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

(b)(6)

U.S. Citizenship and Immigration Services

[redacted]

Date: APR 0 3 2013 Office: GUATEMALA CITY, GUATEMALA FILE: [redacted]

IN RE: Applicant: [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,

Ron Rosenberg
Acting Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Field Office Director, Guatemala City, Guatemala, 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 Guatemala who 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 more than one year and seeking readmission within ten years of her last departure from the United States. The record indicates that the applicant is married to a U.S. citizen and is the mother of two lawful permanent resident children and a Guatemalan citizen child. She is the beneficiary of an approved Petition for Alien Relative (Form I-130). The applicant seeks a waiver of inadmissibility pursuant to 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 spouse and children.

The Field Office Director found that the applicant had failed to establish that extreme hardship would be imposed on the applicant's qualifying relative and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) accordingly. *Decision of the Field Office Director*, dated August 17, 2012.

The applicant, through counsel, contends that the Field Office Director "inappropriately" applied the law; the facts were not considered; and the Field Office Director's analysis was "inconsistent with existing rules, regulations, and precedent decisions." *Counsel's appeal brief*, dated October 9, 2012. Additionally, the applicant's spouse is suffering extreme hardship. Counsel also submits new evidence of hardship on appeal.

The record includes, but is not limited to, counsel's appeal brief, statements from the applicant and her husband, medical documents for the applicant's husband, financial documents, school records for the applicant's daughter, and an employment document for the applicant's son. The entire record was reviewed and considered in arriving at 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.

. . . .

> (v) Waiver.-The [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 her children can be considered only insofar as it results in hardship to a qualifying relative. The applicant's 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 United States Citizenship and Immigration Services (USCIS) then assesses whether a favorable exercise of discretion is warranted. *See Matter of Mendez-Moralez,* 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 of Immigration Appeals (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 v. INS*, 138 F.3d 1292, 1293 (9th Cir. 1998) (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 record indicates that in March 2006, the applicant entered the United States without inspection. In December 2008, she departed the United States.[1] The applicant accrued over one year of unlawful presence between March 2006 and December 2008. The applicant is, therefore, inadmissible to the United States under section 212(a)(9)(B)(i)(II) of the Act. Counsel does not contest the applicant's inadmissibility.

Describing his hardship should he join the applicant in Guatemala, in his statement dated March 14, 2012, the applicant's husband states there is "no future" for him or his family in Guatemala. He states he has resided in the United States since 1978. Counsel states the applicant's husband is 69 years old and cannot relocate to Guatemala because of his age and medical conditions. Medical documentation in the record establishes that the applicant's husband has been diagnosed with pulmonary fibrosis, diabetes, hyperlipidemia, and an enlarged prostate, and he is being treated with medications. Counsel claims that the applicant's husband would not receive the same medical care in Guatemala that he currently receives in the United States. Additionally, the applicant's husband states he worries about the children in Guatemala. Counsel states the applicant's children would suffer because of the current safety and security situation in Guatemala, and the lack of educational opportunities there.

---

[1] The AAO notes that on March 30, 2012, during the applicant's sworn statement, she claimed to have departed the United States on December 9, 2009, while the I-601 decision and consular refusal worksheet in the record indicates that she departed the United States in December 2008. This discrepancy in departure dates, however, does not affect her inadmissibility.

The AAO acknowledges that the applicant's husband is a U.S. citizen, and that relocation abroad would involve some hardship. However, no evidence has been submitted showing that the applicant's husband, a native of Guatemala, does not speak Spanish, is unfamiliar with the culture and customs in Guatemala, or has no family ties there. Additionally, the AAO notes that the applicant's husband is elderly; however, the record does not show that his family in the United States cannot help to support him or that the applicant cannot support him in Guatemala. 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)). Regarding the medical hardship to the applicant's spouse, no documentary evidence was submitted establishing that he cannot receive medical treatment for his medical conditions in Guatemala or that he has to remain in the United States to receive treatment. Moreover, regarding the hardship that the applicant's children may experience in Guatemala, they are not qualifying relatives under the Act, and though the applicant's spouse expresses his concerns, the applicant has not shown that hardship to her children has elevated her husband's challenges to an extreme level. 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 her husband would suffer extreme hardship if he relocated to Guatemala.

Concerning the hardship that the applicant's husband would experience by remaining in the United States, counsel states the applicant's husband is suffering "extreme health, emotional, mental, and financial hardships." As noted above, the applicant's husband has been diagnosed with pulmonary fibrosis, diabetes, hyperlipidemia, and an enlarged prostate, and he is being treated with medications. Medical documentation shows that the applicant's husband's pulmonary fibrosis diagnosis is not significantly restrictive. Counsel states the applicant's husband requires the applicant's daily assistance because of his medical conditions. In her statement dated March 19, 2012, the applicant states she needs to be in the United States to take care of her husband and children. The applicant's husband states he is having difficulty taking his medications and following his diet. The applicant's wife states she helps her husband to take his medications and prepares "proper foods" to prevent him from becoming ill.

Counsel claims that the applicant's husband is taking care of two of the applicant's children, including her 13-year old daughter, but he needs the applicant's assistance "to share in [the] parenting responsibilities." Additionally, counsel states the applicant's husband worries about the effects of the applicant's immigration situation on his stepchildren. Counsel claims that the applicant's husband, daughter, and son are worried about the applicant in Guatemala. The applicant's husband states the children need the applicant in the United States. Counsel states the applicant's daughter is suffering from a lack of parenting since the applicant's husband has to work, and because her son works to help with household expenses, he is unable to pursue his educational goals.

Counsel states the applicant's husband needs the applicant's financial assistance. Documentation in the record establishes that the applicant's husband receives $868.40 a month in Social Security benefits. Additionally, a document in the record shows that the applicant's adult son is employed full-time. Counsel states the applicant's husband is supporting two households, one in the United States and one in Guatemala. The applicant's husband states the applicant is unable to support herself in Guatemala.

The AAO acknowledges that the applicant's husband is suffering emotionally 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 her husband's emotional hardship upon separation from that which is typically faced by the spouses of those deemed inadmissible. Moreover, though counsel and the applicant's husband refer to financial difficulties, the record does not contain sufficient evidence showing that he is experiencing financial hardship in the applicant's absence. Additionally, the applicant has not distinguished her husband's financial challenges from those commonly experienced when a family member remains in the United States. Further, the record does not contain documentary evidence establishing that the applicant has been unable to obtain employment in Guatemala and, thereby, financially assist her husband from outside the United States. With respect to the applicant's husband's medical hardship, although the record establishes that he suffers from medical issues, the medical documentation in the record does not establish that the separation from the applicant has elevated his symptoms or that he requires the applicant's assistance. The AAO also notes that the applicant's children may be suffering some hardship in being separated from their mother; however, the applicant has not shown that her children's hardship has elevated her husband's challenges to an extreme level. Based on the record before it, the AAO finds that the applicant has failed to establish that her husband would suffer extreme hardship if her waiver application is denied and he remains in the United States.

In this case, the record does not contain sufficient evidence to show that the hardships faced by the applicant's 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. Having found the applicant statutorily ineligible for relief, the AAO finds 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 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.