



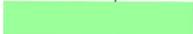
U.S. Citizenship
and Immigration
Services

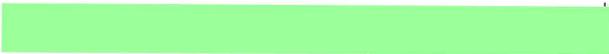
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DATE: **MAR 28 2013**

OFFICE: TEGUCIGALPA

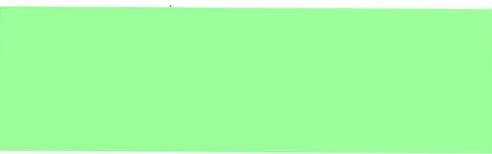
FILE: 

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, Tegucigalpa, Honduras and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native and citizen of Nicaragua 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 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 U.S. citizen spouse and step-children.

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 July 3, 2012.

On appeal, counsel asserts that the director erred in denying the waiver and did not consider the aggregate hardship the applicant's qualifying relative would endure. *See Form I-290B, Notice of Appeal or Motion* (Form I-290B), received August 2, 2012, and counsel's brief.

The record contains, but is not limited to: Form I-290B and counsel's brief; Form I-601; statements by the applicant's spouse and children; a psychological evaluation of the applicant's spouse; medical documents; and birth certificates. 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) [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 on an unspecified date in 2005 and was placed into immigration proceedings after he was arrested for a traffic violation on January 30, 2009. He was given voluntary departure by an immigration judge and complied with the order; he left the United States on December 17, 2010. As the record reflects that the applicant remained in the United States without legal status for more than one

year, he is found to be inadmissible under 212(a)(9)(B)(i)(II) of the Act. Counsel does not contest his 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 his children 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 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 record contains references to hardship the applicant’s step-children would experience if the waiver application were denied. It is noted that Congress did not include hardship to an alien’s children as a factor to be considered in assessing extreme hardship under section 212(a)(9)(B)(v) of the Act. In the present case, the applicant’s spouse is the only qualifying relative for the waiver under section 212(a)(9)(B)(v) of the Act, and hardship to the applicant’s step-children will not be separately considered, except as it may affect the applicant’s spouse.

The applicant’s 38 year-old spouse is a native and citizen of the United States. The applicant’s spouse indicates that she has known the applicant since 2006 and married him on [REDACTED]. She states they lived together for two years and eight months with her three children before he was detained. She explains that she married her first husband at a young age to escape the problems in her “broken home,” only to be with a man that abused her physically, mentally and emotionally. After twelve years of marriage and raising three children, she left her husband. The applicant’s spouse explains the economic difficulties of being a single mother before she met the applicant, but also the freedom she felt in no longer being afraid. Furthermore, she asserts that the applicant supported her and her children emotionally and financially. The applicant’s spouse describes their

life as a complete family and seeing her children happy with a father figure. She states that when the applicant was detained, she and her children were not able to sleep, had trouble focusing and did not eat well.

After the applicant left the United States, she states that “[t]hings are falling apart.” She could no longer afford to pay for their home, and they moved to her mother’s residence. She states that it is difficult to pay for the expenses of their storage unit, vehicle, children’s braces, medical visits, and other bills, as the applicant was the main provider of their household before their separation. Her expenses include two trips to visit the applicant in Nicaragua and weekly remittances to support him because he cannot find employment. Her children state that their financial situation is difficult on their mother and express a desire to help her by, for example, minimizing their school related activities. Although documents related to her health were submitted, the record lacks corroborating evidence of her financial situation, such as the applicant’s financial contribution to their household before he left the United States, the applicant’s spouse’s income, their expenses before the applicant’s spouse and her children moved, and their current expenses, including rent, credit card bills, car payments, school fees, her children’s medical costs, and remittances, in order to determine the severity of the financial impact of the applicant’s departure. 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 applicant’s spouse indicates that her emotional hardship led her to visit a doctor in January 2011 who diagnosed her with depression and prescribed her anti-depressant medications. The record contains corroborating evidence of her prescription medication for depression and high blood pressure. A psychological evaluation indicates that the applicant’s spouse reports various symptoms of major depressive disorder, such as “constant fatigue, body aches, . . . headaches, memory loss, crying spells, isolation, inconsistent eating patterns, . . . irritability, intense fear [and] intermittent desire to die.” The applicant’s spouse reported to her psychologist that these symptoms worsened approximately three months after the applicant left the United States. The applicant’s spouse further explains the effect of her children’s behavior on her.

While the AAO acknowledges the emotional and financial difficulty of their separation and the positive impact the applicant has had on the applicant’s spouse’s and her children’s lives, the evidence in the record is not sufficient to show, in the aggregate, that the applicant’s spouse is suffering extreme hardship. In particular, the lack of documentation relating to the applicant’s spouse’s financial hardship is not sufficient. Thus, the AAO does not find that the applicant’s spouse suffers extreme hardship based on separation.

The applicant’s spouse indicates that she has considered relocating to Nicaragua but does not believe her children would be able to adjust to life there. The applicant’s spouse visited the applicant in Nicaragua twice. She states that the applicant lives with his mother, aunt, uncle, sister and her family in a two-room house; therefore, there would be no space for their family. She worries that she may not be able to find employment and support their family. According to her

psychological report, the applicant's spouse believes that "Nicaragua provides limited educational and employment opportunities for all members of the family."

The applicant has lived in the United States her entire life and stated that she did not have a passport because she never felt the need to travel. She indicates that she feels grateful to have her mother and brother help her. She also indicates that she participates in her religious community and attends church.

The AAO has considered in the aggregate all assertions of relocation-related hardship, including the applicant's spouse's adjusting to a country in which she has never resided; her family, community and religious ties to the United States; and her medical care. The AAO finds that, considered in the aggregate, the evidence is not sufficient to demonstrate that the applicant's spouse would suffer extreme hardship if she were to relocate to Nicaragua to be with the applicant. In particular, the record lacks evidence, such as reports about safety, standard of living, opportunities and general conditions in Nicaragua, corroborating the applicant's spouse's stated concerns about living in Nicaragua.

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.