



U.S. Citizenship
and Immigration
Services

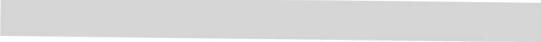
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DATE: APR 28 2015

Office: GUATEMALA CITY

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:

SELF-REPRESENTED

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.

Thank you,



Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The Field Office Director, Guatemala City, Guatemala, denied the waiver application, the Administrative Appeals Office (AAO) dismissed a subsequent appeal, and the matter is before the AAO on motion. The motion is granted, the prior AAO decision is withdrawn, and the underlying appeal is sustained.

The applicant is a native and a citizen of Guatemala 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 unlawful presence of one year or more. The applicant seeks a waiver of inadmissibility in order to immigrate as the beneficiary of an approved Petition for Alien Relative (Form I-130).

The field office director concluded the applicant had failed to establish that extreme hardship would be imposed on a qualifying relative and, accordingly, denied the Application for Waiver of Grounds of Inadmissibility (Form I-601). *Decision of Field Office Director*, October 15, 2010. On appeal, the AAO also concluded the record evidence did not establish that a qualifying relative would suffer extreme hardship as a result of the applicant's inadmissibility. *Decision of the AAO*, October 10, 2012.

On motion, filed on November 5, 2012 and received by the AAO on November 21, 2014, the applicant asserts that the evidence establishes his wife would suffer extreme hardship if she relocated to Guatemala. In support of the motion, he provides an updated hardship statement and country condition information. This evidence supplements a record containing documentation including a psychological evaluation, medical records, financial information, supportive statements, and photographs. The entire record was reviewed and considered in rendering this decision.

According to USCIS regulations, a motion to reopen must state the new facts to be proved in the reopened proceeding and be supported by affidavits or other documentary evidence. 8 C.F.R. § 103.5(a)(2). A motion to reconsider must state the reasons for reconsideration and be supported by any pertinent precedent decisions to establish that the decision was based on an incorrect application of law or Service policy. A motion to reconsider a decision on an application or petition must, when filed, also establish that the decision was incorrect based on the evidence of record at the time of the initial decision. 8 C.F.R. § 103.5(a)(3).

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.

.....
(v) Waiver. – The Attorney General [now the Secretary of Homeland Security (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 Attorney General (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....

The record reflects that the applicant entered the country in February 1998¹ without admission or parole and departed either in May or November 2009, thereby triggering his inadmissibility pursuant to section 212(a)(9)(B)(i)(II) of the Act. He therefore requires a waiver in order to return to the United States.

A waiver 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 can be considered only insofar as it results in hardship to a qualifying relative. The applicant's U.S. citizen 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 applicant has established extreme hardship to a qualifying relative. 22 I&N Dec. 560, 565 (BIA 1999). 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; the Board added that not all of these factors need be analyzed in any given case and emphasized that the list is 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

¹ He began accruing unlawful presence on [REDACTED], 1998, when he turned 18.

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, 631-32 (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, "[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, or cultural readjustment 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, although 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. INS*, 138 F.3d 1292, 1293 (9th Cir. 1998) (quoting *Contreras-Buenfil v. INS*, 712 F.2d 401, 403 (9th Cir. 1983)); conversely, *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 case-by-case whether denial of admission would result in extreme hardship to a qualifying relative.

We found on appeal that the applicant's wife would suffer extreme hardship by being separated from her husband, but that the applicant had not shown his wife would experience extreme hardship by relocating to remain with him. The applicant must therefore establish that moving to Guatemala would impose hardship that goes beyond the usual or common results of the removal or inadmissibility of a family member.

The record reflects that the applicant's wife arrived in the United States from her native El Salvador in 1981 with her first husband and became a U.S. citizen in 2003. The record shows that her two adult children from the prior marriage live here, along with their two children. Although both her parents are deceased, she has a sister in El Salvador, with whom she has stayed several times, and has made at least five visits to Guatemala to visit her husband. Although not disputing that she is fluent in Spanish, the applicant's wife points to her U.S. citizenship and lack of ties to Guatemala as showing that her life is here. She claims that, although the applicant's parents live there, she stays in a hotel when she visits the applicant because they are impoverished. Besides home ownership and extended family, her U.S. ties include long-term employment with the local school district, church membership, and numerous friends. She expresses concern that leaving the United States would entail loss of her pension benefits only two years before they become vested, make her unable to pay her mortgage due to poor employment prospects for a 54-year old woman, and cause her to lose her home. In addition, she reports fearing widespread violence in Guatemala and inability to receive proper care for her medical conditions.

An August 2010 letter from a clinical psychologist indicates the applicant's wife was being treated for major depression stemming from her husband's absence, and supportive statements confirm they share a close relationship. Also reviewing medical records as part of her examination, the psychologist notes that the qualifying relative has been diagnosed with hypothyroidism, high cholesterol, irritable bowel syndrome (IBS), and migraines. The doctor notes that depression is an aggravating factor for IBS and migraines, and documentation confirms the applicant's wife was taking thyroid replacement and anti-anxiety medication. Evidence confirms that she has a number of ailments and, while not establishing that required treatment would be unavailable in Guatemala, shows they are serious health conditions.

Joint tax filings for the two years before the applicant's departure show him earning slightly less than 50% of household income. His wife's most recently reported income was \$36,000 in 2008, of which she claims nearly \$2,100 in take home pay. Besides a nearly \$800 monthly mortgage payment, documentation shows cash withdrawals from Guatemala and several other expenses of daily living. The record indicates that his parents live in a rural area of the country, but not whether he resides with them. There is no evidence regarding the applicant's cost of living in Guatemala, whether he is working, or his income.

Documentation submitted in support of the qualifying relative's updated statement includes country condition information and news articles reporting on crime and violence in Guatemala. While official U.S. government reporting confirms that crime is a serious problem, it notes that U.S. citizens have not been targeted and the last reported kidnapping of a U.S. citizen was two years ago. See *Country Information—Guatemala*, U.S. Department of State (DOS), January 21, 2015. Although there is no evidence that either the applicant or his wife is subject to any specific threat, we observe that DOS notes that Guatemala's high murder rates make it one of the most dangerous countries in the Western Hemisphere, the number of violent crimes reported by U.S. citizens has remained high, and such crimes have occurred in areas once considered safe. And,

while the DOS website indicates that the full range of medical care is available in the nation's capital and states that many hospital-based specialists are U.S.-trained and –certified, we are sensitive that in seeking such care, the qualifying relative would expose herself to the potential violence of Guatemala City, where she has no ties besides the applicant.

Based on the totality of the circumstances, we conclude the record establishes that the applicant's wife would experience extreme hardship if she relocates to Guatemala. Although she speaks Spanish, she is not a native of Guatemala, but of El Salvador. She has spent 34 of her 54 years, including her entire adult life, living and working in the United States. She raised two children here who are now adults, her two grandchildren live here, and she has strong ties to her community. Her ownership of a home with a mortgage, which she and the applicant were paying jointly, would be jeopardized by moving abroad, as would her health care options and personal safety. Considering the evidence in the aggregate, we find the hardship the applicant's wife would experience by relocating rises to the level of extreme.

The documentation on record, when considered in its totality, reflects the applicant has established that his wife would suffer extreme hardship were the applicant unable to reside in the United States. Accordingly, we find that the situation presented in this application rises to the level of hardship required for a waiver. However, the grant or denial of the waiver does not turn only on the issue of extreme hardship. It also hinges on the discretion of the Secretary pursuant to such terms, conditions and procedures as he may by regulations prescribe. In discretionary matters, the alien bears the burden of proving eligibility in terms of equities in the United States which are not outweighed by adverse factors. *See Matter of T-S-Y-*, 7 I&N Dec. 582 (BIA 1957):

In evaluating whether . . . relief is warranted in the exercise of discretion, the factors adverse to the alien include the nature and underlying circumstances of the exclusion ground at issue, the presence of additional significant violations of this country's immigration laws, the existence of a criminal record, and if so, its nature and seriousness, and the presence of other evidence indicative of the alien's bad character or undesirability as a permanent resident of this country. The favorable considerations include family ties in the United States, residence of long duration in this country (particularly where alien began residency at a young age), evidence of hardship to the alien and his family if he is excluded and deported, service in this country's Armed Forces, a history of stable employment, the existence of property or business ties, evidence of value or service in the community, evidence of genuine rehabilitation if a criminal record exists, and other evidence attesting to the alien's good character (e.g., affidavits from family, friends and responsible community representatives).

See Matter of Mendez-Morales, 21 I&N Dec. 296, 301 (BIA 1996).

We must then “balance the adverse factors evidencing an alien’s undesirability as a permanent resident with the social and humane considerations presented on the alien’s behalf to determine whether the grant of relief in the exercise of discretion appears to be in the best interests of the country.” *Id.* at 300. (Citations omitted).

The favorable factors in this matter are the extreme hardships the applicant’s wife will face if the applicant is unable to return from Guatemala, regardless of whether she joins him there or remains here; the applicant’s long residence in the United States and history of employment; his family and community ties here; support letters from family, friends, and pastor evidencing good character and community service; and passage of over 17 years since his unlawful entry at the age of 16. The unfavorable factors in this matter concern the applicant’s unlawful entry into the United States.

Although the applicant’s immigration violations are serious, the record establishes that the positive factors in this case outweigh the negative factors and a favorable exercise of discretion is warranted. The burden of establishing eligibility for the waiver rests entirely with the applicant. *See* section 291 of the Act, 8 U.S.C. § 1361. In this case, the applicant has met that burden and, accordingly, our prior decision will be withdrawn.

ORDER: The motion is granted. The prior decision of the AAO dismissing the appeal is withdrawn and the underlying appeal is sustained.