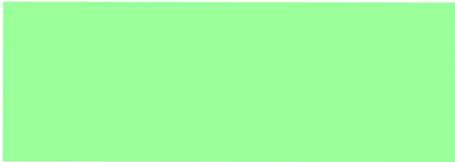


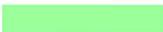


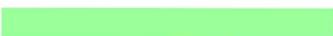
U.S. Citizenship  
and Immigration  
Services

(b)(6)



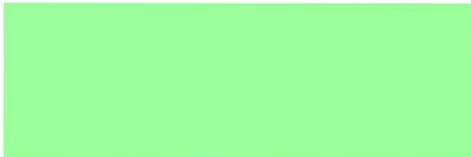
DATE: **MAR 11 2013** OFFICE: SAN SALVADOR

FILE: 

IN RE: 

APPLICATION: Application for Waiver of Grounds of Inadmissibility under section 212(a)(9)(B)(v) of the Immigration and Nationality 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. 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

(b)(6)

**DISCUSSION:** The waiver application was denied by the Field Office Director, San Salvador, El Salvador and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant 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 a beneficiary of an approved Petition for Alien Relative, as the spouse of a US citizen, who seeks a waiver of inadmissibility in order to reside in the United States with his spouse and children.

The Field Office Director found that the applicant was also inadmissible to the United States pursuant to section 212(a)(2)(A)(i)(II) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(2)(A)(i)(II) for violating a law or regulation of a state, the United States, or a foreign country relating to a controlled substance. The Field Office Director determined that the applicant does not qualify for a waiver of this ground of inadmissibility and also concluded that the record failed to establish the existence of extreme hardship for a qualifying relative. The Field Officer Director denied the application accordingly. *See Decision of the Field Office Director*, dated September 19, 2011.

On appeal, counsel for the applicant asserts that the record is insufficient to support a section 212(a)(2)(A)(i)(II) ground of inadmissibility against the applicant. Counsel further asserts that the evidence submitted demonstrates that the applicant's spouse, in the aggregate, will suffer from extreme hardship if the applicant's waiver application is denied.

In support of the waiver application and appeal, the applicant submitted a letter from his spouse, a letter from his mother-in-law, financial documentation, country conditions reports concerning El Salvador, and family photographs. The entire record was reviewed and considered in rendering a decision on the appeal.

Section 212(a)(2)(A) of the Act states, in pertinent parts:

(i) [A]ny alien convicted of, or who admits having committed, or who admits committing acts which constitute the essential elements of –

(I) a crime involving moral turpitude (other than a purely political offense) or an attempt or conspiracy to commit such a crime, or

(II) a violation of (or a conspiracy or attempt to violate) any law or regulation of a State, the United States, or a

foreign country relating to a controlled substance (as defined in section 102 of the Controlled Substances Act (21 U.S.C. 802)), is inadmissible

The Field Office Director determined that the applicant is inadmissible to the United States pursuant to section 212(a)(2)(A)(i)(II) of the Act based upon the applicant's admissions during a medical examination. The record reflects that the applicant submitted to medical examination in conjunction with his immigrant visa application. During his May 5, 2011 examination the applicant admitted to using cocaine on three occasions, April 2005, before his return to El Salvador, and a month prior to the exam.

In *Matter of K-*, 7 I&N Dec. 594 (BIA 1957), the Board of Immigration Appeals (BIA) established a standard for determining the "validity" of an admission for purposes of inadmissibility under section 212(a)(2)(A)(i) of the Act (formerly 212(a)(9)). The BIA held that a "valid admission of a crime for immigration purposes requires that the alien be given an adequate definition of the crime, including all essential elements, and that it be explained in understandable terms," a rule intended to ensure "that the alien would receive fair play and to preclude any possible later claim by him that he had been unwittingly entrapped into admitting the commission of a crime involving moral turpitude." *Id.* at 597. Further, the BIA held that the admission at issue in that case, which was made to a police officer and included in a sworn statement signed by the alien, could not be considered an admission of acts constituting the essential elements of a crime involving moral turpitude because the notification requirement had not been met. *Id.* at 596-597.

The record does not indicate that the applicant made any admissions concerning controlled substances outside of his May 5, 2011 medical examination. There is also no indication that the applicant was provided with an adequate definition of any crime, including all essential elements, in understandable terms. It is noted that the applicant has not been charged with or convicted of any crime involving controlled substances. The AAO finds that the evidence is insufficient to support a finding that the applicant is inadmissible to the United States pursuant to section 212(a)(2)(A)(i)(II) of the Act based upon his May 5, 2011 statements.

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

**(B) ALIENS UNLAWFULLY PRESENT.-**

- (i) In general.- Any alien (other than an alien lawfully admitted for permanent residence) who-

...

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(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 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 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 Attorney General regarding a waiver under this clause.

The applicant is a native and citizen of El Salvador who entered the United States without admission or parole in November 2002. The applicant began to accrue unlawful presence in the United States when he turned 18 year of age, on April 27, 2004. The applicant departed for El Salvador in April 2011. Accordingly, the applicant accrued over one year of unlawful presence in the United States, and he is inadmissible under section 212(a)(9)(B)(i)(II) of the Act. The applicant does not contest his inadmissibility on appeal.

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. See *Salcido-Salcido*, 138 F.3d at 1293 (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 record reflects that the applicant is a 26-year-old native and citizen of El Salvador. The applicant’s spouse is a 21-year-old native and citizen of the United States. The applicant and their children are currently residing in El Salvador and the applicant’s spouse is residing in Suitland, Maryland.

Counsel for the applicant asserts that the applicant’s spouse is suffering from tension headaches due to separation from the applicant. The applicant’s spouse contends that she is going through hard times because of her separation from her spouse and children. The applicant’s spouse also contends that her children have to cope with the different climate

in El Salvador and one of her daughters was stung by insects. It is noted that the applicant's children are not qualifying relatives in the context of this application so that any hardship they suffer will be considered only insofar as it affects the applicant's spouse. The record contains a letter from the applicant's spouse's mother stating that the applicant's spouse misses her husband and children. The record also contains a note from a physician stating that the applicant's spouse was prescribed Motrin for tension headaches and stress.

Counsel for the applicant also asserts that the applicant's finances are extremely strained because of the need to send financial support to her husband and two children in El Salvador. The record contains a paystub for the applicant's spouse and receipts for money transfers. The applicant's spouse states that she is currently residing in a home with her parents and sisters. The record does not contain any information concerning the applicant's financial expenses and there is no indication that she has been unable to meet her financial obligations. In the aggregate, there is insufficient evidence in the record to demonstrate that the applicant's spouse is suffering from hardship due to separation from the applicant that is beyond the common results of inadmissibility or removal of a spouse.

Counsel for the applicant asserts that the applicant's spouse cannot relocate to El Salvador to reside with her family because she would be leaving behind her ties in the United States. It is noted that the applicant's spouse is a native of the United States and asserts that she has only visited El Salvador once in her life. The record reflects that the applicant's spouse is currently living in Suitland, Maryland with family members including her parents and her sisters. The record also includes a letter of support written by the applicant's spouse's mother.

The applicant's spouse asserts that she is residing in the United States to financially support her husband and children and would not be able to support her family if she resided in El Salvador with them. Counsel for the applicant also asserts that the applicant's spouse would fear for her safety if she resided in El Salvador. In support of these assertions, counsel submitted country conditions reports concerning El Salvador. It is noted that the Department of State issued a travel warning on January 23, 2013 concerning El Salvador stating that crime and violence are serious problems throughout the country. It is also noted that El Salvador's designation as a country with temporary protected status has been extended through September 9, 2013. In this case, the record, in the aggregate, contains sufficient evidence to show that the hardships faced by the qualifying relative, if she were to relocate to El Salvador, rise to the level of extreme hardship.

The applicant has demonstrated that his spouse would suffer extreme hardship upon relocation to El Salvador. The record, however, does not contain sufficient evidence to show that the hardships faced by the qualifying relative upon separation, considered in the aggregate, rise beyond the common results of removal or inadmissibility to the level of extreme hardship. 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, 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). As the applicant has not demonstrated extreme hardship upon separation, we cannot find that refusal of admission would result in extreme hardship to the qualifying relative in this case.

The AAO therefore finds that the applicant has failed to establish extreme hardship to his U.S. citizen spouse as required under section 212(a)(9)(B)(v) of the Act. As the applicant has not established extreme hardship to a qualifying family member, no purpose would be served in determining whether the applicant merits this 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 and the underlying application will remain denied.

**ORDER:** The appeal is dismissed.