



U.S. Citizenship  
and Immigration  
Services

(b)(6)



DATE: FEB 01 2013 OFFICE: SAN SALVADOR

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

(b)(6)

**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 national and citizen of Ecuador 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 more than one year and seeking readmission within 10 years of his last departure from the United States. The applicant is a beneficiary of an approved Petition for Alien Relative, as the child of a U.S. citizen, who seeks a waiver of inadmissibility in order to reside in the United States with his U.S. citizen mother and lawful permanent resident father.

The Field Office Director concluded that the record failed to establish the existence of extreme hardship for a qualifying relative. The Field Officer Director denied the application accordingly. *See Decision of the Field Office Director*, dated August 25, 2011.

On appeal, counsel for the applicant asserts that the applicant's parents are suffering financial and medical hardship in the absence of the applicant. Counsel further asserts that the applicant's parents could not relocate to Ecuador because it is experiencing political problems.

In support of the waiver application and appeal, the applicant submitted identity documents, medical documentation concerning the applicant's parents, financial documentation, background country conditions reports concerning Ecuador, and a letter from the applicant's mother. The entire record was reviewed and considered in rendering a decision on the appeal.

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

**(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 Attorney General 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 that the refusal of

(b)(6)

admission to such immigrant alien would result in extreme hardship to the citizen or lawfully resident spouse or parent of such alien. No court shall have jurisdiction to review a decision or action by the Attorney General regarding a waiver under this clause.

The applicant entered the United States with a B2 visa on July 10, 1993, with authorization to remain in the United States until January 9, 1994. The applicant filed an application for asylum, which was denied on October 6, 1994. The applicant was granted voluntary departure on July 31, 1995, and subsequently departed from the United States pursuant to that grant. The applicant was then admitted to the United States on December 16, 2003 with a B2 visa, with authorization to remain in the United States until June 15, 2004. On August 10, 2007, he was encountered by U.S. immigration officers and determined to be residing in the United States without a legal status. The applicant received a grant of voluntary departure on July 25, 2008 and departed from the United States within the allowed period on November 21, 2008. Accordingly, the applicant accrued over one year of unlawful presence in the United States, and he is inadmissible under section 212(a)(9)(B)(i)(II) of the Act. The applicant does not contest his inadmissibility on appeal.

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 can be considered only insofar as it results in hardship to a qualifying relative. In the present case, the applicant's mother 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*, 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.

The record reflects that the applicant is a 56-year-old native and citizen of Ecuador. The applicant's mother is an 80-year-old native of Ecuador and citizen of the United States. The applicant's father is an 88-year-old native of Ecuador and lawful permanent resident of the United States. The applicant is currently residing in Ecuador and the applicant's parents are residing in Miami, Florida.

Counsel for the applicant asserts that the applicant's mother suffers from medical conditions that render her unable to support herself. Counsel contends that the applicant's mother's functional limitations require assistance. The applicant's mother asserts that the applicant assisted her in

making her medical appointments when he resided in the United States. The applicant's mother further asserts that the applicant provided her with emotional support. The record contains a letter from the applicant's mother's physician stating that she suffers from diabetes mellitus, hypertension, hyperlipidemia, chronic exacerbated gastritis, peripheral neuropathy and lower extremities debility, and degenerative joint disease and osteoarthritis. The record also contains medical records from May 31, 2011 indicating that the applicant's mother suffered an impacted distal radius fracture and subsequently underwent occupational therapy during which she required assistance opening food containers. A physician's letter from June 29, 2011 states that the applicant's mother responded to therapy and it was recommended that she continue with her strengthening exercises.

The record contains medical documentation from a hospital in Ecuador indicating that the applicant's father suffered a subdural hemorrhage so that he is unable to stand alone and requires the care of his family to help him administer his medicine. The record also contains medical documentation indicating that the applicant's father suffers from prostatic hypertrophy, diverticulitis in the colon, hypertension, and dyspepsia.

The medical ailments of the applicant's mother and father and their subsequent reliance upon their family members for physical assistance is well documented. Counsel for the applicant asserts that the applicant's father and mother need the applicant because their other immediate family members have their own responsibilities. Counsel states that the applicant's parents are receiving temporary assistance from an individual staying with them. It is noted that the applicant's mother asserts that she has immediate family members living near her in Florida and they are close and get together often. In fact, counsel states that the applicant's parents have four children residing in the United States and her occupational therapy records indicate she was accompanied by a child to an appointment and that she received assistance from family members, as needed, in her daily living activities. There is no indication that the applicant's mother or father have been unable to rely upon their other family members in the absence of the applicant.

Counsel for the applicant asserts that the applicant's mother and father are suffering financially in the absence of the applicant. Counsel contends that the applicant's parents experience a deficit between their retirement income and their household expenses on a monthly basis. Counsel further asserts that the applicant is the individual who makes up his parent's financial deficit. The record contains evidence of a wire transfer from the applicant to his parents in the amount of three thousand dollars. The record also indicates that the applicant is employed as an executive of a company in Ecuador and there is no indication that he will be unable to continue to provide financial assistance to his parents in the United States. There is no indication that the applicant's parents have been unable to meet their financial obligations, taking into account the financial assistance that they receive. In the aggregate, there is insufficient evidence in the record to demonstrate that the applicant's mother or father are suffering from hardship due to separation from the applicant that is beyond the common results of inadmissibility or removal of a son.

Although the depth of concern and anxiety over separation from the applicant is neither doubted nor minimized, the fact remains that Congress provided for a waiver of inadmissibility only under limited circumstances. While the prospect of separation or involuntary relocation nearly always results in considerable hardship to individuals and families, in specifically limiting the availability of a waiver of inadmissibility to cases of "extreme hardship," Congress did not intend that a waiver be granted in every case where a qualifying relationship exists.

The applicant's mother asserts, in a letter dated October 29, 2010, that she had been residing in the United States for approximately 15 years and that she has established ties in the United States. The applicant's mother also asserts that she cannot return to Ecuador because of the unraveling political situation. As noted, the applicant's parents have four children residing nearby in the United States whom they see often. Counsel for the applicant also contends that the applicant's parents receive retirement income and food stamps in the United States.

The applicant's mother and father are currently 80 and 88 years of age, respectively. The record indicates that the applicant's parents have both received medical care in the United States for their health ailments and rely upon their family members in the United States to assist them in their daily activities. In this case, the record contains sufficient evidence to show that the hardships faced by the qualifying relatives, if they were to relocate to Ecuador, rise to the level of extreme hardship.

The applicant has demonstrated that his parents would suffer extreme hardship upon relocation to Ecuador. The record, however, does not contain sufficient evidence to show that the hardships faced by the qualifying relatives upon separation, considered in the aggregate, rise beyond the common results of removal or inadmissibility to the level of 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 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 upon separation, we cannot find that refusal of admission would result in extreme hardship to the qualifying relatives in this case:

The AAO therefore finds that the applicant has failed to establish extreme hardship to his U.S. citizen mother and lawful permanent resident father as required under section 212(a)(9)(B)(v) of the Act. As the applicant has not established extreme hardship to a qualifying family member, no purpose would be served in determining whether the applicant merits this 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.

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.