



U.S. Citizenship
and Immigration
Services

(b)(6)



Date: **JAN 16 2013** Office: PANAMA CITY, PANAMA 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 (the 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, or a request for a fee waiver. 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 applicant is a native and citizen of Panama 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. The applicant is the spouse of a U.S. citizen and seeks a waiver of inadmissibility in order to return to the United States.

The Field Office Director concluded that the applicant failed to establish that a denial of his waiver application would result in extreme hardship to his U.S. citizen spouse and denied the application accordingly. *See Decision of Field Office Director* dated October 13, 2011.

On appeal, the applicant, through counsel, submits a brief and additional documentation in support of his claim that denial of his waiver application would result in extreme hardship to his spouse. *See Appeal Brief*. Counsel claims that the director's decision reflects a cursory review of the evidence and should be overturned. *Id.* Specifically, counsel claims that the director failed to consider the applicant's spouse's emotional hardship due to separation from the applicant and potential separation from her mother, her mental health including depression and Post Traumatic Stress Disorder, and her inability to be the sole caregiver for her children. *Id.*

The record contains, in relevant part, the above-mentioned brief and supporting documentation, the applicant's Form I-601, Application for Waiver of Grounds of Inadmissibility, and the documents submitted in support of the waiver application. The entire record was reviewed *de novo* and considered in rendering 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 [now the Secretary of Homeland Security (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. No court shall have jurisdiction to review a decision or action by the [Secretary] regarding a waiver under this clause.

In the present case, the record reflects, and the applicant does not dispute, that the applicant was unlawfully present in the United States from 2001 until his departure in 2009. The applicant is therefore inadmissible under section 212(a)(9)(B)(i)(II) of the Act for having been unlawfully present in the United States for over a year.

The Act provides for a waiver of the unlawful presence ground of inadmissibility in section 212(a)(9)(B)(v), 8 U.S.C. § 1182(a)(9)(B)(v) upon a showing that the admissibility bar imposes an extreme hardship on a U.S. citizen or lawful permanent resident spouse or parent. Once extreme hardship is established, it is but one favorable factor to be considered in the determination of whether the Secretary should exercise discretion. *See Matter of Mendez*, 21 I&N Dec. 296 (BIA 1996).

The applicant's case is based on a claim of extreme hardship to his U.S. citizen spouse. The record contains references to hardship that 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 under section 212(a)(9)(B)(v) of the Act. In the present case, the applicant's spouse is the only qualifying relative for purposes of a waiver of inadmissibility, and hardship to the applicant's children will not be separately considered, except as it may affect the applicant's 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 (the 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. I.N.S.*, 138 F.3d 1292 (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 applicant maintains that his U.S. citizen spouse would face extreme hardship should the waiver application be denied. Specifically, the applicant claims that denial of the waiver application would result in extreme emotional and financial hardship.

The evidence in the record does not support the applicant's claim that his spouse would face extreme hardship should she remain in the United States, separated from the applicant. As noted

by the field office director, the hardship she faces due to the separation from her spouse is the common results of inadmissibility experienced by other individuals in this situation, and does not rise to the level of extreme hardship. The record establishes that the applicant's spouse is well educated, with a bachelor's degree in business administration. See Affidavit of Applicant's Spouse Dated December 2, 2011 at ¶ 6. The record contains a letter stating that she is employed (as of November 2011) with the Compass Group and earning \$13 per hour. See Letter from [REDACTED] Dining Services. Counsel states that the applicant's spouse risked losing her employment due to a planned visit to the applicant's in Ecuador. See Counsel's letter dated June 12, 2012; see also Letter from [REDACTED] Company dated August 2, 2010. The record does not contain evidence to establish that the applicant's spouse is financially dependent on the applicant. The financial and employment records submitted do not demonstrate that the applicant's spouse's economic hardship rises beyond that of other individuals in similar circumstances. The record also establishes that the applicant's spouse has family ties in the United States, and has been a long time resident of the United States. The applicant's spouse states that it was difficult for her to care for all her children alone. Her older children are now residing in Ecuador with their father. With regards to the applicant's spouse's medical condition, the documentation submitted indicates that she suffers from psychological and physical ailments, including depression and illness during her pregnancy. The record includes a Notice of Health Plan Enrollment verifying that the applicant's spouse has access to medical care. The record also indicates that the applicant's spouse has been treated for both physical and psychological ailments. There is no indication that her conditions are chronic or severe, or not responding to treatment. Although she is concerned about her older children's well-being in Ecuador, these concerns are typical for individuals in similar circumstances and do not rise to the level of extreme. In sum, the record does not support the claim that by remaining in the United States, the applicant's spouse's hardship is more severe than that normally experienced by others facing separation from a spouse.

The applicant claims that his spouse would face extreme hardship should she relocate to Ecuador. In this regard, the applicant's spouse notes that she attempted to relocate but could not adjust to life in Ecuador. The applicant's spouse notes that the criminality in Ecuador, the lack of employment and educational opportunities, as well as her own traumatic experience growing up in Ecuador. First, the AAO notes that 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. at 886. Furthermore, to relocate and suffer extreme hardship, where remaining 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). There is no indication in the record that the applicant's spouse's relocation to Ecuador would be any more difficult than that of others in her circumstances who would also face a lower standard of living, separation from family in the United States, lack of educational and employment opportunities, and difficulty adjusting to different social and cultural norms. A "lower standard of living [] and the difficulties of readjustment to [another] culture and environment . . . simply are not sufficient" to establish extreme hardship. See *Ramirez-Durazo v. INS*, 794 F.2d 491, 497 (9th Cir. 1986).

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The AAO finds that the applicant has failed to establish extreme hardship to his qualifying relative, because of either separation or relocation, as required under section 212(a)(9)(B)(v) of the Act. As the applicant has not established extreme hardship to a qualifying relative no purpose would be served in determining whether the applicant 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. 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.