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



U.S. Citizenship
and Immigration
Services

DATE: APR 18 2013

OFFICE: PANAMA CITY

FILE: [REDACTED]

IN RE: [REDACTED]

APPLICATION:

Application for Waiver of Grounds of Inadmissibility under Section 212(a)(9)(B)(v) and 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,

A handwritten signature in black ink that reads "Ron Rosenberg".

Ron Rosenberg
Acting Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Field Office Director, Panama City, Panama and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native and citizen of Ecuador who was found to be inadmissible under 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 country for more than one year and seeking readmission within ten years of his departure from the United States. The applicant was also found to be inadmissible under section 212(a)(9)(A) of the Act, 8 U.S.C. § 1182(a)(9)(A), for seeking readmission after having been removed under an outstanding order. The applicant is the beneficiary of an approved Petition for Alien Relative (Form I-130). He 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 live in the United States with his U.S. citizen spouse and child.

When considering the applicant's request for waiver of these grounds of inadmissibility, the director determined that the applicant had not shown extreme hardship to a qualifying relative and the applicant was also inadmissible to the United States pursuant to section 212(a)(6)(B) of the Act, 8 U.S.C. § 1182(a)(6)(B), for failing to attend removal proceedings and seeking admission to the United States within five years of his departure from the United States. The application was denied accordingly. *See Decision of Field Office Director*, dated August 24, 2012.

On appeal, counsel asserts that the director failed to consider all the evidence, and the applicant has established that his qualifying relative would suffer extreme hardship based on relocation and is suffering extreme hardship based on separation. *See Form I-290B, Notice of Appeal or Motion* (Form I-290B), received September 19, 2012, and counsel's brief.

The record contains, but is not limited to: Form I-290B, counsel's brief; Form I-601, counsel's letter; Form I-212, Application for Permission to Reapply for Admission into the United States After Deportation or Removal (Form I-212); Form I-130; statements by the applicant's spouse, pastor, and friend; a psychological evaluation of the applicant's spouse and child; financial documents; medical documents; naturalization, birth, marriage and divorce certificates; photographs; and articles and country-condition reports about Ecuador. The entire record was reviewed and considered in rendering a decision on the appeal.

The record reflects that the applicant entered the United States without inspection on or about October 1993. He was arrested and placed in deportation proceedings. On October 4, 1994, the applicant did not appear for his hearing, although he had been contacted by his attorney, and the immigration judge ordered him removed *in absentia*. The applicant did not leave the United States. On September 26, 2008, immigration agents apprehended the applicant at his residence, and he was deported on November 6, 2008.

The AAO notes that section 212(a)(6)(B) of the Act does not apply to those placed in deportation proceedings under section 242 of the Act before April 1, 1997. The applicant was placed in proceedings in 1994. Therefore, the section 212(a)(6)(B) inadmissibility does not apply to the applicant. However, the applicant remains inadmissible under section 212(a)(9)(B)(i)(II) of the

Act for being unlawfully present in the United States for more than one year. Counsel does not contest the applicant's inadmissibility.

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

(i) [A]ny 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.

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

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 first upon a showing that the bar imposes an extreme hardship on a qualifying family member, which includes the U.S. citizen or lawful permanent resident spouse or parent of the applicant. Hardship to the applicant and his child can be considered only insofar as it results in hardship to a qualifying relative. In the present case, the applicant's spouse is the only qualifying relative. 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*, 22 I&N Dec. 560, 565 (BIA 1999), the Board provided a list of factors it deemed relevant in determining whether an alien has established extreme hardship to a qualifying relative. The factors include the presence of a lawful permanent resident or U.S. 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).

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. I.N.S.*, 138 F.3d 1292 (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 contains references to hardship the applicant's child would experience if the waiver application were denied. It is noted that Congress did not include hardship to an alien's children as a factor to be considered in assessing extreme hardship under section 212(a)(9)(B)(v) of the Act. 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 child will not be separately considered, except as it may affect the applicant's spouse.

The applicant's spouse is a 36 year-old native of Kazakhstan and citizen of the United States. She states that she met the applicant in 2006 and they married in February 2007. Their son was born in December 2007. The applicant's spouse states that the applicant is her "miraculous gift from God," and gives her happiness. After he was placed in immigration detention in September 2008, she states that she could not sleep or eat. She indicates that she felt permanently depressed and constantly anxious, cried daily, and felt she could not raise their son alone. A psychologist reports that several years of separation has caused the applicant's spouse to suffer from major depressive disorder. He states that the applicant's spouse's symptoms include sleep disturbances, poor appetite, weight loss, difficulty concentrating, persistent sadness, chronic anxiety, and crying spells, and these symptoms will be exacerbated the longer she remains separated from the applicant.

The applicant's spouse states that after the applicant's deportation, her finances were depleted, and she moved from their apartment to her parents' home. The record indicates that the applicant and his spouse worked for a remanufacturing company until it closed in 2007. The applicant's and his spouse's biographical information form indicates he subsequently found work at another company until he was deported, but the applicant's spouse did not. Through her psychologist she reports that she cleans houses for income. The record also indicates that the applicant is employed as an attorney in Ecuador. Financial documents spanning a year from September 2011 to September 2012 allude to her debt of over \$15,000. No other documents were submitted regarding the applicant's spouse's finances, expenses, or income, such as income statements, employment documents, tax returns or any other expenses she bears; the record also lacks evidence of the applicant's financial contributions to support his family in the United States. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *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)).

The AAO has considered cumulatively all assertions of separation-related hardship to the applicant's spouse, including the emotional strain of being separated from the applicant and raising their young son without him, her fragile mental state, and her loss of income after the applicant's removal. Although the AAO acknowledges the difficulty in being separated from the applicant, the evidence presented, taken in the aggregate, is not sufficient to demonstrate that the applicant's U.S. citizen spouse suffers extreme hardship as a result of their separation.

The applicant's spouse states that she moved to Ecuador from July 2009 to May 2010 to live with the applicant, however issues regarding her religion, health and safety caused her and their son to return to the United States. She states that people in Ecuador threatened to kidnap or kill her for being a Pentecostal Christian. She indicates that her and their son's health declined, and they both suffered eczema and allergies due to the climate, as medical documentation corroborates. She describes the dangers of living in Ecuador and how a man threatened the applicant at gun-point in front of her. She states that this man bribed the police and was released from custody the next day. Country-conditions reports support her statements about the high crime rate in Ecuador.

Counsel asserts that the applicant's spouse's mother, father, brother, sister, aunts and uncles live in the United States, and she does not have any family, besides the applicant in Ecuador. A letter

from their pastor notes the applicant's spouse is involved in their church. The applicant's spouse indicates that her church and family have helped support her emotionally and financially in the United States.

The AAO has considered cumulatively all assertions of relocation-related hardship to the applicant's spouse, including her stated religious, health and safety concerns, and her family and community ties in the United States. The evidence presented cumulatively is sufficient to demonstrate she would suffer hardship beyond what is typical of those who would relocate to live with an applicant who is deemed inadmissible.

The AAO 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, the AAO cannot find that refusal of admission would result in extreme hardship to his qualifying relative in this case.

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. Section 291 of the Act, 8 U.S.C. § 1361. Here, the applicant has not met that burden. As the applicant has not established extreme hardship to a qualifying family member no purpose would be served in determining whether the applicant merits a waiver as a matter of discretion. Accordingly, the appeal will be dismissed.

The AAO notes that the 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) on the same date. *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.

ORDER: The appeal is dismissed.