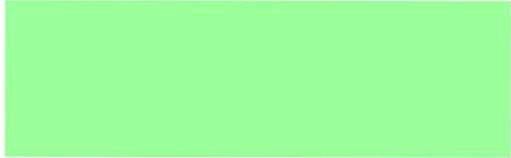


(b)(6)

U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
20 Massachusetts Avenue NW
Washington, DC 20529-2090
**U.S. Citizenship
and Immigration
Services**



DATE: JAN 03 2013 Office: TEGUCIGALPA FILE: [redacted]

IN RE: [redacted]

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 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 with the field office or service center that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$630. The specific requirements for filing such a request 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
Maria Yeh

R

Ron Rosenberg
Acting Chief, Administrative Appeals Office

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

The applicant is a native and citizen of Honduras 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 10 years of his last departure from the United States, and section 212(a)(9)(A)(ii) of the Act, 8 U.S.C. § 1182(a)(9)(A)(ii), for seeking admission within 10 years of the date of his removal. The applicant seeks a waiver of inadmissibility in order to reside in the United States with his U.S. citizen spouse.

The Field Office Director concluded that the applicant had failed to demonstrate extreme hardship to his U.S. citizen spouse and denied the application accordingly. *See Decision of Field Office Director*, dated November 9, 2011.

On appeal, the qualifying spouse asserts that she has suffered extreme hardship since the applicant's removal in 2008 and that she would continue to do so if the waiver application were removed. The qualifying spouse also claims that she would suffer extreme hardship if she were to relocate to Honduras.

The evidence includes, but is not limited to: statements from the applicant and his qualifying spouse; letters from the applicant's sisters-in-law, pastors, and teacher; financial records; a letter from the qualifying spouse's doctor; and country conditions information on Honduras. The entire record was reviewed and considered in rendering 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 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 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.

In the present case, the record reflects that the applicant entered the United States without inspection on February 20, 2003, at the age of 16, and was apprehended by Border Patrol agents. He was placed in removal proceedings and on October 15, 2003, received an order of voluntary departure with instructions to leave the United States by November 30, 2003. The applicant did not depart and was arrested by Immigration and Customs Enforcement (ICE) on August 8, 2008. He was removed to Honduras on September 17, 2008. Therefore, the applicant accrued unlawful presence from March 11, 2004, his eighteenth birthday, until September 17, 2008 and is inadmissible under section 212(a)(9)(B)(i) of the Act for a period of 10 years from his departure from the United States. The applicant does not contest this finding of inadmissibility on appeal.

The applicant is eligible to apply for a waiver of this ground of inadmissibility under section 212(a)(9)(B)(v) of the Act as the spouse of a U.S. citizen. In order to qualify for this waiver, however, he must first prove that the refusal of his admission to the United States would result in extreme hardship to his qualifying relative. Hardship to the applicant is not directly relevant under the statute and will be considered only insofar as it results in hardship to the applicant's spouse. 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 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 U.S. 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.

On appeal, the applicant asserts that separation has been very difficult for him and his qualifying spouse. The qualifying spouse is only able to visit him in Honduras occasionally due to her schedule and the price of airline tickets. The applicant is concerned that he will be unable to provide for the qualifying spouse on an average Honduran income and they will therefore be unable to support a family. The applicant also worries that the qualifying spouse would be unable to complete her education in Honduras and that she would therefore be unable to find a good job. Furthermore, the applicant fears that it would be unsafe for his qualifying spouse to live in Honduras due to health and safety conditions, and states that they would not be comfortable raising children there.

The qualifying spouse indicates that she has struggled financially in the applicant's absence. She states that she cannot afford health insurance without his assistance and that as a result, she has not been able to attend basic medical checkups or eye exams, or obtain new contact lenses or contraception. She also indicates that she has approximately \$14,000 in student loan debt which she would be unable to pay without the applicant's assistance because she works only sporadically. She states that she has struggled to live on her income alone, and that she would not be able to raise a family without the applicant's assistance. Additionally, she indicates that due to the applicant's absence she has been unable to focus on her education and has spent holidays apart from her family while visiting the applicant. She also misses the applicant and has struggled emotionally in his absence.

The qualifying spouse also claims that she is afraid to relocate to Honduras because of the high rates of crime there. She indicates that she was robbed during a visit to Honduras and that the applicant's relatives have been assaulted. The qualifying spouse also states that living conditions in Honduras are poor and that she fears becoming ill due to the lack of basic sanitation facilities and clean water, as well as the risk of contracting dengue fever. She also claims that on visits to Honduras, she has had serious trouble with allergies. Finally, she indicates that she would be unable to find a good job in Honduras and therefore could not afford to pay off her debts in the United States.

The qualifying spouse's sisters indicate that the qualifying spouse has "not been herself" since the applicant's removal and that she appears unhappy with her daily routine. Her sisters also state that she has struggled financially due to the cost of the applicant's legal assistance, her visits to Honduras, and long distance calls to the applicant in Honduras. *See Letter from [REDACTED]* The pastors at the church the applicant and the qualifying spouse attended together confirm that the qualifying spouse has struggled financially without the applicant's assistance. They also assert that the qualifying spouse has faced emotional hardship since the applicant's removal. *See Letter from [REDACTED]* dated August 1, 2010.

The AAO finds that the qualifying spouse would suffer extreme hardship upon relocation to Honduras. The murder rate in Honduras is the highest in the world. Kidnappings and other violent crime are also common, and foreigners are sometimes targeted for their perceived wealth. *See U.S. Department of State, Travel Warning: Honduras*, dated November 21, 2012. Documentation in the record indicates that the applicant has been residing in Tegucigalpa since his removal, so it is reasonable to conclude that the qualifying spouse would join him there. Crime rates are higher than the national average in the department in which Tegucigalpa is located. *Id.* Transnational crime organizations commit "murder, kidnapping, carjacking, armed robbery, rapes, and other aggravated assaults" in Tegucigalpa. *Id.* Additionally, dengue fever and malaria are problems in Honduras and medical facilities in the country do not meet U.S. standards. *U.S. Department of State, Country Specific Information: Honduras.* Finally, the qualifying spouse was born in the United States and has family here. Adjusting to life in Honduras would be difficult for her, especially in light of the conditions in that country. In the

aggregate, these factors would create extreme hardship for the applicant's spouse if she were to relocate to Honduras.

However, the applicant has not demonstrated that his U.S. citizen spouse would suffer extreme hardship on separation from the applicant. The qualifying spouse's concerns relate to the emotional effects of separation, economic difficulties, and inconvenience relating to her education. Although the AAO recognizes that these factors have a negative impact on the qualifying spouse, they are common results of the removal or inadmissibility of a close family member and do not reach the level of extreme hardship necessary for a waiver. *See Matter of Cervantes-Gonzalez*, 22 I&N Dec. at 568; *Matter of Pilch*, 21 I&N Dec. 627, 632-33 (BIA 1996). There is no indication that the qualifying spouse suffers from any serious health problems. Although she claims that she has been unable to receive medical care, she only indicates that she has not attended annual checkups or purchased contact lenses and contraception. Additionally, while the qualifying spouse claims that she will be unable to support herself or pay off her debts in the applicant's absence, there is no evidence to support a finding that her financial difficulties are serious enough to constitute 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). The AAO therefore finds 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.

As the applicant has not established extreme hardship to a qualifying family member, no purpose would be served in determining whether the applicant merits a waiver as a matter of discretion.

In proceedings for an 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.