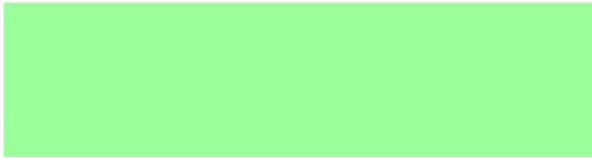




U.S. Citizenship
and Immigration
Services

(b)(6)



DATE: **MAR 22 2013** Office: SAN SALVADOR (PANAMA 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. section 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

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DISCUSSION: The waiver application was denied by the Field Office Director, Panama City, Panama. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native and citizen of Ecuador. He 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 seeking admission within 10 years of his last departure. He is married to a United States citizen. 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).

The Field Office Director concluded that the applicant had failed to establish that the bar to his admission would impose extreme hardship on a qualifying relative, his U.S. citizen spouse, and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) on June 12, 2012.

On appeal, counsel for the applicant states that the Field Office Director's decision denying the application was an abuse of discretion and that the applicant established that a qualifying relative would experience extreme hardship. *Form I-290B*, received on June 16, 2012.

The record includes, but is not limited to, counsel's brief; statements from the applicant's spouse; a statement from the applicant; statements from friends and family members of the applicant and her spouse; copies of medical records pertaining to the applicant's spouse; copies of medical records pertaining to the applicant's spouse's parents; copies of bills, bank statements and other financial records for the applicant and her spouse; country conditions materials on Ecuador; a statement from [redacted] dated June 28, 2012, and pertaining to the applicant's spouse; and health insurance coverage documentation for the applicant's spouse. The entire record was reviewed and all relevant evidence 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.

The record indicates that the applicant entered the United States without inspection on July 31, 2001, and remained until he departed in March 2011. Therefore, the applicant was unlawfully present in the United States for over a year and is now seeking admission within 10 years of his last departure

from the United States. Accordingly, the applicant is inadmissible to the United States under section 212(a)(9)(B)(i)(II) of the Act. The applicant does not contest this finding.

Section 212(a)(9)(B)(v) of the Act provides for a waiver of section 212(a)(9)(B)(i) inadmissibility as follows:

The Attorney General [now Secretary of Homeland Security] 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 . . . 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 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 any children can be considered only insofar as it results in hardship to a qualifying relative. The applicant's spouse 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 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.

On appeal, the applicant’s spouse asserts she will experience extreme physical, emotional and financial hardship upon relocation to Ecuador. *Statement of the Applicant’s Spouse*, received July 16, 2012. The applicant’s spouse explains that her parents are elderly, have numerous medical conditions and rely on her physically and financially. She also states that her brother has Down’s Syndrome and requires physical assistance to function on a daily basis and that, due to her parents’ medical condition, the burden of his care sometimes falls to her. The applicant’s spouse also states that she has several medical conditions, and that relocating to Ecuador would disrupt her medical care. She further states that the country conditions pose a physical threat to her due to the crime in Ecuador such as taxi robberies, bus robberies and poor police protection.

The record contains a statement from the applicant’s spouse’s mother in which she states she receives monthly disability benefits, and that the applicant’s spouse helps provide physical assistance to her by transporting her back and forth to doctor’s appointments and financial assistance in the amount of \$450 a month. The AAO acknowledges this statement, but notes that the letter does not provide details about why they need financial assistance from the applicant’s spouse. The AAO notes that the record indicates the applicant’s spouse may be residing with her parents and that the

assistance she provides them may be part of a household contribution rather than direct financial assistance. *Statement of the Applicant's Spouse*, dated May 13, 2011.

The record also contains medical records pertaining to the applicant's spouse's parents, including visitation reports and exam results from medical specialists. Based on the evidence in the record the AAO concludes that the applicant's spouse's parents are suffering from several medical conditions and that the applicant's spouse provides physical assistance for them. The record also includes documentation regarding the applicant's spouse's brother's mental condition. Based on the statements and medical records in the record the AAO finds that the applicant's spouse likely provides some physical assistance to her brother with a disability.

The applicant's spouse has also indicated that she suffers from several medical conditions, including Polycystic Ovarian Syndrome and asthma, and that she needs the applicant in the United States to help her manage her family and medical conditions. The record contains a statement from [REDACTED] indicating the applicant has been diagnosed with depression, anxiety, polycystic ovarian syndrome and asthma. The statement does not, however, indicate to what degree these conditions have impacted the applicant's spouse's ability to function on a daily basis. Other medical documents in the record indicate she has attended a doctor with regard to the issues, but they do not explain or indicate that she is incapable of caring for herself. While [REDACTED] states that the applicant's spouse has been diagnosed with depression and anxiety, the AAO notes that it is not clear whether [REDACTED] is a qualified mental health practitioner, nor is there any other mention of the condition in her letter or in other evidence submitted into the record.

Based on this analysis, the AAO finds the record to establish that the applicant's spouse does suffer from some medical conditions. Based on her relationships with doctors who are familiar with her medical history, she would have to disrupt her continuity of medical care in order to relocate to Ecuador. The AAO also notes that the record contains documentation supporting a claim by the applicant's spouse that her employment provides her with necessary medical coverage to treat her conditions.

Other evidence in the record supports the applicant's spouse's assertions of hardships upon relocation, and the AAO finds that all identified factors, when considered in the aggregate, establish that she would experience impacts rising to the degree of extreme hardship upon relocation.

With regard to hardship due to separation, the applicant's spouse asserts that she needs the applicant here in the United States with her to assist her in caring for her family members, to assist her financially with household expenses, and that without him she will experience financial and emotional hardship. She states that she could not afford to travel back and forth to Ecuador to visit her husband, and that without his financial assistance she is unable to meet her financial obligations or return to school to continue her education.

As discussed above, the record indicates that the applicant's spouse suffers from at least two medical conditions. Although it would be disruptive to her medical care to relocate to Ecuador, the AAO

does not find the record to indicate that her conditions are such that remaining here in the United States without the applicant would result in an uncommon medical or physical impacts. The medical evidence in the record does not indicate the seriousness or personal impact on the applicant's spouse, and it is noted that she is able to maintain employment, care for her parents and help out with the care of her disabled brother.

While the AAO acknowledges that the applicant's presence might reduce the burden on his spouse to provide care for her family members, the AAO notes that the record fails to establish this would result in an uncommon impact on her. The applicant's spouse's father submitted a statement indicating that they have other daughters and grandchildren in the United States who might be capable of mitigating the impacts on the applicant's spouse. In addition, while the record establishes the medical conditions of her family members, the record does not contain sufficiently probative evidence to show that the presence of the applicant's spouse will change these circumstances. There is insufficient evidence to demonstrate, for instance, the extent of the care she provides her parents and brother. Based on these observations, the AAO does not find the record to establish that the applicant's spouse will experience an uncommon physical impact due to separation.

With regard to financial hardship, the record contains substantial evidence of the applicant's spouse's financial obligations, including insurance, car payments and credit debt. However, it is unclear where the applicant's spouse is residing, and whether she may be part of her parents' household by residing with them. In addition, it appears the applicant's spouse has a job and earns over \$40,000 annually. Based on these observations the AAO finds that, while it is evident the applicant's spouse has financial obligations, it is not clear that she is unable to meet those obligations without the applicant's assistance.

The applicant's spouse has stated that she wants to continue her education and cannot do so without the financial assistance of the applicant. Although the AAO recognizes that the applicant's spouse might desire to seek additional educational development, having to maintain employment in order to support herself or family members rather than attending college has not been established as an uncommon impact.

When the impacts due to separation are considered in the aggregate, the AAO does not find the record to establish that the applicant's spouse will experience hardship rising to the degree 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).

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As the applicant has not demonstrated extreme hardship from 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. Having found the applicant statutorily ineligible for relief, no purpose would be served in discussing whether he merits a 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 rests with the applicant. *See* 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.