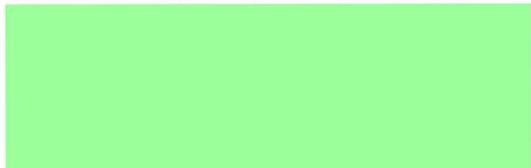




U.S. Citizenship
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Services

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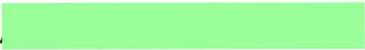


Date: **JAN 24 2013**

Office: PANAMA CITY

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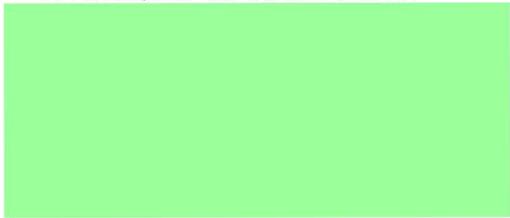
IN RE:

Applicant: 

APPLICATION:

Application for Waiver of Grounds of Inadmissibility under section 212(a)(9)(B) of the Immigration and Nationality Act, 8 U.S.C. § 1182(a)(9)(B)

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

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

The applicant is a native and citizen of Ecuador 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 again seeking admission within ten years of his last departure from the United States. The record reflects that the applicant entered the United States without inspection in 1994, remaining until his departure in October 2011. He seeks a waiver of inadmissibility in order to reside in the United States with his U.S. citizen father.

The Field Office Director found that the applicant failed to establish that his qualifying relative would experience extreme hardship as a consequence of his inadmissibility. The application was denied accordingly. *See Decision of the Field Office Director* dated February 23, 2012.

On appeal counsel for the applicant contends the Service erred in denying the I-601, *Application to Waive Grounds of Inadmissibility*.

With the appeal counsel submits a brief; medical information for the applicant's father; documentation related to the death of the applicant's mother; documentation related to the father's property and business in the United States; a statement from the applicant's father; medical records and letters from the applicant's siblings. The record also contains country information about Ecuador and information about issues related to truck driving as a profession.

The entire record was reviewed and considered in rendering this decision.

Section 212(a)(9)(B) 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.

Section 212(a)(9)(B)(v) of the Act provides for a waiver of section 212(a)(9)(B)(i) inadmissibility as follows:

The Attorney General [now 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 . . . 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. The applicant's father 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 USCIS then assesses whether a favorable exercise of discretion is warranted. *See Matter of Mendez-Moralez*, 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 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. *Salcido-Salcido v. INS*, 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.

In a brief counsel for the applicant notes that the applicant’s mother is now deceased, underscoring the hardship suffered by the applicant’s father as she had provided emotional support for him and was the person assisting him daily. Counsel contends the applicant’s father is facing challenges growing older as he is a tractor trailer operator whose income is limited to the amount of driving he can do, but that he cannot retire as he has no pension. Counsel contends the father has medical problems, specifically with his legs, that impair his ability to drive for long periods of time, and has sleeping problems which can create safety issues when he drives. Counsel contends the father has trouble maintaining mortgage payments, which will become worse if his capacity to work declines due to health. Counsel states that the applicant intends to work with his father to allow him the security and dignity of continuing his occupation and making his livelihood. Counsel also asserts that as the applicant’s father ages it will be increasingly difficult for him to care for himself and his home.

Counsel further contends that the applicant’s father would experience hardship if he relocates to Ecuador as he is a long-time U.S. resident with all his other children in the United States, where he has his own business. Counsel contends that in Ecuador the applicant’s father would have no means of support while having increasing medical disabilities. Counsel states that Ecuador is poor, struggling and lacking in medical facilities. In a previous statement counsel contended that if the applicant were in Ecuador his parents would worry for his health and safety. In that statement counsel contended that in Ecuadoran culture the unmarried adult child traditionally cares for elderly parents. Counsel further contended that the high cost of health care would deplete the parents’ assets to where they would end up in poverty during retirement. Counsel noted that Ecuador is poor and the parents would be dependent on applicant’s income for support, but it would be insufficient to meet their needs as Ecuador has poor health programs and social services while also experiencing a high crime rate.

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In his declaration the applicant's father states his biggest concern is to have the applicant with him to continue his plans and dreams. The father states that he is having difficulty paying debts and his mortgage and that he is now retired. The father contends that because of his age and health concerns the applicant is the only person who can help him. Medical documentation and a letter from the father's physician indicate that father has suffered from a heart condition, sleeping problems, diabetes, and asthma since 2011.

In a previously-submitted declaration the applicant stated that nearly his entire family lives in the United States and he has little memory of his childhood in Ecuador as he has been in the United States since he was young.

The record establishes that the applicant's qualifying parent would experience extreme hardship if he were to relocate abroad to reside with the applicant. The father has several children in the United States, owns his home and owned and operated his own business. Documentation shows the applicant's father has some medical issues, while country information establishes that in Ecuador access to healthcare is limited. County information also shows that Ecuador experiences high rates of poverty and crime. As such, the record reflects that the cumulative effect of the father's family ties to the United States, his length of residence in the United States, health and safety concerns, and potential loss of business and property were he to relocate to Ecuador rises to the level of extreme. The AAO thus concludes that were the applicant unable to reside in the United States due to his inadmissibility, his qualifying father would suffer extreme hardship if he returned to Ecuador to reside with the applicant.

However, the record does not establish that the applicant's father would experience extreme hardship if the applicant were unable to reside in the United States due to his inadmissibility. Counsel, the applicant, and the applicant's father contend the applicant is needed to help his father operate his business and to care for him due to medical issues. The record does not establish, however, that the applicant's father would otherwise be unable to find a business partner or hire a driver to alleviate some of the burden of operating his business and continuing his income. Courts considering the impact of financial detriment on a finding of extreme hardship have repeatedly held that, while it must be considered in the overall determination, "[e]conomic disadvantage alone does not constitute "extreme hardship." *Ramirez-Durazo v. INS*, 794 F.2d 491, 497 (9th Cir. 1986).

Counsel stated that in Ecuadoran culture an unmarried adult child traditionally cares for the elderly parents, but the record does not establish that the applicant's siblings and their families living in the United States would be unable to assist the father. Although documentation shows that the applicant's father has some health problems, the record does not establish the severity of those conditions or that the father's medical care and treatment require the applicant's presence in the United States. Further, other than showing the desire of the applicant, his father, and his siblings that the applicant help care for the father and assist with his business, nothing has been submitted detailing or documenting any emotional hardships the father is experiencing and how such emotional hardships are outside the ordinary consequences of removal.

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, while 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). As the applicant has not demonstrated extreme hardship from separation, we cannot find that refusal of admission would result in extreme hardship to the qualifying relative in this case.

The record, reviewed in its entirety and in light of the *Cervantes-Gonzalez* factors, cited above, does not support a finding that the applicant's U.S. citizen father will face extreme hardship if the applicant is unable to reside in the United States. Rather, the record demonstrates that he will face no greater hardship than the unfortunate, but expected disruptions, inconveniences, and difficulties arising whenever a relative is removed from the United States and/or refused admission. Although the AAO is not insensitive to the father's situation, the record does not establish that the hardship he would face rises to the level of "extreme" as contemplated by statute and case law.

In proceedings for application for 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.