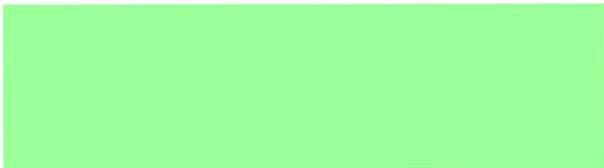


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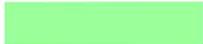
U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090

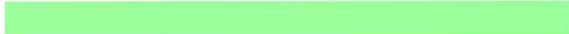


U.S. Citizenship
and Immigration
Services



DATE: **AUG 27 2013** Office: SAN SALVADOR (PANAMA CITY)

File: 

IN RE: 

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

ON BEHALF OF APPLICANT:



INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office (AAO) in your case.

This is a non-precedent decision. The AAO does not announce new constructions of law nor establish agency policy through non-precedent decisions. If you believe the AAO incorrectly applied current law or policy to your case or if you seek to present new facts for consideration, you may file a motion to reconsider or a motion to reopen, respectively. Any motion must be filed on a Notice of Appeal or Motion (Form I-290B) within 33 days of the date of this decision. **Please review the Form I-290B instructions at <http://www.uscis.gov/forms> for the latest information on fee, filing location, and other requirements.** See also 8 C.F.R. § 103.5. **Do not file a motion directly with the AAO.**

Thank you,

A handwritten signature in black ink, appearing to read "Michael Shumway".

Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Field Office Director, Panama City, Panama. An appeal of the denial 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 and the prior AAO decision will be affirmed.

The applicant is a native and citizen of Ecuador. He was found 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 and seeking admission within 10 years of his last departure. He is married to a United States citizen. 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).

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, his U.S. citizen spouse, and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) on June 12, 2012. The applicant appealed that decision and the AAO dismissed the appeal on March 22, 2013.

On motion, counsel for the applicant submits new evidence regarding the hardship to the U.S. citizen spouse and states that the evidence establishes the required extreme hardship.

A motion to reopen must state the new facts to be proved in the reopened proceeding 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 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). A motion that does not meet applicable requirements shall be dismissed. 8 C.F.R. § 103.5(a)(4). Here, counsel filed a motion to reopen and a motion to reconsider; however counsel did not state the reasons for reconsideration nor establish that the prior decision was based on an incorrect application of law or policy. The applicant has submitted new evidence and the AAO will grant the motion to reopen; however, as set forth below, the new evidence is insufficient to alter the outcome of the case, and the prior AAO decision will be affirmed.

The applicant is inadmissible under section 212(a)(9)(B)(i)(II) of the Act, 8 U.S.C. § 1182(a)(6)(C)(i), which we addressed in our prior decision and the applicant has not disputed on motion.

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 any 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 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 deportation, 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, 885 (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 our prior decision, we found that the applicant's spouse would experience extreme hardship if she were to relocate to Ecuador to reside with the applicant. We see no reason to disturb that finding on motion.

In regards to the hardship that the applicant's spouse would experience if she were to remain separated from the applicant, the AAO previously found that when the impacts due to separation were considered in the aggregate, the record did not establish that the applicant's spouse would experience hardship rising to the degree of extreme hardship. On motion, the applicant's spouse submits a new letter detailing the hardship to her as a result of the applicant's inadmissibility, in addition to documentation regarding her financial and physical health.¹ The AAO does not find that this additional evidence changes the prior decision in this case. Although the applicant's spouse continues to state that she is suffering from financial hardship and the record indicates that the applicant's spouse has moved in with her parents, the record does not indicate that she is unable to pay for her expenses on her adjusted gross income reported on her 2012 Federal Income Tax Returns, \$39,944. The applicant's spouse also states that the stress, anxiety, and sleep that she has experienced as a result of separation from the applicant has affected her job performance and may lead her to lose her job, but the record does not support that conclusion. A previously submitted letter from an Assistant Manager at the bank where the applicant's spouse is employed indicates that the applicant's spouse's "work performance has been slightest[sic] different" and that the applicant's spouse is "stressed from this whole ordeal," there is no indication that she may lose her job and the associated health benefits that she receives with her job. The applicant's spouse also again states that she is suffering hardship because she is unable to return to school to continue her education. The AAO recognizes the applicant's spouse's difficult position; however, as stated above the inability to pursue one's chosen profession has been found to be one of the common or typical results of inadmissibility and not the type of hardship that is considered extreme. *See generally Matter of Cervantes-Gonzalez*, 22 I&N Dec. at 568; *Matter of Pilch*, 21 I&N Dec. at 632-33; *Matter of Ige*, 20 I&N Dec. at 885; *Matter of Ngai*, 19 I&N Dec. at 246-47; *Matter of Kim*, 15 I&N Dec. at 89-90; *Matter of Shaughnessy*, 12 I&N Dec. at 813.

¹ Country conditions information regarding Ecuador were also submitted, but as stated above, the AAO already determined that the applicant's spouse would suffer extreme hardship if she were to relocate.

In regards to the applicant's spouse's medical condition, the record contains documentation that the applicant's spouse suffers from asthma and polycystic ovaries. The applicant's physician also indicates that the applicant's spouse had been suffering from adjustment disorder with depressive symptoms and anxiety. This information was submitted previously and there is no indication in the newly submitted documentation that the applicant's spouse's condition has changed. A previously submitted letter from [REDACTED] states that the applicant's spouse is her patient and it's her conclusion that it is in the applicant's spouse's "best interest health-wise that [the applicant] be allowed to re-enter the country and be reunited with his wife." The AAO respects [REDACTED] opinion and notes the symptoms described in her letter: excessive tearfulness throughout the day, insomnia at night, decreased productivity in the workplace, difficulty concentrating, and problems in interpersonal relationships. When this evidence, however, is considered in the aggregate with the other evidence of record, including the applicant's spouse's financial documents, the AAO does not find the record to establish that the applicant's spouse will experience hardship rising to the degree of extreme hardship.

Again, 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 separation, we cannot find that refusal of admission would result in extreme hardship to the qualifying relatives in this case.

There is no basis to disturb our previous finding that the applicant has failed to establish extreme hardship to his U.S. citizen spouse as required under section 212(a)(9)(B)(v) of the Act. Having found the applicant statutorily ineligible for relief, no purpose would be served in discussing whether he 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 rests with the applicant. *See* section 291 of the Act, 8 U.S.C. § 1361. Here, the applicant has not met that burden. Accordingly, although the motion to reopen is granted, the prior AAO decision is affirmed.

ORDER: The prior AAO decision is affirmed.