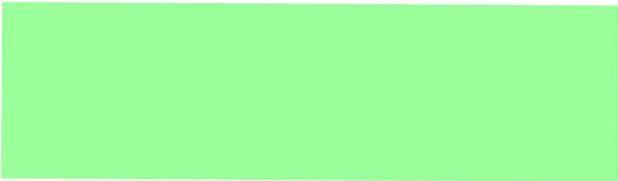




U.S. Citizenship
and Immigration
Services

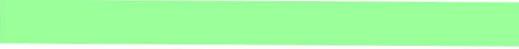
(b)(6)



DATE: JUL 3 1 2013

OFFICE: GUATEMALA CITY

FILE: 

IN RE: 

APPLICATION:

Application for Waiver of Grounds of Inadmissibility under Section 212(9)(B)(v) of the Immigration and Nationality Act, 8 U.S.C. § 1182(9)(B)(v) and Application for Permission to Reapply for Admission into the United States after Deportation or Removal under Section 212(a)(9)(A) of the Immigration and Nationality Act, 8 U.S.C. § 1182(a)(9)(A)

ON BEHALF OF APPLICANT:

SELF-REPRESENTED

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. If you believe the AAO incorrectly applied current law or policy to your case or if you seek to present new facts for consideration, you may file a motion to reconsider or a motion to reopen, respectively. Any motion must be filed on a Notice of Appeal or Motion (Form I-290B) within 33 days of the date of this decision. **Please review the Form I-290B instructions at <http://www.uscis.gov/forms> for the latest information on fee, filing location, and other requirements.** See also 8 C.F.R. § 103.5. **Do not file a motion directly with the AAO.**

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 applicant is a native and citizen of Guatemala 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 country for more than one year and seeking readmission within ten years of his departure from the United States. The applicant was also found to be inadmissible under section 212(a)(9)(A) of the Act, 8 U.S.C. § 1182(a)(9)(A), for seeking readmission after having been removed under an outstanding order. The applicant is the beneficiary of an approved Petition for Alien Relative (Form I-130). He 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 live in the United States with his lawful permanent resident parents.

The Field Office Director concluded that the applicant failed to establish that extreme hardship would be imposed on a qualifying relative and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) accordingly. *See Decision of the Field Office Director*, dated September 13, 2012.

On appeal, the applicant's mother explains her struggles without the applicant with her in the United States. *See Form I-290B, Notice of Appeal or Motion* (Form I-290B), filed October 12, 2013.

The record contains, but is not limited to: Various immigration forms; The Fifth Circuit Court of Appeals, Board of Immigration Appeals (BIA) and immigration judge's decisions; letters in Spanish from family members; various bills; the applicant's mother's medical documents; passport and identity documents. The entire record was reviewed and considered in rendering a decision on the appeal.

The regulations at 8 C.F.R. § 103.2(b)(3) require that any document in a foreign language submitted to U.S. Citizenship and Immigration Services (USCIS) be accompanied by a full English language translation which the translator has certified as complete and accurate, and by the translator's certification that he or she is competent to translate from the foreign language into English. Thus, only documents translated into English are considered as evidence.

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

- (i) [A]ny 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.

The record reflects that the applicant entered the United States without inspection either in 1990 or on April 15, 1994. For purposes of this decision the date of his initial arrival is not relevant. The applicant applied for asylum and withholding of removal on April 2, 1998. An immigration judge denied his case and granted him voluntary departure to leave the United States by July 2, 2004. On appeal, the BIA adopted and affirmed the immigration judge's decision and ordered the applicant to voluntarily depart the United States by September 22, 2005. The applicant appealed to the Fifth Circuit Court of Appeals which dismissed the appeal on June 9, 2006. The applicant remained in the United States until taken into custody on May 18, 2007 and was removed from the United States on July 2, 2007. The applicant accrued a period of unlawful presence of one year or more from April 1, 1997, when section 212(a)(9)(B)(i)(II) of the Act was enacted, until he filed for asylum status on April 2, 1998. He was also unlawfully present in the United States after the Fifth Circuit Court of Appeals made their decision until his removal. The record supports the inadmissibility finding pursuant to section 212(a)(9)(B)(i)(II) of the Act, and the applicant does not contest the inadmissibility.

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

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 first upon a showing that the bar imposes an extreme hardship on a qualifying family member, which includes the U.S. citizen or lawful permanent resident spouse or parent of the applicant. In the present case, the applicant's lawful permanent resident parents are the only qualifying relatives. 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*, 22 I&N Dec. 560, 565 (BIA 1999), the Board provided a list of factors it deemed relevant in determining whether an alien has established extreme hardship to a qualifying relative. 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 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).

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's 62 year-old mother and 67 year-old father are natives of Guatemala and lawful permanent residents of the United States. The applicant's mother states that she needs the applicant in the United States with them to help with their finances, their physical well-being, and household necessities. She explains that she cannot work due to her illnesses, she cannot drive, her husband is retired, and his social security income is not enough to cover their expenses. Her other children in the United States are either attending school or have families of their own that they struggle to provide for. Her remaining children live in Guatemala and cannot financially assist them. She asserts that if the applicant were to be admitted to the United States, he could help them financially and physically by doing such activities as fixing repairs in their home, taking them to doctor's appointments, and going grocery shopping. She submits evidence of various bills showing their monthly expenses. She also submits her medical documentation describing a

kidney infection, high levels of cholesterol and lipids, and her medications. However, the applicant has not submitted evidence to support his mother's statements, such as evidence about his parents' income including social security income, the applicant's ability to contribute financially, and a plain language document describing his mother's physical conditions. 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)).

The AAO has considered cumulatively all assertions of separation-related hardship to the applicant's parents, including the emotional strain of being separated from the applicant and the stated financial burden. Although the AAO acknowledges the difficulty in being separated from the applicant, the evidence presented, considered in the aggregate, is not sufficient to demonstrate that the applicant's lawful permanent residence parents are suffering extreme hardship beyond what is typical of those who are separated from an applicant who is deemed inadmissible.

The records reflect that applicant's mother has been a lawful permanent resident of the United States for eleven years and has five adult children living in the United States. Neither the applicant nor his qualifying relative parents have made any assertions or submitted evidence explaining any hardship they would suffer due to leaving the United States and relocating to Guatemala to live with the applicant. The AAO acknowledges that his parents would need to travel to the United States to maintain their lawful permanent resident status, and could strain their connection to their children in the United States. However, considered cumulatively, the evidence is not sufficient to find that his parents would suffer extreme hardship were they to relocate to Guatemala.

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. As the applicant has not established extreme hardship to a qualifying family member no purpose would be served in determining whether the applicant merits a waiver as a matter of discretion. Accordingly, the appeal will be dismissed.

The AAO notes that director denied the applicant's Form I-212 Application for Permission to Reapply for Admission into the United States After Deportation or Removal in the same decision. *Matter of Martinez-Torres*, 10 I&N Dec. 776 (reg. Comm. 1964) held that an application for permission to reapply for admission is denied, in the exercise of discretion, to an alien who is mandatorily inadmissible to the United States under another section of the Act, and no purpose would be served in granting the application. As the applicant is inadmissible under section 212(a)(9)(B)(i)(II) of the Act, no purpose would be served in granting the applicant's Form I-212.

ORDER: The appeal is dismissed.