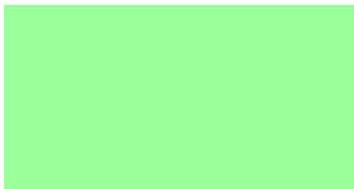




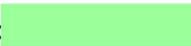
**U.S. Citizenship
and Immigration
Services**

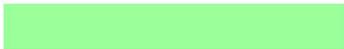
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DATE: **JAN 14 2013**

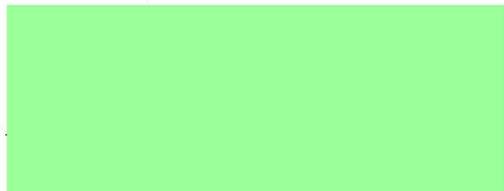
Office: PANAMA CITY

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:



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,


f- 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 applicant is a native and citizen of Panama who was found to be inadmissible to the United States under 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 her last departure from the United States, and section 212(a)(9)(A) of the Act, 8 U.S.C. § 1182(a)(9)(A), for seeking admission after previously being ordered removed. 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). Her qualifying relative is her U.S. citizen spouse.

The Field Office Director concluded that the applicant had failed to demonstrate extreme hardship to her qualifying spouse and denied the application accordingly. *See Decision of Field Office Director*, dated September 29, 2011.

On appeal, counsel for the applicant asserts that the Field Office Director failed to give full consideration to the hardship that the qualifying spouse would suffer due to the separation of his family. Counsel also states that the qualifying spouse would suffer extreme hardship upon relocation to Panama due to inferior healthcare, employment, educational, and housing opportunities in that country. *See Counsel's Brief*.

The record contains, but is not limited to: a statement from the qualifying spouse; letters from the qualifying spouse's mother and doctor; and educational records relating to the applicant's son. The entire record was reviewed and all relevant evidence considered in reaching a decision on the appeal.

Section 212(a)(9) of the Act 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.
.....

(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 on December 22, 1992 as a conditional permanent resident. Her then-spouse, Mr. [REDACTED] filed a Petition to Remove Conditions on Residence, Form I-751 on the applicant's behalf on October 7, 1994. That petition was denied on May 16, 1995 due to Mr. [REDACTED] failure to appear for a scheduled interview. The applicant was placed into deportation proceedings and was ordered deported in absentia after failing to appear for a hearing on June 28, 1996. A warrant of deportation was entered against the applicant on August 20, 1996, but she failed to depart as ordered. The applicant divorced Mr. [REDACTED] in December 1996 and married the qualifying spouse on October 11, 1998. The qualifying spouse filed a Petition for Alien Relative, Form I-130, on the applicant's behalf on November 21, 2002. The applicant filed an Application to Adjust Status, Form I-485, on November 13, 2005, but that application was denied due to the outstanding order of deportation against the applicant. On May 3, 2007, the applicant was apprehended by immigration authorities. She departed the United States under an order of removal on August 2, 2009. Therefore, the applicant accrued one year or more of unlawful presence and is inadmissible under section 212(a)(9)(B)(i) of the Act for a period of 10 years from her 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, she must first prove that the refusal of her admission to the United States would result in extreme hardship to her qualifying relative. Hardship to the applicant or to her U.S. citizen son is not directly relevant under the statute and will be considered only insofar as it results in hardship to the qualifying 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

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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.

The qualifying spouse states that he has suffered extreme hardship since the applicant was deported to Panama and that he will continue to do so if her waiver application is denied. He asserts that he has been unable to meet his financial obligations without the applicant's contributions and that his home is therefore in foreclosure. He cannot afford to visit the applicant in Panama due to his debts and the financial burden her immigration situation has placed on the family. He also states that the stress of the applicant's immigration situation has "affected [his] health and mental stability."

The qualifying spouse also indicates that he will suffer extreme hardship if he must relocate to Panama to join the applicant. He states that he has no family ties in Panama and would be separated from his mother, siblings, and other close relatives in the United States. He asserts that his elderly mother is ill and that he would be unable to care for her in an emergency if he were living in Panama. He also states that he has diabetes, hypertension, and sleep apnea for which he must receive regular medical care, but that he does not have health insurance. He indicates that his doctor in the United States is providing him with free samples of his medications and that he would not be able to afford necessary medical care in Panama. His doctor confirms that the qualifying spouse's health conditions are "uncontrolled" and are having a negative effect on his life expectancy. *See Letter from [REDACTED] M.D.*, dated November 18, 2010. The doctor also notes that the qualifying spouse is receiving free medication because he does not have health insurance. Finally, the doctor states that the applicant has provided helpful support to the qualifying spouse, and that the qualifying spouse would not be able to receive the same level of care in a third world country. *Id.*

Additionally, the qualifying spouse states that he is concerned about the increasing crime rate in Panama. He also fears that he would not be able to earn a living in Panama because salaries there are low and because he does not speak Spanish. Finally, he notes that he and the applicant have a teenage son who receives special education services for emotional disturbance and who needs the applicant's assistance in his education. The qualifying spouse fears that his son would not receive the proper services in Panama. A psycho-educational evaluation in the record notes that the applicant's son has a "history of inadequate communication and social skills," "below average performance in the written language domain," and "less developed nonverbal processing abilities." *See Psycho-Educational Evaluation, [REDACTED], Psy.D.*, dated October 26, 2007. The evaluation therefore recommends educational accommodations for the applicant's son, including tutoring, counseling, incentives, and extra time to complete his work. *Id.*

The AAO finds that the qualifying spouse would suffer extreme hardship if he were to relocate to Panama. The qualifying spouse was born and raised in the United States and he does not speak Spanish. His mother and siblings live in the United States and he states that he has no family ties in Panama. He also has serious medical conditions for which he requires regular treatment. Additionally, educational records demonstrate that the qualifying spouse's teenage son has an emotional disturbance for which he has received special services at school for several years. The qualifying spouse's son does not speak Spanish and has difficulty with communication and social interaction. Relocation to an unfamiliar country, and away from the school at which he receives special support, would likely be very disruptive and would cause extreme hardship for the son, thereby causing hardship for the qualifying spouse. *See Matter of Bing Chih Kao and*

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Mei Tsui Lin, 23 I&N Dec. 45, 50-51 (BIA 2001). In the aggregate, these factors would create extreme hardship for the qualifying spouse upon relocation to Panama.

However, the applicant has failed to demonstrate that her qualifying spouse would suffer extreme hardship on separation from the applicant if her waiver application were denied. Although the qualifying spouse claims that he has experienced severe financial hardship in the applicant's absence, there is no evidence in the record to support that claim. The applicant has not submitted tax records, pay stubs, mortgage statements, or any other documentation to demonstrate the financial situation of the qualifying spouse. 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)). There is no other evidence that the qualifying spouse has suffered hardship on separation from the applicant that rises above that which is normally expected as a result of the removal or inadmissibility of a close family member. See *Matter of Cervantes-Gonzalez*, 22 I&N Dec. at 568.

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. at 632-33. 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.

In proceedings for an application for a waiver of grounds of inadmissibility, 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. The waiver application is denied.