



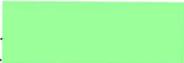
**U.S. Citizenship
and Immigration
Services**

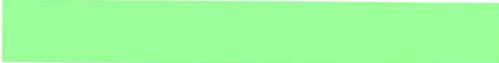
(b)(6)



DATE: **APR 18 2013**

Office: PANAMA CITY, PANAMA

FILE: 

IN RE: 

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:



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, Panama City, Panama. A subsequent appeal was dismissed by the Administrative Appeals Office (AAO). The matter is now before the AAO on a motion to reopen and reconsider. The motion will be granted, the previous decision affirmed and the waiver application denied.

The applicant is a native and a citizen of Ecuador 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 admission within 10 years of his last departure. The applicant is the son of a legal permanent resident of the United States and the beneficiary of an approved Petition for Alien Relative (Form I-130). He seeks a waiver under 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 his parents.

The Field Office Director concluded that the applicant had failed to establish that the bar to his admission would impose extreme hardship on a qualifying relative and denied the Form I-601, Application for Waiver of Grounds of Inadmissibility, accordingly. *See Field Office Director's Decision*, dated September 1, 2011. Thereafter, the applicant appealed the Field Office Director's decision, and the AAO dismissed the appeal on December 5, 2012.

In the motion to reopen and reconsider, counsel asserts that the AAO erred in determining that the applicant's qualifying parent would not face extreme hardship if she were to relocate to Ecuador to be with her son. The applicant's attorney states that the qualifying parent would face financial, psychological and medical hardships upon relocation.

The evidence of record includes, but is not limited to: counsel's brief; statements from the applicant, his mother and siblings; psychological evaluations for the applicant's mother; a letter from the applicant's mother's treating physician; court dispositions; and identification and relationship documents. With the applicant's motion to reopen and reconsider, counsel provides an additional brief and country-conditions documentation. The entire record was reviewed and considered in rendering this decision.

A motion to reopen must state the new facts to be provided and be supported by affidavits or other documentary evidence. 8 C.F.R. § 103.5(a)(2). A motion to reconsider must state the reasons for reconsideration and be supported by any pertinent precedent decisions to establish that the decision was based on an incorrect application of law or Service policy. A motion to reconsider a decision on an application or petition must, when filed, also establish that the decision was incorrect based on the evidence of record at the time of the initial decision. 8 C.F.R. § 103.5(a)(3). Counsel on motion asserts that the AAO erred in determining that the applicant's qualifying parent would not face extreme hardship if she were to relocate to Ecuador. The evidence submitted on motion includes an additional brief written on behalf of the applicant and additional documentation relating to country conditions in Ecuador. The AAO does not find that the Field Office Director's decision was incorrect based on the evidence of record at the time of the initial decision, and therefore does not meet the requirements for a motion to reconsider. Nonetheless, the AAO will grant the motion to reopen the proceedings and consider the new documentation submitted in support of the motion to reopen.

Section 212(a)(9) states 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.

(ii) Construction of unlawful presence.- For purposes of this paragraph, an alien is deemed to be unlawfully present in the United States if the alien is present in the United States after the expiration of the period of stay authorized by the Attorney General [now Secretary of Homeland Security, "Secretary"] or is present in the United States without being admitted or paroled.

(iii) Exceptions.-

(I) Minors.-No period of time in which an alien is under 18 years of age shall be taken into account in determining the period of unlawful presence in the United States under clause (i).

The record reflects that the applicant entered the United States on November 28, 2001 without inspection and remained in the United States until May 1, 2010, when he voluntarily departed. At the time of his entry into the United States, the applicant was 17 years old. He turned 18 years of age on January 23, 2002. Based on the applicant's history, the AAO finds that the applicant accrued unlawful presence from January 24, 2002, the day after his 18th birthday, until his departure in May 2010. As the applicant accrued unlawful presence of more than one year and is seeking admission within 10 years of his 2010 departure, he is inadmissible to the United States pursuant to section 212(a)(9)(B)(i)(II) of the Act. Counsel does not contest the applicant's inadmissibility.

Section 212(a)(9)(B)(v) of the Act provides for a waiver of section 212(a)(9)(B)(i) inadmissibility as follows:

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 . . . 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 other family members can be considered only insofar as it results in hardship to a 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-Moralez*, 21 I&N Dec. 296, 301 (BIA 1996). In the present case, the applicant's mother is the qualifying relative.

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, 631-32 (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, "[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., In re 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.

The AAO previously found that, when considered in the aggregate, the evidence of record established that the qualifying parent is suffering extreme hardship due to her separation from the applicant. The AAO noted the applicant's mother was experiencing psychological hardship related to her reliance on the applicant's emotional support that was not improving with treatment and was causing somatic afflictions. The AAO affirms its previous finding that the qualifying parent would experience extreme hardship if she were to remain in the United States without the applicant.

The AAO also concluded, however, that the applicant failed to establish that the qualifying parent, a native of Ecuador, would suffer extreme hardship if she were to relocate to Ecuador. With regard to the potential hardships to the qualifying parent upon relocation, the AAO asserted potential financial hardships to her and found that the record lacked evidence corroborating these claims. The AAO stated that the applicant failed to submit documentary evidence showing his current income and the family's financial resources and expenses to demonstrate that his mother would experience financial hardship if she relocates. No new evidence was provided to address these concerns on motion.

On motion counsel claims that the October 2011 psychological evaluation by [REDACTED] supports his assertions that the qualifying parent will experience psychosocial stress and that her psychological issues will be exacerbated by leaving her family in the United States and relocating to Ecuador. Counsel further notes that the qualifying parent "will be isolated from the proper psychological care that she has been receiving here in the United States." However, [REDACTED] letter specifically notes that the qualifying parent's depression stems from "acute situational problems . . . triggered by the psychosocial stress of being separated from [the applicant.]" The letter does not indicate whether she would experience stress if she relocated to Ecuador. Moreover, the country-conditions materials provided on motion do not support assertions that the qualifying parent would be unable to receive proper psychological care in Ecuador, if she so requires.

Similarly, the applicant's attorney notes on motion that medical care in Ecuador is "substandard and far from the level of that which is offered in the United States." Counsel points to the reports provided on motion that conclude medical care and facilities in smaller communities are limited and that social inequities in medical care exist in Ecuador. However, the materials note that adequate medical and dental care is available in major cities in Ecuador. The record reflects that the applicant is living in or near [REDACTED] which appears to be a major city and

not a small community, as depicted by counsel. Further, while social inequities in medical care based on income may exist, as aforementioned, the record fails to contain any financial documentation relating to the applicant's or his parent's income. Without documentary evidence the assertions of counsel will not satisfy the applicant's burden of proof. The unsupported assertions of counsel do not constitute evidence. See *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980).

The AAO also considered the applicant's mother's concerns regarding her family ties in the United States and noted that in *Matter of Pilch*, 21 I&N Dec. 627 (BIA 1996), the Board held that emotional hardship caused by severing family and community ties is a common result of deportation and does not constitute extreme hardship. Moreover, other than statements by counsel and the applicant's three siblings living in the United States, no objective evidence demonstrates the qualifying parent's family ties to the United States or lack of ties to Ecuador. Moreover, the psychological evaluation noted that the qualifying parent has ten children, and the record does not establish where her children live. Going on record without supporting documentary evidence generally is not sufficient for purposes of meeting the burden of proof in these proceedings. 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)).

As such, the AAO affirms its prior decision finding that the applicant failed to provide sufficient evidence to demonstrate that the qualifying parent's hardships upon relocation would amount to extreme hardship.

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 remain in the United States and thereby suffer extreme hardship as a consequence of separation can easily be made for purposes of the waiver even where there is no intention to separate in reality. See *Matter of Ige*, 20 I&N Dec. 880, 886 (BIA 1994). Furthermore, to separate and suffer extreme hardship, where relocating abroad with the applicant would not result in extreme hardship, is a matter of choice and not the result of inadmissibility. *Id.*, see also *Matter of Pilch*, 21 I&N Dec. 627, 632-33 (BIA 1996). As the applicant has not demonstrated extreme hardship from relocation, we cannot find that refusal of admission would result in extreme hardship to the qualifying relative in this case.

The applicant has not established statutory eligibility for a waiver of his inadmissibility under section 212(a)(9)(B)(v) of the Act. As the applicant has not established extreme hardship to his qualifying family member if she relocates to Ecuador, no purpose would be served in determining whether the applicant merits a waiver as a matter of discretion.

Furthermore, motions for the reopening of immigration proceedings are disfavored for the same reasons as are petitions for rehearing and motions for a new trial on the basis of newly discovered evidence. *INS v. Doherty*, 502 U.S. 314, 323 (1992) (citing *INS v. Abudu*, 485 U.S. 94 (1988)). A party seeking to reopen a proceeding bears a "heavy burden." *INS v. Abudu*, 485 U.S. at 110. With the current motion, the applicant has not met that burden.

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In proceedings for application for waiver of grounds of inadmissibility under section 212(i) 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.

ORDER: The motion will be granted, the previous decision affirmed and the waiver application denied.