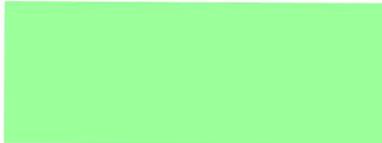




U.S. Citizenship
and Immigration
Services

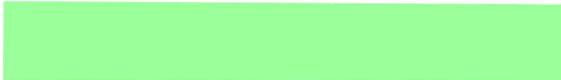
(b)(6)



DATE: **MAR 21 2013**

OFFICE: SAN SALAVDOR (ANAHEIM, CA)

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

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 is a native and citizen of El Salvador 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 her departure from the United States. She 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 her U.S. citizen spouse and children.

The 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 July 13, 2012.

On appeal, counsel asserts that the applicant showed extreme hardship to her qualifying relative, the director erred in his decision, and new evidence supports approving the applicant's waiver. *See Form I-290B, Notice of Appeal or Motion (Form I-290B)*, dated August 9, 2012.

The record contains, but is not limited to: Form I-290B; Form I-601; a psychological evaluation of the applicant's spouse; statements by the applicant and her spouse; financial documents; marriage, birth and naturalization certificates; school records; and photographs. The record also contains documents in Spanish that were not translated into English. The regulations at 8 C.F.R. § 103.2(b)(3) require that any document in a foreign language submitted to 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, documents that are not translated into English may not be considered as evidence. The rest of the record, however, was reviewed and considered in rendering a decision on the appeal.

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 in May 2004 and remained until November 2011.¹ The record supports the inadmissibility finding pursuant to section 212(a)(9)(B)(i)(II) of the Act, and counsel does not contest the applicant's 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. Hardship to the applicant and her child can be considered only insofar as it results in hardship to a qualifying relative. In the present case, the applicant's spouse is the only qualifying relative. 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

¹ Documents in the record also indicate that the applicant departed from the United States in November 2010. This inconsistency in departure dates, however, does not affect the determination of her inadmissibility, because the applicant accrued over one year of unlawful presence using either date as her departure date.

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 spouse is a 41 year-old native of El Salvador and citizen of the United States. He indicates that he loves the applicant and needs her with him in the United States. He states that he has been depressed and unable to concentrate; he does not know how to regain control of his life, has lost his appetite, and has become “indifferent towards life.” He indicates that he fears for the applicant’s and their children’s safety in El Salvador because of the violence there.

A psychologist indicates that the applicant’s spouse is suffering from single episode major depressive disorder and adjustment disorder with anxiety due to the separation from the applicant and their children, ages five and two. Through his psychologist, the applicant’s spouse states that he is lonely, depressed, cannot sleep, and feels sick. He claims that he lost 15 pounds, developed a

stomach infection, and received two injections from a doctor for his illness. Medical records were not submitted to support his statements.

The psychologist also states that the applicant's spouse is undergoing financial stress. She notes that the applicant's spouse has worked painting cars for the same company for approximately 12 years, and he received \$1000 per week as income. Since the applicant and their children departed, he has visited them in El Salvador five times in eight months and once stayed for approximately a month and a half. Due to his absences from work, the applicant's spouse's employer dismissed him, but then rehired him to work on commission, averaging \$800 per week. The psychologist reports that the applicant's spouse sold two trucks to be able to afford visits to the applicant in El Salvador. He also sends the applicant \$1000 per month. The psychologist further notes that he pays \$300 per month in child-support payments to his previous spouse. The record contains evidence of the applicant's income in 2010 and expenses for utilities and other services in the United States; however, it lacks evidence corroborating the psychologist's statements about the applicant's change in salary, his visits to El Salvador, the expenses of his visits, the sales of his trucks, remittances sent to El Salvador, child-support payments, and other expenses reflecting the applicant's spouse's financial hardship. 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 spouse, including the emotional strain of being separated from his wife, his psychological state, and his stated financial situation. Considered in the aggregate, the AAO finds that the evidence is not sufficient to demonstrate that the applicant's U.S. citizen spouse suffers extreme hardship as a consequence of being separated from the applicant.

However, the applicant has demonstrated extreme hardship were he to relocate to El Salvador. He indicates that he fears the violence and gang-related activity prevalent there. Through his psychologist, he reports that two opposing gang members of the MS18 and MS13 gangs live on opposite sides of his family's residence in Usulután. He indicates that he has seen a dead victim of gang violence and that after six in the evening, people will not go outside. The U.S. State Department's current *Travel Warning for El Salvador*, dated January 23, 2013, indicates that El Salvador has the second highest murder rate in the world, and while a truce between the "two principal street gangs contributed to a decline in the homicide rate" in 2012, "the sustainability of the decline is unclear and the truce had little impact on robbery, assaults, and other violent crimes." See http://travel.state.gov/travel/cis_pa_tw/tw/tw_5871.html.

The applicant's spouse also explains his ties to the United States. He indicates that he has become successful in Texas and would lose everything if he relocated to El Salvador. Through his psychologist, he states that he has lived in the United States since 1988, has worked for the same employer for 12 years, and has several family members in the United States, including his siblings, mother, two children from a previous marriage, and a grandson. He notes that he tried to

find employment in El Salvador but would earn \$100 per month, resulting in his inability to pay child support.

The AAO has considered cumulatively all assertions of relocation-related hardship to the applicant's spouse, including his adjustment to a country in which he has not resided for nearly 25 years; his family ties to the United States; loss of employment in the United States; economic considerations of living in El Salvador; and the stated safety-related concerns. Considered in the aggregate, the AAO finds the evidence sufficient to demonstrate that the applicant's spouse would suffer extreme hardship were he to relocate to El Salvador to be with the applicant.

The AAO finds 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 from separation, the AAO cannot find that refusal of admission would result in extreme hardship to the qualifying relative in this case.

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.

ORDER: The appeal is dismissed.