



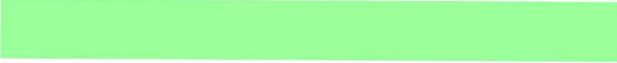
(b)(6)



Date: **FEB 25 2013**

Office: TEGUCIGALPA, HONDURAS

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 Field Office Director, Tegucigalpa, Honduras. 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 citizen of Honduras 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 married to 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 husband 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 field office director failed to consider all the factors in the case, such as a letter from the Department of Veterans Affairs describing the applicant's husband's depression and country conditions in Honduras.

The record contains, *inter alia*: letters and an affidavit from the applicant's husband, two Certificates of Visit from the Department of Veterans Affairs; copies of medical records, including a list of his prescription medications; copies of tax returns and other financial documents; a copy of the U.S. Department of State's Country Reports on Human Rights Practices for Honduras and other background materials; photographs of the applicant and her husband; 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 was unlawfully present in the United States from 1998 until her departure in February 2009. The applicant accrued unlawful presence of over ten years. She now seeks admission within ten years of her 2009 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 within ten years of her 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 husband, [REDACTED] states that he is a veteran of the U.S. Army. He states he has felt the effects of his time in the service, experiences severe chest pains, and fears that a heart attack could come at any time. He also contends he is in the beginning stages of clinical depression. He states he started taking an anti-depressant and has begun to receive treatment for his depression. In addition, [REDACTED] states he has been diagnosed with reflux esophagitis and Barrett's disease. According to [REDACTED] both conditions affect his life every day and his wife helps him when he is not feeling well and unable to eat. He states his wife cooks less acidic food and helps him maintain his esophagitis at a treatable level. In addition, [REDACTED] contends he is seventy-eight years old and that he has three step-children who are sixteen, nineteen, and twenty years old. According to [REDACTED] the sixteen-year old child needs to continue her education in the United States, but the older two children will continue their college education in Honduras. Furthermore, [REDACTED] states he has made over twenty trips to Central America to see his wife while trying to run two businesses in Houston, Texas. He contends his entire family resides in the United States and that he does not want to relocate to Honduras because it is a dangerous place. [REDACTED] also contends he is a successful businessman and owns several properties. He states that moving to Honduras would put him in jeopardy of losing everything.

After a careful review of the record, the AAO finds that if [REDACTED] relocated to Honduras to avoid the hardship of separation, he would experience extreme hardship. The record shows that [REDACTED] is currently eighty-one years old and was born in the United States. The AAO acknowledges [REDACTED] contention that his entire family resides in the United States and that relocating to Honduras would separate [REDACTED] from his family. Furthermore, the AAO notes that the U.S. Department of State has issued a Travel Warning for Honduras, stating that crime and violence are serious problems throughout the country. *U.S. Department of State, Travel Warning, Honduras*, dated November 21, 2012. Considering these unique circumstances cumulatively, the AAO finds that the hardship [REDACTED] would experience if he relocated to Honduras to be with his wife is extreme, going beyond those hardships ordinarily associated with inadmissibility.

Nonetheless, [REDACTED] has the option of remaining in the United States and the record does not show that he will experience extreme hardship if he remains in the United States without his wife. Although the AAO is sympathetic to the couple's circumstances, the record does not 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 (9th 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] medical conditions, there is insufficient evidence in the record to substantiate his claims. There is no evidence, such as a letter from a physician, corroborating [REDACTED] claim that he is experiencing severe chest pains. Similarly, although the record contains a two-page report from [REDACTED] showing that he had an upper GI endoscopy and biopsies performed, the procedure was performed on January 10, 2006, more than five years before the field office director's decision. There is no letter in plain language from any health care professional addressing the diagnosis, prognosis, treatment, or severity of [REDACTED] purported reflux esophagitis and Barrett's disease. Regarding [REDACTED] depression, the record contains two Certificates of Visit from the Department of Veterans Affairs. The more recent certificate, dated [REDACTED] states that [REDACTED] is being treated for depression and insomnia, that his symptoms are worsening due to separation from his wife, that he has lost a significant amount of weight, and "seems to be going downhill." Although the input of any medical professional is respected and valuable, the certificates do not provide sufficient details to show that [REDACTED] situation, or the symptoms he is experiencing as a result of being separated from his wife, are unique or atypical compared to others in similar circumstances. Regarding [REDACTED] contention that he is taking anti-depressant medication, the certificates make no mention of any prescription medications and although the record shows [REDACTED] was taking an anti-depressant in September 2010, the more recent printout of his medications list, dated May 16, 2011, show the status of an anti-depressant as "pending." Without more recent and detailed information, the AAO is not in the position to reach conclusions regarding the severity of any medical condition or the treatment and assistance needed. Even considering all of the factors in the case cumulatively, there is insufficient evidence showing that the hardship [REDACTED] will experience amounts to hardship that is extreme, unique, or atypical.

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 from separation, we cannot find that refusal of admission would result in extreme hardship to Mr. Phelps, the qualifying relative in this case.

A review of the documentation in the record fails to establish the existence of extreme hardship to the applicant's husband 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.

(b)(6)

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.