the United States due to his inadmissibility, a qualifying relative would suffer extreme hardship by relocating abroad to reside with her husband.

We can find extreme hardship warranting a waiver of inadmissibility only where an applicant has demonstrated extreme hardship to a qualifying relative in the scenario of separation *and* the scenario of relocation. A claim that a qualifying relative will relocate and thereby suffer extreme hardship can easily be made for purposes of the waiver even where there is no actual intention to relocate. *Cf. Matter of Ige*, 20 I&N Dec. 880, 886 (BIA 1994). Furthermore, to relocate and suffer extreme hardship, where remaining in the United States and being separated from the applicant would not result in extreme hardship, is a matter of choice and not the result of inadmissibility. *Id.*, *also cf. Matter of Pilch*, 21 I&N Dec. 627, 632-33 (BIA 1996). As the applicant has not demonstrated extreme hardship from separation, we cannot find that refusal of admission would result in extreme hardship to the qualifying relative in this case.

In proceedings for application for waiver of grounds of inadmissibility, 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. The waiver application is denied.