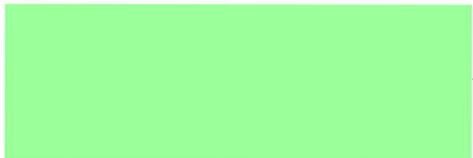


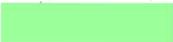
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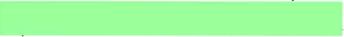
U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals
20 Massachusetts Ave., N.W., MS2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services



Date: **JAN 02 2013** Office: SAN SALVADOR 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, 8 U.S.C. § 1182(a)(9)(B)(v).

ON BEHALF OF APPLICANT:

SELF-REPRESENTED

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 our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen with the field office or service center that originally decided your case by filing a Form I-190B, 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 a 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,

A handwritten signature in black ink that reads "Ron Rosenberg".

Ron Rosenberg
Acting Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Field Office Director, San Salvador, El Salvador, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native and citizen of El Salvador 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 (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 U.S. citizen. The applicant seeks a waiver of inadmissibility 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 U.S. citizen mother.

The field office director concluded that the applicant failed to establish that his qualifying relative would experience extreme hardship as a consequence of his inadmissibility and denied the Form I-601, Application for Waiver of Grounds of Inadmissibility, accordingly.

On appeal, the applicant's mother asserts that the director erred in finding that the applicant has not established extreme hardship to his qualifying relative. The applicant's mother contends that the evidence outlining her medical difficulties, together with evidence of financial and emotional difficulties demonstrates extreme hardship to the applicant's qualifying relatives.

The record includes, but is not limited to: the applicant's statement; a statement from the applicant's mother; medical reports concerning the applicant's mother; school letters; rent receipts and utility bills; and documentation regarding the applicant's removal proceeding.

The AAO conducts appellate review on a *de novo* basis. See *Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). The entire record has been 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.

(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 or is present in the United States without being admitted or paroled.

The record shows that the applicant entered the United States without inspection in October 1997, and remained in the United States until his removal to El Salvador in September 2008. The applicant was placed in removal proceedings in March 1998, and was ordered removed *in absentia* on September 8, 1998. The applicant remained in the United States until his removal on September 8, 2008. The AAO finds that the applicant, thus, accrued unlawful presence in the United States for more than one year. As the applicant accrued unlawful presence of more than one year and is seeking admission within 10 years of his 2008 departure, he is inadmissible to the United States pursuant to section 212(a)(9)(B)(i)(II) of the Act. The applicant does not contest his inadmissibility on appeal.

In his decision, the field office director considered that the consular officer noted the applicant was arrested in California on August 29, 2004, for driving with a suspended license and driving under the influence of alcohol. The field office director indicated that the applicant, "as a result of plea negotiations, was found guilty of misdemeanors." Despite noting this conviction, the field office director did not find the applicant inadmissible for having been convicted of a crime involving moral turpitude pursuant to section 212(a)(2)(A)(i)(I) of the Act. Nor is there evidence in the record indicating that the field office director requested the applicant submit the evidence comprising the record of conviction for these offenses. The record also does not include any additional documentation relating to the applicant being convicted of any specific crime. Accordingly, the AAO cannot find that the applicant is inadmissible for having been convicted of a crime involving moral turpitude. The applicant, however, remains inadmissible under section 212(a)(9)(B)(i)(II) of the Act for having accrued unlawful presence in the United States in excess of one year.

Section 212(a)(9)(B)(v) of the Act provides that:

Waiver.-The Attorney General [Secretary of Homeland Security] 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 of Homeland Security] 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. No court shall have jurisdiction to review a decision or action by the Attorney General [Secretary of Homeland Security] regarding a waiver under this clause.

A waiver of inadmissibility under section 212(a)(9)(B)(v) of the Act is dependent upon 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-Morales*, 21 I&N Dec. 296, 301 (BIA 1996). Here, the record reflects that the applicant is the son of a U.S. citizen. The applicant's mother therefore meets the definition of a 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 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 the 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 is 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 now turns to the issue of whether the applicant has established that a qualifying relative would experience extreme hardship as a result of his inadmissibility.

The asserted hardship factors to the qualifying relative are the emotional, financial, and medical hardships the applicant's mother would experience in the event of separation. In her statement on appeal, the applicant's mother indicates that the applicant is a responsible person, a good son, and a very good father to his children. The applicant's mother states that it has been difficult for her to take care of the applicant's children, as they are constantly asking about the applicant. She further states that the applicant's children are being raised in the United States without their father, and that she wants her grandchildren to "grow up with both parents." Here, the AAO recognizes the significance of family separation as a hardship factor. However, while it is understood that the separation of qualifying relatives often results in emotional challenges, the applicant has not distinguished his mother's emotional hardship upon separation from that which is typically faced by the qualifying relatives of those deemed inadmissible. U.S. court decisions have repeatedly held that the common results of removal or inadmissibility are insufficient to prove extreme hardship. *See Hassan v. INS*, 927 F.2d 465, 468 (9th Cir. 1991).

The AAO also notes that the applicant's mother may experience some difficulties in sharing with the applicant's children's mother the responsibilities of caring for the applicant's children; however, the evidence does not establish that her hardship would be extreme. The applicant's mother has lived with the applicant, his children, and their mother prior to the applicant's removal. It is unexplained why the applicant's mother would suffer extreme hardship were she to live with the children and their mother upon the applicant's removal. Additionally, it is noted that though the applicant's mother has asserted that the applicant's children are experiencing emotional difficulties, the applicant's children are not qualifying relatives under section 212(a)(9)(B)(v) of the Act. As such, hardship to the children will not be separately considered, except as it may affect the applicant's mother. In this case, the record does not establish that emotional difficulties to the applicant's children will elevate his mother's difficulties to the level of extreme hardship. Moreover, per a documentary submission received by the AAO on June 25, 2012, the applicant's mother presented a new mailing address; this address corresponds with the applicant's brother's residential address in La Puente, California. It is unclear whether the applicant's mother still resides with her grandchildren in Oakland, California, if she helps with their daily care, and of the emotional effect her possible relocation may have upon her.

With regards to financial hardship, the applicant's mother states that their financial stability has decreased as a consequence of separation from the applicant. The applicant's mother indicates that she lost her house to foreclosure in September 2008 and asserts that "we would still have the house if [the applicant] would have been in the United States." The applicant's mother further states that the applicant financially contributed to the household when he lived with her in the United States. She contends that if the applicant is allowed admission into the United States, he will secure employment and will financially support his family. However, there is insufficient evidence in the record to substantiate these claims, or to show that without his financial support, the applicant's qualifying relatives would experience extreme hardship. For instance, the record does not contain financial

documentation indicating that the applicant financially provided for his family while in the United States or that the applicant's mother's and girlfriend's income is insufficient to financially support the household they shared. Though evidence detailing monthly expenses related to the household were submitted on appeal, neither the applicant nor his mother have provided sufficient documentation showing that her earnings are insufficient to cover these expenses.

Moreover, the applicant's mother's assertion about the mortgage foreclosure being the result of the applicant's removal is inconsistent with other evidence in the record. For instance, she notes that the house was foreclosed in September 2008, which is the same month that the applicant was removed from the United States. As such, any financial difficulties faced by the applicant's mother likely were encountered when the applicant was residing in the United States. The applicant's mother does not demonstrate that the applicant was employed or able to financially assist her prior to the foreclosure. Moreover, though the applicant's mother asserts that he contributed financially to the household, the record does not contain income tax returns or other financial documentation showing that the applicant was employed or that without his assistance, she is experiencing extreme hardship. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *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)). Additionally, the record reflects that the applicant's mother has a history of steady employment in the United States, and there is evidence that the applicant's girlfriend was employed at the time of the appeal. The applicant's mother states that the applicant filed tax returns for the years he was employed pursuant to a grant of temporary protected status (TPS). Yet, the record evidence indicates that the applicant filed for TPS in 2001 and that both his original application and a motion to reopen/reconsider were denied by the United States Citizenship and Immigration Services (USCIS). Though the AAO acknowledges that the applicant received employment authorization for the years 2001 and 2002, there is no evidence that he filed income tax returns while employed during that time. Accordingly, the AAO cannot determine whether or how his income benefitted his family or the effect of his removal upon the family's economic state.

In regard to medical hardships, the applicant's mother asserts that she has been diagnosed with hypertension, depression, and stress-related illnesses. She states that she has to take medication on a daily basis "in order to function," and avers that her medical conditions have worsened since the applicant's removal. Here, the AAO notes that the record contains various medical evaluations of the applicant's mother which are sufficient to establish that she has been diagnosed with depression, hypertension, and other medical illnesses, including abdominal pain, body aches, and decreased appetite. Yet, psychological difficulties stemming from the removal or inadmissibility of an alien have been found insufficient, when considered on their own, to amount to extreme hardship. See generally *Matter of Cervantes-Gonzalez*, 22 I&N Dec. at 568. The record of proceedings include what appears to be the applicant's mother's entire medical record in the United States, and addresses the symptoms and illnesses that prompted each visit to the [REDACTED]. However, the record does not show the applicant's mother to be incapacitated, to require the daily care of another individual, or to have medical conditions requiring constant treatment. Accordingly, the AAO finds that the evidence in the record, when considered in the aggregate, fails to establish the applicant's mother would experience emotional, financial, and medical, and hardship that rises beyond the common results of removal or inadmissibility if the applicant were denied admission into the United States and she remained in the United States.

The asserted hardship factors to the qualifying relative are the financial and medical hardships the applicant's mother would experience in the event of relocation. The applicant's mother states on appeal that she has medical insurance in the United States that covers the care of her treatment and medication. She avers that in the United States, she also has the advantage of modern medical facilities. The applicant's mother contends that were she to return to El Salvador, she would have to pay for all of her medical appointments and expenses. She states she would not be able to afford her current medical needs. Additionally, the applicant's mother states that she will be unable to find employment in El Salvador because of her age, and that she would not survive with a minimum wage salary in that country. Here, the record lacks adequate documentation to support these claims: other than the applicant's mother's general assertions regarding the cost of medical care in El Salvador, there is no evidence in the record showing that she could not obtain treatment for her medical condition abroad, if necessary. The record also lacks evidence that explains that healthcare or medical facilities in the area where they would be residing is lacking. Also, the record does not show that she will be unable to secure health insurance in that country. Additionally, the record does not establish how the applicant's mother's medical conditions and their care would impact her in a way that, when considered in the aggregate with the other asserted hardships, could amount extreme hardship.

The additional documentation in the record does not support the asserted claim of economic hardship in regards to relocation to El Salvador. For instance, the record does not include documentation from country conditions sources to support the applicant's mother's assertions pertaining to country conditions in El Salvador including lack of employment options for returning citizens, economic issues, safety issues, or the inadequacy of a minimum wage salary. Also, the record does not support the applicant's assertion that she would be unable to find employment in El Salvador. The AAO notes that El Salvador was designated for Temporary Protected Status (TPS) in March 2001, due to the devastation caused by a series of severe earthquakes that occurred in January and February of 2001. *See* 77 Fed. Reg. 1710 (January 11, 2012). The TPS designation for El Salvador has been extended through September 9, 2013, because: "[t]here continues to be a substantial, but temporary, disruption of living conditions in El Salvador resulting from a series of earthquakes in 2001, and El Salvador remains unable, temporarily, to handle adequately the return of its nationals." *Id.* However, the submitted evidence does not establish that the asserted medical and economic difficulties, when considered in the aggregate with certain country conditions resulting from the earthquake, could lead to a finding of extreme hardship upon relocation to El Salvador.

The documentation in the record fails to establish the existence of extreme hardship to the applicant's mother 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 he merits a waiver as a matter of discretion.

In proceedings for an application for waiver of grounds of inadmissibility under section 212(h) 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, the appeal will be dismissed.

The AAO further notes that in *Matter of Martinez-Torres*, 10 I&N Dec. 776 (Reg. Comm. 1964), it was held that an application for permission to reapply for admission will be denied, in the exercise of

discretion, to an alien who is mandatorily inadmissible to the United States under another section of the Act. Thus, no purpose would be served in further review of the applicant's Form I-212 application. Consequently, the appeal of the field office director's denial of the Form I-212 will be dismissed as a matter of discretion.

ORDER: The appeal is dismissed.