

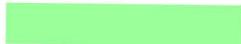


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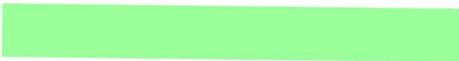


DATE: **JUN 29 2013**

Office: SAN DIEGO



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:

SELF-REPRESENTED

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

DISCUSSION: The waiver application was denied by the District Director, San Diego, California, and it 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 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. She is seeking a waiver of inadmissibility in order to immigrate to the United States as the beneficiary of the approved Petition for Alien Relative (Form I-130) filed by her husband.

The district director concluded the applicant had failed to establish that extreme hardship would be imposed on a qualifying relative and, accordingly, denied the Application for Waiver of Ground of Inadmissibility (Form I-601). *Decision of the Field Office Director*, November 14, 2012.

On appeal, the applicant claims through her husband that a qualifying relative would suffer extreme hardship due to the waiver denial. The record on appeal consists of a psychological evaluation, updated medical evidence, and updated support statements, as well as of evidence submitted with the waiver application, including a hardship letter, financial documentation, a medical letter, and copies of passport data pages. The entire record was reviewed and considered in rendering a decision on the appeal.

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 United States in April 2000 without admission or parole and remained here until March 4, 2012, when she departed to apply for an immigrant visa. She thereby accrued unlawful presence from May 21, 2004, her 18th birthday, until her departure, and thus requires a waiver to return to the United States before March 2022.

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 or her children can be considered only insofar as it results in hardship to a qualifying relative. The applicant's lawful U.S. citizen husband 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 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 hardship from separation, the qualifying relative supports the claim that his wife's absence is emotionally devastating for him by providing a December 2012 psychosocial evaluation. The report diagnosing the applicant's husband with major depression and anxiety, panic disorder, and post-traumatic stress disorder (PTSD) is based on questionnaires and tests administered during an interview. The psychologist attributes his problems to feelings of abandonment rooted in his father's frequent absence and alcoholism that were enhanced by PTSD from being subjected (along with family members) to detention and search by masked soldiers while a child in Guatemala. The report observes that reported symptoms -- stomach aches, headaches, other pain (in the arms, legs, joints, and chest), dizziness, heart palpitations, shortness of breath, nausea, fatigue, and insomnia -- are consistent with the diagnoses, and notes that the qualifying relative's emotional problems are heightened by the loss of his three children, ages 3, 5, and 7, who left with their mother.¹ It concludes that the qualifying relative would benefit from psychotherapy, should have a psychiatric evaluation to determine whether medication is appropriate, and states that his prognosis depends on being able to reunite with his wife. The record reflects that he is taking medicines for his gastrointestinal problems prescribed by a doctor in Tijuana, Mexico, who viewed his abdominal pain as stress-related.

Regarding financial hardship, in support of the claim of economic difficulty due to his wife's absence and the need to support two households, the qualifying relative provides evidence only of his U.S. expenses, including utility bills and an apartment lease, as well as receipts for remittances to Guatemala. There is nothing to show the living expenses in Guatemala of the applicant and her children, nor any documentation of the qualifying relative's income,² and the record reflects that the applicant was not employed before her departure. Based on the expenses claimed, the record fails to show the applicant's husband is unable to meet these costs. The record does not reflect that he is making late payments or is unable to pay his bills, but does indicate that he obtained a joint sponsor to support his wife's immigrant visa application because his own income was insufficient.

¹ He and the applicant determined that, as his job prevents him from caring for his children, they were better served by accompanying their mother abroad, rather than remain here and be watched by a hired caregiver.

² The psychological evaluation states that he is self-employed as a gardener, and lists his prior jobs, but the record contains no documentation of this employment.

Despite the lack of financial evidence indicating hardship, documentation of the qualifying relative's psychological and medical problems is substantial. Considered in aggregate, the documentation on record shows that the applicant's husband is suffering extreme emotional hardship, and that due to his childhood feelings of abandonment and trauma, the absence of his wife and young children have resulted in hardship beyond the usual or common impact of removal or inadmissibility. As their situation is not typical of individuals separated as a result of removal or inadmissibility, the AAO finds that the applicant has established hardship to a qualifying relative that rises to the level of "extreme" under the Act.

Regarding relocation, the applicant's husband told the psychologist that, while he would have to join his wife in Guatemala if she is not allowed to immigrate, this would mean abandoning debts in this country and leaving his parents and siblings. Although support letters reflect that he has family members here, his concern about unpaid debts is unsubstantiated and he fails to show that he would be unable to find work in Guatemala. The record reflects that the applicant's husband has worked a variety of jobs, including in a nursery, a grocery store, manufacturing, landscaping, and as a gardener. There is no indication that medical care and treatment he is receiving in Mexico would not be available in Guatemala. There is little evidence of his overall health and no medical conclusion that he has any serious illness. There is no evidence for the claim that his children are getting sick in Guatemala and, as they are U.S. citizens entitled to live here, the decision that they live abroad is a matter of parental choice.

Although the applicant's husband worries that returning to his native country to reunite with his wife would entail loss of economic opportunity, there is no evidence that moving would represent a substantial hardship. The AAO is sensitive that the prospects of returning to Guatemala might be inconvenient for the qualifying relative, or entail economic sacrifices. However, the record fails to reflect circumstances that would make this other than a typical result of removal or inadmissibility, as it involves difficult choices common to these situations. Without any evidence showing how relocating to his homeland will adversely impact her husband, the applicant cannot show hardship that rises to the level of "extreme." The AAO thus concludes that, were the applicant unable to reside in the United States due to her inadmissibility, the record does not establish that a qualifying relative would suffer extreme hardship if he relocated to live with the applicant.

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 remain in the United States and thereby suffer extreme hardship as a consequence of separation can easily be made for purposes of the waiver even where there is no intention to separate in reality. *See Matter of Ige*, 20 I&N Dec. 880, 886 (BIA 1994). Furthermore, to separate and suffer extreme hardship, where relocating abroad with the applicant would not result in extreme hardship, is a matter of choice and not the result of inadmissibility. *Id.*, *see also Matter of Pilch*, 21 I&N Dec. 627, 632-33 (BIA 1996). As the applicant has not demonstrated extreme hardship from relocation, we cannot find that refusal of admission would result in extreme hardship to the qualifying relative in this case.

The record, when considered in its totality, reflects that the applicant has not established her husband will suffer extreme hardship if she is unable to live in the United States. The AAO recognizes that

the applicant's husband will endure hardship as a result of the applicant's inability to immigrate. However, his situation is typical of individuals affected by removal or inadmissibility, and the AAO thus finds that the applicant has failed to establish extreme hardship to her husband as required under the Act.

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.