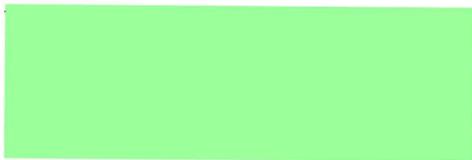


U.S. Department of Homeland Security  
U.S. Citizenship and Immigration Services  
Administrative Appeals Office (AAO)  
20 Massachusetts Ave., N.W., MS 2090  
Washington, DC 20529-2090  
**U.S. Citizenship  
and Immigration  
Services**

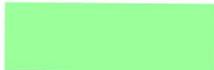


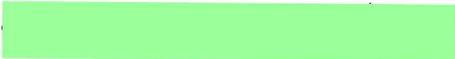
(b)(6)



Date: **APR 15 2013**

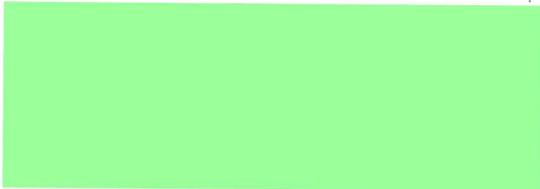
Office: ANAHEIM, CA

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:



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 International Affairs Support Branch on behalf of the Field Office Director, Guatemala City, Guatemala. 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 daughter of a U.S. citizen and seeks a waiver of inadmissibility pursuant to section 212(a)(9)(B)(v) of the Act in order to reside with her father and her child in the United States.

The field office director found that the applicant failed to establish extreme hardship to a qualifying relative and denied the application accordingly.

On appeal, counsel contends the applicant established extreme hardship, particularly considering the applicant is very close with her father, her father must split his income to support his daughter and granddaughter in Guatemala, and country conditions in Guatemala.

The record contains, *inter alia*: a letter from the applicant's father, Mr. Martin; a copy of the birth certificate of the applicant's U.S. citizen daughter; a copy of the U.S. Department of State's Country Reports on Human Rights Practices for Guatemala; 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 does not contest, that she entered the United States without inspection in 1996 when she was seven years old. The applicant remained in the United States until her departure in December 2008. The applicant accrued unlawful presence for more than one year, beginning on March 1, 2007, when she turned eighteen years old, until her departure in December 2008. She now seeks admission within ten years of her 2008 departure. Accordingly, she 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 her 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 has lived in the United States for over twenty years. According to [REDACTED] he has four children living in the United States and two children, including the applicant, living in Guatemala. He contends that the applicant came to the United States when she was seven years old and lived with him in the United States until she was sixteen years old. He states that when she was sixteen, she moved to [REDACTED] to live with her brother and help him care for his children. [REDACTED] contends he and the applicant are very close and that they remained close even after she moved to [REDACTED]. He states he went with the applicant and her daughter to Guatemala to make sure they got there safely. According to [REDACTED] the applicant is currently living in Guatemala with her mother and sister and is having a difficult time. In addition, Mr. [REDACTED] contends he is experiencing economic hardship because he has to financially provide for the applicant in Guatemala as she has been unable to find employment. Furthermore, [REDACTED] states his granddaughter will suffer hardship if she remains in Guatemala because it is almost impossible to obtain a higher education there.

After a careful review of the record, there is insufficient evidence to show that the applicant’s father, [REDACTED], has suffered or will suffer extreme hardship if his daughter’s waiver application were denied. If [REDACTED] decides to remain in the United States without his daughter, 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. Although the AAO is sympathetic to the family’s circumstances, there is insufficient evidence in the record to 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 (9<sup>th</sup> 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] financial hardship, there are no financial documents in

the record to support this claim. There is no evidence in the record, such as copies of tax returns or pay stubs, addressing [REDACTED] total wages or income and there is no documentation addressing regular, monthly expenses. Even considering all of these factors cumulatively, there is insufficient evidence showing that the hardship [REDACTED] has experienced or will experience if he remains in the United States without his daughter amounts to extreme hardship.

Furthermore, the record does not show that [REDACTED] will suffer extreme hardship if he returns to Guatemala, where he was born, to avoid the hardship of separation. Although the AAO acknowledges [REDACTED] contentions that he has lived in the United States for more than twenty years and has four other children living in the United States, at the same time, he also states that the applicant is living with her mother and sister in Guatemala. Therefore, [REDACTED] continues to have significant family ties to Guatemala. The AAO notes that [REDACTED] went to Guatemala with the applicant; however, he does not address whether traveling to, visiting, or relocating to Guatemala amounts to any hardship. To the extent counsel addresses safety issues in Guatemala, the AAO acknowledges that violent crime is a serious concern in Guatemala. *U.S. Department of State, Country Specific Information, Guatemala*, dated March 22, 2013. Nonetheless, there has not been a Travel Alert or Warning issued for Guatemala and, in any event, this factor alone would be insufficient to establish 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. Considering all of the evidence cumulatively, the record does not show that Mr. Martin's hardship is extreme, or that his 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 she 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.