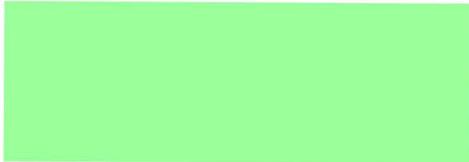




**U.S. Citizenship  
and Immigration  
Services**

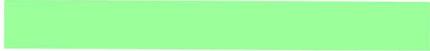
(b)(6)



DATE: JUL 24 2013

Office: GUATEMALA CITY

File: 

IN RE: Applicant: 

APPLICATION: Application for Waiver of Grounds of Inadmissibility under 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 (AAO) in your case. This is a non-precedent decision. The AAO does not announce new constructions of law nor establish agency policy through non-precedent decisions.

Thank you,

A handwritten signature in black ink, appearing to read "Ron Rosenberg".

Ron Rosenberg  
Acting Chief, Administrative Appeals Office

**DISCUSSION:** The waiver application was denied by the Field Office Director, Guatemala City, Guatemala, and it is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained.

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 Act, 8 U.S.C. § 1182(a)(9)(B)(i)(II), for having been unlawfully present in the United States for one year or more, and under section 212(a)(9)(C)(i)(I) of the Act, 8 U.S.C. § 1182(a)(9)(C)(i)(I), for having reentered the United States without being admitted after previously being unlawfully present for more than one year. He contests the latter finding and, thus, is seeking a waiver of the unlawful presence inadmissibility in order to immigrate as the beneficiary of the approved Petition for Alien Relative (Form I-130) filed by his sister.

The field office director concluded that, as the applicant attempted to reenter the United States without being admitted after a prior period of unlawful presence of more than one year, he was ineligible for a waiver and, accordingly, denied the Application for Waiver of Ground of Inadmissibility (Form I-601). *Decision of the Acting Field Office Director, March 21, 2012.*

On appeal, counsel for the applicant contends that USCIS erred in finding the applicant had attempted to reenter the United States when, in actuality, he was already here and attempting to depart the country to pursue an immigrant visa in Guatemala. In support of the appeal, he provides a brief and documents, including his updated statement; medical letters; untranslated Spanish-language articles; copies of a passport containing a visa; and copies of motor vehicle transfer and ownership records. The record contains documentation, including but not limited to: hardship statements; medical treatment records, including prescription lists; identity documents, including a naturalization certificate, social security and employment authorization cards; and support statements. The entire record was reviewed and considered in rendering this decision.

Section 212(a)(9)(B) of the Act provides, in pertinent part:

(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 Attorney General (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....

The record indicates the applicant entered the country without inspection or parole in 1998 and remained until December 12, 2005, when he departed for Guatemala via Mexico. At an immigrant visa interview on June 30, 2011, a Consular Officer therefore found him inadmissible for having accrued unlawful presence of one year or more. The field office director, however, concluded he was also subject to inadmissibility for the nonwaivable violation of attempting on December 12, 2005 to reenter the United States after a previously being unlawfully present for more than one year.

Section 212(a)(9)(C) of the Act provides, in pertinent part:

(i) In General. - Any alien who-

(I) has been unlawfully present in the United States for an aggregate period of more than 1 year,

....

and who enters or attempts to reenter the United States without being admitted is inadmissible.

(ii) Exception. - Clause (i) shall not apply to an alien seeking admission more than 10 years after the date of the alien's last departure from the United States if, prior to the alien's reembarkation at a place outside the United States or attempt to be readmitted from a foreign contiguous territory, the Secretary of Homeland Security has consented to the alien's reapplying for admission.

The record indicates the applicant encountered U.S. Customs and Border Protection officers on December 12, 2005. The applicant explains that on that date, possessing a valid visa to enter Mexico and required paperwork for his car, he entered a queue of several hundred vehicles awaiting out-processing to Mexico; when his turn came, he showed his passport and was allowed to leave. Although there is a record entry reflecting that he was sent back to Mexico, the applicant contends that he departed voluntarily. While the field office director viewed the record as showing the applicant being apprehended on or about December 12, 2005 after entering the country without inspection and thus being inadmissible pursuant to section 212(a)(9)(C)(i)(I) of the Act, 8 U.S.C. § 1182(a)(9)(C)(i)(I), the AAO finds the applicant to have provided evidence that he was already in the United States on that date and about to start his journey back to Guatemala.

Documentation shows that the applicant was issued a Mexican visa in Los Angeles on December 7, 2005 and the visa was valid for 30 days; left the country on December 12, 2005; transited Mexico and arrived in Guatemala on December 15, 2005. The AAO finds the applicant has provided evidence that he did not reenter the United States without admission and is thus inadmissible only under a provision of the Act for which a waiver is available.

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 can be considered only insofar as it results in hardship to a qualifying relative. The applicant's U.S. citizen mother 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-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 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 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.

Regarding relocation, the record reflects that the qualifying relative will suffer extreme hardship if she relocates to her native country. Documentation establishes that the applicant's mother is a 76 year-old widow and naturalized U.S. citizen who is under medical care and treatment for a number of serious conditions, including: end stage renal disease, for which she receives dialysis three times per week; Alzheimer's Disease; diabetes, controlled with insulin; high blood pressure and cholesterol; and arthritis. Besides insulin, the medical records show her to be taking over a dozen medications. Citing the qualifying relative's chronic and limiting medical conditions, one of her treatment providers states she is unable to travel. Official U.S. government reporting and country condition information reflect that personal safety is an issue in Guatemala, where the State Department (DOS) rates as "critical" the threat of violent crime. See *Guatemala—Country Specific Information*, DOS, March 22, 2013.

Besides interrupting continuity of the qualifying relative's care from her established medical providers, returning to her homeland would entail leaving the daughter who has been her primary caregiver at home. While there is evidence the applicant's mother has grandchildren and several adult children in the United States, there is no indication she has relatives in Guatemala, besides the applicant. The totality of the evidence shows that departing the United States would not represent a mere inconvenience, but rather would adversely impact the applicant's mother to such an extent that her resulting hardship would be "extreme." The AAO thus concludes that the applicant has met his burden of establishing that, if he cannot reside in the United States due to his inadmissibility, a qualifying relative would endure extreme hardship by moving abroad to live with him.

Regarding hardship from separation, the qualifying relative, the applicant, and his petitioner contend the applicant's absence will cause his mother emotional hardship. Several supportive statements establish that the applicant's absence weighs heavily upon his elderly mother, and the evidence shows that he is the only one of her children not in the United States. A doctor's statement confirms that the qualifying relative's mobility declined since her son's 2005 departure has reached the point that her daughter is no longer able to handle the situation without the applicant, whose assistance she requires in order to continue providing for their mother's home care needs. The record reflects that the qualifying relative is being monitored and cared for by several medical treatment providers, as well as being watched over at home by a family member. Together with evidence that the qualifying relative would be unable to visit her son abroad, due to her chronic health problems, these

circumstances represent hardship that goes beyond the typical consequence of separation from a close family member.

Regarding financial hardship, the record reflects only that the applicant's mother has been receiving social security benefits since July 2011 of about \$10,000 annually. Although there is no indication of the applicant's earnings either before or after departing the United States in 2005, and despite the lack of documentation of the qualifying relative's living expenses, we note that the qualifying relative's economic resources support an existence at the subsistence level. Thus, any financial contribution by the applicant would raise his mother's standard of living, while his presence would also spare her the foreseeable expense of hiring outside help to assist with her home care needs.

The evidence shows that, due to the qualifying relative's advanced age, serious infirmities, inability to travel, and limited resources, she will endure suffering as a result of the applicant's absence that goes beyond the usual consequences of inadmissibility. For all these reasons, the cumulative effect of the physical and emotional, as well as financial, hardships the applicant's mother will experience due to her son's inadmissibility rises to the level of extreme. The AAO concludes based on the evidence provided that, were his mother to remain in the United States without the applicant due to his inadmissibility, she would suffer extreme hardship beyond those problems normally associated with family separation.

The documentation on record, when considered in its totality, reflects the applicant has established that his U.S. citizen parent would suffer extreme hardship were the applicant unable to reside in the United States. Accordingly, the AAO finds that the situation presented in this application rises to the level of extreme hardship. However, the grant or denial of the waiver does not turn only on the issue of the meaning of "extreme hardship." It also hinges on the discretion of the Secretary and pursuant to such terms, conditions and procedures as she may by regulations prescribe. In discretionary matters, the alien bears the burden of proving eligibility in terms of equities in the United States which are not outweighed by adverse factors. *See Matter of T-S-Y-*, 7 I&N Dec. 582 (BIA 1957):

In evaluating whether . . . relief is warranted in the exercise of discretion, the factors adverse to the alien include the nature and underlying circumstances of the exclusion ground at issue, the presence of additional significant violations of this country's immigration laws, the existence of a criminal record, and if so, its nature and seriousness, and the presence of other evidence indicative of the alien's bad character or undesirability as a permanent resident of this country. The favorable considerations include family ties in the United States, residence of long duration in this country (particularly where alien began residency at a young age), evidence of hardship to the alien and his family if he is excluded and deported, service in this country's Armed Forces, a history of stable employment, the existence of property or business ties, evidence of value or service in the community, evidence of genuine rehabilitation if a criminal record exists, and other evidence attesting to the alien's good character (e.g., affidavits from family, friends and responsible community representatives).

*See Matter of Mendez-Moralez*, 21 I&N Dec. 296, 301 (BIA 1996).

The AAO must then “balance the adverse factors evidencing an alien’s undesirability as a permanent resident with the social and humane considerations presented on the alien’s behalf to determine whether the grant of relief in the exercise of discretion appears to be in the best interests of the country.” *Id.* at 300. (Citations omitted).

The favorable factors in this matter are the extreme hardships the applicant’s mother would face if the applicant were to reside in Guatemala, regardless of whether she accompanied the applicant or remained here; the applicant’s lack of any criminal record other than for traffic offenses; family ties in the United States; supportive statements; and voluntary departure in the attempt to obtain lawful readmission. The unfavorable factors in this matter are the applicant’s illegal entry and unlawful presence.

Although the applicant’s violations of the immigration laws cannot be condoned, the positive factors in this case outweigh the negative factors. Given the equities involved, including the passage of time since the applicant’s violations of immigration law, the AAO finds that a favorable exercise of discretion is warranted.

In application proceedings, it is the applicant’s burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361. Here, that burden has been met.

**ORDER:** The appeal is sustained.