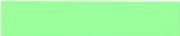
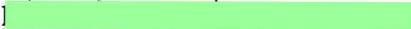




U.S. Citizenship
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Services

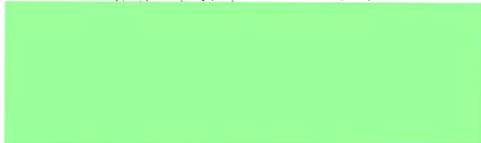
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Date: **JAN 07 2013** Office: **GUATEMALA CITY, GUATEMALA** FILE: 

IN RE: Applicant: 

APPLICATIONS: 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, Guatemala City, Guatemala, 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 Guatemala 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 his last departure from the United States; and section 212(a)(6)(B) of the Act, 8 U.S.C. § 1182(a)(6)(B), for failing to attend a removal proceeding. The applicant also was found inadmissible under section 212(a)(9)(A)(i) of the Act, 8 U.S.C. § 1182(a)(9)(A)(i), as an alien previously removed. The record indicates that the applicant is married to a U.S. citizen and the father of three U.S. citizen children. 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 his spouse and children.

The Field Office Director found that no waiver was available for the applicant's inadmissibility under section 212(a)(6)(B) of the Act and that the applicant had failed to establish that extreme hardship would be imposed on his qualifying relative. She denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) accordingly. *Decision of the Field Office Director*, dated April 22, 2011. The AAO notes that the Field Office Director also denied the applicant's Application for Permission to Reapply for Admission After Deportation or Removal (Form I-212) in the same decision, though no Notice of Appeal or Motion (Form I-290B) was filed for that application.

On appeal, the applicant, through counsel, claims that the applicant's wife and children will experience extreme hardship should the applicant be denied admission to the United States. *Counsel's appeal brief, attached to Form I-290B, Notice of Appeal or Motion*, filed May 18, 2011. 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 wife and son, psychological documentation for the applicant's wife, school records for the applicant's children, household and utility bills in English and Spanish, financial documents in English and Spanish, photographs, and documents pertaining to the applicant's removal proceeding. The entire record was reviewed and considered, with the exception of the Spanish-language documents, in arriving at a decision on the appeal.¹

Section 212(a)(6)(B) of the Act provides, in pertinent part:

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 some of the bills and money transfer receipts are in Spanish and are not accompanied by English-language translations, the AAO will not consider them in this proceeding.

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- (B) Failure to attend removal proceedings.—Any alien who without reasonable cause fails or refuses to attend or remain in attendance at a proceeding to determine the alien's inadmissibility or deportability and who seeks admission to the United States within 5 years of such alien's subsequent departure or removal is inadmissible.

The record reflects that on October 15, 1992, the applicant entered the United States without inspection. On or about March 1, 1994, the applicant filed a Request for Asylum in the United States (Form I-589). On April 3, 1997, an immigration judge ordered the applicant removed *in absentia* from the United States. On or about April 4, 1997, the applicant filed a motion to reopen the immigration judge's decision, claiming that he attempted to attend the hearing but went to the wrong building. The immigration judge denied the applicant's motion to reopen on May 19, 1997.

Counsel correctly asserts that section 212(a)(6)(B) of the Act does not apply to the applicant, because he was placed into deportation proceedings before April 1, 1997. See *Adjudicator's Field Manual*, chapter 40.6.2(b)(2)(i). Since the applicant was placed in deportation proceedings before April 1, 1997, he is not inadmissible under section 212(a)(6)(B).

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.

....

- (iii) Exceptions.-

....

- (II) Asylees.-No period of time in which an alien has a bona fide application for asylum pending under section 208 shall be taken into account in determining the period of unlawful presence in the United States under clause (i) unless the alien during such period

was employed without authorization in the United States.

....

- (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 his children can be considered only insofar as it results in hardship to a qualifying relative. The applicant's wife 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

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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.

As noted above, the record reflects that on October 15, 1992, the applicant entered the United States without inspection. On or about March 1, 1994, the applicant applied for asylum. On April 3, 1997, an immigration judge ordered the applicant removed *in absentia* from the United States. After the applicant's motion to reopen the immigration judge's decision was denied, he appealed the immigration judge's decision to the Board. The Board dismissed his appeal on June 5, 2000. On November 4, 2008, the applicant was removed from the United States.

Under section 212(a)(9)(B)(iii)(II) of the Act, no period of time in which the applicant has a bona fide asylum application pending shall be taken into account in determining the period of unlawful presence in the United States, unless the applicant was employed without authorization. The applicant accrued over one year of unlawful presence between June 6, 2000, and November 4, 2008. 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 he seeks admission within ten years of his departure from the United States. The applicant does not contest his 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

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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.

Concerning the applicant's wife's hardship if she were to relocate to Guatemala, in her affidavit dated June 16, 2010, the applicant's wife states that she and their children have assimilated to the American lifestyle and that even though she was born in Mexico, all of her immediate family resides in the United States; she has no ties to Guatemala. In his appeal brief dated May 12, 2011, counsel states the applicant's wife has never visited Guatemala. The applicant's wife also states that economic opportunities are limited in Guatemala, and their children would be deprived of an American education. Moreover, she states it "would be like a death sentence" for her and their children to join the applicant in Guatemala because of the gang violence there, and they would be targets for criminals.

The AAO acknowledges that the applicant's wife is a U.S. citizen, and that relocation abroad would involve some hardship. However, even though the applicant's wife has resided in the United States for many years, no evidence has been submitted showing that she does not speak Spanish, the primary language of Guatemala. Additionally, the record does not contain documentary evidence showing that the applicant's wife would be unable to obtain employment in Guatemala. Regarding the hardship that the applicant's children may experience in Guatemala, they are not qualifying relatives under the Act, and the applicant has not shown that hardship to their children would elevate his wife's challenges to an extreme level. Moreover, though the AAO acknowledges the security concerns in Guatemala, the applicant failed to submit any country-conditions documents to support a claim of extreme hardship to his wife should she join him in Guatemala. 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 his wife would suffer extreme hardship if she relocated to Guatemala.

Regarding the hardship caused by their separation, the applicant's wife states she is under an "immense amount of stress." In her affidavit dated May 13, 2011, the applicant's wife states she is so stressed and depressed that sometimes she does not eat, and she gets dizzy. In his statement dated June 14, 2010, licensed social worker [REDACTED] diagnoses the applicant's wife with depression. The applicant's wife states their children's suffering also affects her. Additionally, she states it is difficult being a single mother, and she does not "think [she] can move forward on [her] own" as a single mother of three.

The applicant's wife states the applicant is a "loving father" to their children, and they are "very attached" to each other. Mr. [REDACTED] indicates that the applicant's immigration situation is affecting their children. In an updated statement dated May 9, 2011, Mr. [REDACTED] reports that the applicant's children are showing symptoms of depression and disruptive behavior. The oldest son spends time "with the wrong crowd" and receives poor grades, and the two youngest children are "exhibiting signs of abandonment and depression." Documentation in the record establishes that the applicant's oldest son is failing classes, and he has a negative attitude in class. The applicant's wife states their oldest child is rebelling and he needs a "male figure in his life." She claims that she feels like she is losing their son, and she is desperate. In his statement, the applicant's son states he looks up to the applicant and it has been difficult growing up without him; he is angry and misses him. Mr. [REDACTED] states if the applicant were in the United States, his wife could focus more on their children.

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The applicant's wife claims that with the applicant, they provided all the necessities for their family, but she cannot survive without the applicant's financial contribution to the household. Mr. [REDACTED] indicates that the applicant's wife is suffering financially by trying to support their family in the United States and the applicant in Guatemala. Documentation in the record establishes that the applicant's wife has been late paying her bills. She states she has to work long hours to pay her bills, but it takes away time from their children. The applicant's son states his mother is pushing her limits with the hours she works. The applicant's wife states that if the applicant remains in Guatemala, she would have to support him, because employment opportunities are limited. Counsel states the applicant has been unable to find stable employment in Guatemala. Additionally, the applicant's wife states it would be expensive to visit the applicant in Guatemala, and she cannot afford to take the time off from work.

The AAO acknowledges that the applicant's wife is suffering emotional and financial hardship due to her separation from the applicant. The AAO finds that when the applicant's wife's emotional and financial issues are considered in combination with the hardships that usually result from separation of a spouse, and the effect of their children's hardship on the applicant's wife, the applicant has established that his wife is experiencing extreme hardship in the United States in his absence.

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 remain in the United States and thereby suffer extreme hardship as a consequence of separation can easily be made for purposes of the waiver even where there is no intention to separate in reality. *See Matter of Ige, supra* at 886. Furthermore, to separate and suffer extreme hardship, where relocating abroad with the applicant would not result in extreme hardship, is a matter of choice and not the result of inadmissibility. *Id., see also Matter of Pilch, supra* at 632-33. As the applicant has not demonstrated extreme hardship from relocation, we cannot find that refusal of admission would result in extreme hardship to the qualifying relative in this case.

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.