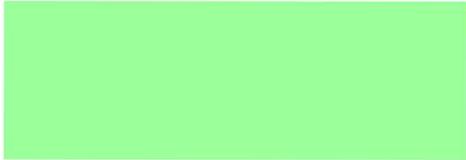


(b)(6)

U.S. Department of Homeland Security
U. S. Citizenship and Immigration Service:
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090



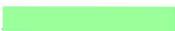
U.S. Citizenship
and Immigration
Services



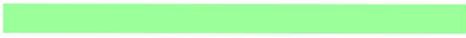
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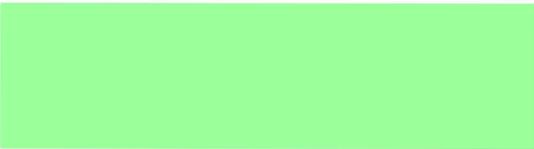
IN RE:

Applicant: 

APPLICATION:

Application for Waiver of Grounds of Inadmissibility under section 212(a)(9)(B) of the Immigration and Nationality Act, 8 U.S.C. § 1182(a)(9)(B)

ON BEHALF OF APPLICANT:



INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office (AAO) in your case.

This is a non-precedent decision. The AAO does not announce new constructions of law nor establish agency policy through non-precedent decisions. If you believe the AAO incorrectly applied current law or policy to your case or if you seek to present new facts for consideration, you may file a motion to reconsider or a motion to reopen, respectively. Any motion must be filed on a Notice of Appeal or Motion (Form I-290B) within 33 days of the date of this decision. **Please review the Form I-290B instructions at <http://www.uscis.gov/forms> for the latest information on fee, filing location, and other requirements. See also 8 C.F.R. § 103.5. Do not file a motion directly with the AAO.**

Thank you,



Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the International Adjudications Support Branch on behalf of the Field Office Director, San Salvador, El Salvador. 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 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 again seeking admission within 10 years of his last departure from the United States. The record reflects that the applicant entered the United States without inspection in February 1999, remaining until May 2011. The applicant seeks a waiver of inadmissibility in order to reside in the United States with his U.S. citizen spouse.

The Field Office Director found that the applicant failed to establish that his qualifying relative would experience extreme hardship as a consequence of his inadmissibility. The application was denied accordingly. *See Decision of the Field Office Director* dated August 6, 2012.

On appeal, filed on August 15, 2012, and received by the AAO on May 1, 2013, counsel for the applicant contends in the Notice of Appeal (Form I-290B) that there are new facts supported by documentary evidence. With the appeal counsel submits a statement from the applicant's spouse and the spouse's son, a psychological assessment of the applicant's spouse, medical documentation for the applicant and spouse, financial documentation, and country information for El Salvador. The record also contains letters from the spouse's employer and friends. The entire record was reviewed and considered in rendering this decision.

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

(B) Aliens Unlawfully Present.-

(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.

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. 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. *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.

On appeal the applicant's spouse states that she suffered domestic violence in her first marriage and only remarried because of the applicant's love and patience. She states that she cannot pay her bills without the applicant's income and fears she will lose their home, which she is now renting out while she lives with a son whose wife does not like her. The applicant's spouse states that if she loses the current renters she cannot afford to remodel the house to rent again without the applicant to do the work. She states that she does not want to live in El Salvador because of the violence and fears the applicant's life is endangered due to crime and gangs that threaten him for money. The spouse states she cannot sleep, has lost weight, and cannot concentrate at her work because she feels alone and needs the applicant's companionship.

The spouse's son states that he is worried about his mother's situation affecting her work performance, as she has trouble concentrating, and that the stress caused her to faint while caring for her granddaughter.

An assessment from a clinical social worker states that the applicant's spouse is struggling emotionally and financially without the applicant, as she fears she cannot meet monthly expenses on only one income. It states that the spouse reports having a difficult time transitioning to living with her son and giving up her independence, is overwhelmed by financial and emotional responsibilities since the applicant's departure, and cannot focus at work, where she is a personal caregiver for an elderly couple. The assessment states that the spouse reports having suffered domestic violence in first marriage and believes that the applicant changed her life. The assessment states that the applicant's spouse has established roots in the community with many resources for emotional support, and it would be difficult for her to move to another country and be separated from her home, children, and grandchild. It further states that the spouse has many years with her current employer, and at her age she would have difficulty finding a job in El Salvador. It states that the spouse fears the applicant will be unable to find work in El Salvador to support the family and that having no support system in El Salvador would be a strain for the spouse.

A letter from the spouse's employer states that she has worked with them for more than 20 years, but that her emotional stress over the applicant being in El Salvador has a negative, distracting effect on her.

The AAO finds the record to establish that the applicant's spouse would experience extreme hardship if she were to relocate to El Salvador to reside with the applicant. The record reflects that the applicant's spouse has resided in the United States since 1989, becoming a U.S. citizen in 1995, has two children in the United States, owns a home, and has been with the same employer for more than 20 years. Further, the U.S. Department of State warns that crime and violence levels in El Salvador remain critically high and recommends that all travelers exercise caution when traveling anywhere and avoid walking at night in most areas of El Salvador. *U.S. Department of State, Bureau of Consular Affairs, Travel Warning – El Salvador*, August 9, 2013.

As such, the record reflects that the cumulative effect of the qualifying spouse's family ties to the United States, her length of residence in the United States, her safety concerns in El Salvador, her loss of employment, and the possible loss of her home if she were to relocate, rises to the level of extreme. The AAO thus concludes that were the applicant unable to reside in the United States due to his inadmissibility, his qualifying spouse would suffer extreme hardship if she relocated to El Salvador to reside with him.

The AAO finds, however, that the record fails to establish that the qualifying spouse will suffer extreme hardship as a consequence of being separated from the applicant. The spouse states that she cannot sleep or concentrate without the applicant, and the psychological assessment states that the spouse feels overwhelmed without the applicant. The assessment provided does not establish that the hardships the applicant's spouse experiences are beyond the hardships normally associated when a spouse is found to be inadmissible. The AAO recognizes that the applicant's U.S. citizen spouse will endure some hardship as a result of long-term separation from the applicant. However the record does not show how such emotional hardships are outside the ordinary consequences of separation as the result of removal or inadmissibility.

The spouse states that she needs the applicant's financial support. The record contains tax and mortgage documentation, a credit card bill, and receipts for money transmittals from the spouse to the applicant, but no documentation has been submitted to establish the applicant's financial contribution before he departed the United States to support that without his physical presence in the United States the spouse experiences financial hardship. Courts considering the impact of financial detriment on a finding of extreme hardship have repeatedly held that, while it must be considered in the overall determination, "[e]conomic disadvantage alone does not constitute "extreme hardship." *Ramirez-Durazo v. INS*, 794 F.2d 491, 497 (9th Cir. 1986). Further, it has not been established that the applicant is unable to support himself while in El Salvador, thereby ameliorating any hardship to the applicant's spouse with respect to supporting the applicant.

The AAO recognizes that the applicant's spouse endures hardship as a result of separation from the applicant. However, her situation if she remains in the United States is typical to individuals separated as a result of removal or inadmissibility and does not rise to the level of extreme hardship based on the record. The difficulties that the applicant's spouse faces as a result of separation from

the applicant, even when considered in the aggregate, do not rise to the level of extreme as contemplated by statute and case law.

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

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.

In application proceedings, it is the applicant's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361. Here, that burden has not been met.

ORDER: The appeal is dismissed.