



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

(b)(6)

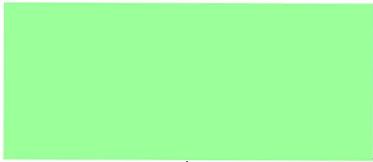


Date: **FEB 27 2013** Office: PANAMA CITY, PANAMA FILE:

IN RE: Applicant:

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, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The record reflects that the applicant is a native and 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 readmission within ten years of her last departure from the United States. The applicant is married to a U.S. citizen and the mother of two Ecuadorian citizen children. She is the beneficiary of an approved Petition for Alien Relative (Form I-130). The applicant 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 reside in the United States with her spouse and children.

The Field Office Director found that the applicant had failed to establish that extreme hardship would be imposed on the applicant's qualifying relative and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) accordingly. *Decision of the Field Office Director*, dated June 12, 2012.

On appeal, the applicant, through counsel, asserts that the Field Office Director erred in not finding "extreme and unusual hardship" to the applicant's spouse if her waiver is not granted. *Form I-290B, Notice of Appeal or Motion*, dated July 11, 2012. Counsel also submits new evidence of hardship on appeal.

The record includes, but is not limited to, counsel's appeal brief, statements from the applicant's husband, letters of support, a statement from a licensed marriage and family therapist, email messages between the applicant and her husband in Spanish, employment documents for the applicant, financial documents, receipts and bills in English and Spanish, photographs, and country-conditions documents on Ecuador.¹ The entire record was reviewed and considered, with the exception of the Spanish-language documents, in arriving at a decision on the appeal.

Section 212(a)(9) of the Act provides, 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

¹ Pursuant to the regulation at 8 C.F.R. § 103.2(b)(3), an applicant who submits a document in a foreign language must provide a certified English-language translation of that document. As the email messages and some of the receipts and bills are in Spanish and are not accompanied by English-language translations, the AAO will not consider them in this proceeding.

(b)(6)

within 10 years of the date of such alien's departure or removal from the United States, is inadmissible.

-
- (v) 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 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 her 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 United States Citizenship and Immigration Services (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 of Immigration Appeals (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 v. INS*, 138 F.3d 1292, 1293 (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.

In the present application, the record indicates that in December 2004², the applicant entered the United States without inspection. In December 2010, the applicant departed the United States. The applicant accrued over one year of unlawful presence between December 2004 and December 2010. The applicant is, therefore, 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 more than one year, and she seeks admission within 10 years of her departure from the United States. The applicant does not contest her inadmissibility.

The record contains references to hardship the applicant’s children would experience if the waiver application were denied. It is noted that Congress did not include hardship to an alien’s child as a factor to be considered in assessing extreme hardship. 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 children will not be separately considered, except as it may affect the applicant’s spouse.

Describing his hardship should he join the applicant in Ecuador, the applicant’s husband states all of his family ties are in the United States. Counsel states the applicant’s husband is very close to his family, most of whom reside in Minnesota, and he depends on them for “love and support.” Counsel also states the applicant’s husband has no family ties in Ecuador other than the applicant. In his statement dated July

² The AAO notes that the applicant’s Form I-601 indicates that she entered October 2004; the I-601 decision and a consular memorandum in the record indicate that she entered in December 2004; and her Form I-130 and counsel indicate that she entered the United States in November 2005. This discrepancy in entry dates, however, does not affect her inadmissibility.

11, 2012, the applicant's husband states he came to the United States at a young age and has adapted to the American way of life. Additionally, he claims that during a visit to Ecuador, he tried but had difficulty finding employment, and he could not support his family on what he would earn in Ecuador. Moreover, he indicates that he supports his elderly parents and if he were to move to Ecuador, he could not continue to support them.

The applicant's husband also states Ecuador has natural disasters, including three active volcanoes and earthquakes, it is dangerous there, girls are targeted for sexual assault, and he fears for his family's safety and health. He claims that the applicant has been robbed twice. Additionally, his stepdaughters would have more educational opportunities in the United States than they do in Ecuador.

The AAO acknowledges that the applicant's husband is a U.S. citizen, and that relocation abroad would involve some hardship. However, no evidence has been submitted showing that the applicant's husband, a native of Ecuador, does not speak Spanish or is unfamiliar with the culture and customs in Ecuador. Additionally, the record does not contain documentary evidence showing that the applicant's husband would be unable to obtain employment in Ecuador that would allow him to use the skills he has acquired in the United States. Going on record without supporting documentation is not sufficient to meet the applicant's burden of proof in this proceeding. 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)). Further, though his concerns about Ecuador are corroborated by country-conditions documents, these documents alone do not support a finding of extreme hardship to the applicant's husband should he join the applicant in Ecuador. Moreover, the applicant's children are not qualifying relatives under the Act, and the applicant has not shown that hardship to her children has elevated her husband's challenges to an extreme level. Therefore, based on the record before it, the AAO finds that, considering the potential hardships in the aggregate, the applicant has failed to establish that her husband would suffer extreme hardship if he relocated to Ecuador.

Concerning the applicant's husband's hardship in the United States, the applicant's husband states he is worried about the applicant and her daughters residing in Ecuador because of the escalating violence and natural disasters. Additionally, he states he is depressed, he feels "like a crazy person," and he is worried that the applicant will leave him for someone else. In her statement dated July 10, 2012, licensed marriage and family therapist [REDACTED] diagnoses the applicant's husband with adjustment disorder with depressed mood, and she indicates that his depression interferes with his daily life. The applicant's husband states that he cannot work or play soccer because he is constantly thinking about the applicant, and he has started drinking to help him "forget [his] pain." He claims that his family and friends have noticed how he has changed; he doesn't want to eat and has "no desire to continue living." He states he has lost 30 pounds. [REDACTED] indicates that after treating the applicant's husband for three weeks, she observed a "progressive deterioration" of his "mental health and an increase in his symptoms of depression."

The applicant's husband also states he is suffering financially. He claims that he was having difficulty paying the rent and was "going into debt" so he moved in with his parents, but it is still difficult to support two households, one in the United States and one in Ecuador. Counsel states the applicant does not earn enough money to support herself and her children in Ecuador. Additionally, the applicant's husband states

he had to take out a loan to help pay for the applicant's furniture and car in Ecuador. He states the applicant has been unable to find employment in Ecuador.

The applicant's husband states the applicant and his stepdaughters are having difficulties without him. He claims that will petition for his stepdaughters to join him in the United States; however, if they move to the United States without the applicant, they will emotionally suffer without the applicant.

The AAO acknowledges that the applicant's husband is suffering emotional difficulties in being separated from the applicant. While it is understood that the separation of spouses often results in significant psychological challenges, the applicant has not distinguished her husband's emotional hardship upon separation from that which is typically faced by the spouses of those deemed inadmissible. Moreover, though the applicant's husband refers to financial difficulties, the record does not contain objective evidence corroborating his claim. The applicant, therefore, has not distinguished her husband's financial challenges from those commonly experienced when a family member remains in the United States. The AAO also notes that the applicant's children may suffer some hardship in being separated from her; however, the applicant has not shown that her children's hardship has elevated her husband's challenges to an extreme level. Based on the record before it, the AAO finds that the applicant has failed to establish that her husband would suffer extreme hardship if her waiver application is denied and he remains in the United States.

In this case, the record does not contain sufficient evidence to show that the hardships faced by the qualifying relative, considered in the aggregate, rise beyond the common results of removal or inadmissibility to the level of extreme hardship. The AAO therefore finds that the applicant has failed to establish extreme hardship to her U.S. citizen spouse as required under section 212(a)(9)(B)(v) of the Act. Having found the applicant statutorily ineligible for relief, the AAO finds no purpose would be served in discussing whether she 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 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.