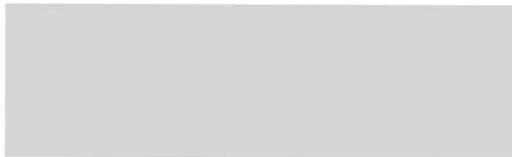




U.S. Citizenship  
and Immigration  
Services

(b)(6)



DATE: **JUL 13 2015**

FILE #: [REDACTED]

APPLICATION RECEIPT #: [REDACTED]

IN RE: Applicant: [REDACTED]

APPLICATION: Application for Waiver of Grounds of Inadmissibility pursuant to 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:

NO REPRESENTATIVE OF RECORD

Enclosed is the non-precedent decision of the Administrative Appeals Office (AAO) for your case.

If you believe we incorrectly decided your case, you may file a motion requesting us to reconsider our decision and/or reopen the proceeding. The requirements for motions are located at 8 C.F.R. § 103.5. Motions must be filed on a Notice of Appeal or Motion (Form I-290B) **within 33 days of the date of this decision**. The Form I-290B web page ([www.uscis.gov/i-290b](http://www.uscis.gov/i-290b)) contains the latest information on fee, filing location, and other requirements. **Please do not mail any motions directly to the AAO.**

Thank you,

A handwritten signature in black ink, appearing to read "Ron Rosenberg".

Ron Rosenberg  
Chief, Administrative Appeals Office

**DISCUSSION:** The waiver application was denied by the Director, Nebraska Service Center, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The record reflects that the applicant is a native and 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 having been unlawfully present for one year or more and seeking readmission within 10 years of his last departure. The applicant's spouse is a U.S. citizen. The applicant 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 reside in the United States with his family.

The Director found that the applicant did not establish extreme hardship to a qualifying relative and denied the Form I-601, Application for Waiver of Grounds of Inadmissibility, accordingly. *Decision of the Director*, dated August 16, 2014.

On appeal, the applicant's spouse details the hardship she would experience if the waiver application is denied. *Applicant's Spouse's Statement*, dated September 12, 2014.

The record includes, but is not limited to, documents establishing identity and relationships, statements from the applicant's spouse, and statements in support of the applicant's character. The entire record was reviewed and considered in arriving at a decision on the appeal.

Section 212(a)(9) 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.

(iii) Exceptions.-

(I) Minors.-No period of time in which an alien is under 18 years of age shall be taken into account in determining the period of unlawful presence in the United States under clause (i).

....

- (v) Waiver.-The Attorney General [now 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 [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. No court shall have jurisdiction to review a decision or action by the [Secretary] regarding a waiver under this clause.

The record reflects that applicant entered the United States without inspection in January 2005 and departed the United States in June 2013. The applicant accrued unlawful presence from [REDACTED] the date he turned 18 years old, until June 2013, the date he departed the United States. The applicant is inadmissible to the United States under section 212(a)(9)(B)(i)(II) of the Act for being unlawfully present in the United States for a period of one year or more and seeking readmission within ten years of his June 2013 departure from the United States. The applicant does not contest this ground of inadmissibility.

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 his child can be considered only insofar as it results in hardship to a qualifying relative, in this case the applicant's spouse. If extreme hardship to a qualifying relative is established, the applicant is statutorily eligible for a waiver, and U.S. Citizenship and Immigration Services 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.

We will first address hardship to the applicant’s qualifying relative upon relocation to Guatemala. The applicant’s spouse states that she was born in the United States; her family is close and lives in California; she would be isolated with no friends or family; she would not have a doctor in Guatemala who knows her and the applicant’s daughter’s medical history; their daughter will receive better healthcare in the United States; their daughter has a sensitive immune system and their daughter’s physician believes it would be best for her to remain in the United States; education in the United States is superior and more realistic to obtain than in Guatemala; their daughter may have to quit school at an early age to help the family financially; they would not have a nice house and reliable vehicles; and they could never retire in Guatemala. The applicant’s spouse states that Guatemala has issues with violence and there are many criminals there.

The record reflects that the applicant’s spouse may experience difficulty in Guatemala. However, the record does not include supporting documentary evidence of the applicant’s spouse’s medical conditions or their daughter’s medical issue; their daughter’s legal status in the United States; the

applicant's spouse's family members in the United States; the lack of educational opportunity in Guatemala; the lack of suitable medical care in Guatemala; the safety issues in Guatemala and whether the applicant's spouse would reside in an unsafe area; or of any other hardship she may experience in Guatemala. 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'r 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm'r 1972)). We find that there is insufficient documentary evidence of emotional, financial, medical or other types of hardship that, considered in their totality, establish that the applicant's spouse would experience extreme hardship upon relocation to Guatemala.

Addressing the hardships the applicant's spouse would experience if she remained in the United States without the applicant, she states that she lives with her mother because that is her only option financially; she struggles with bills, paying debts and daycare expenses; she sometimes works 12-hour shifts; while the applicant worked in the United States, he could support them; she sends money to the applicant when she can; internet, phone and travel costs are high; and she and their daughter never see him because it is too expensive.

The applicant's spouse also states that their daughter will be without a father; their daughter asks for the applicant every night; her family loves each other; she previously tried going to school; she would be able to attend school and watch their daughter if the applicant was present; she is constantly thinking about the possibility of the applicant's death due to violence in Guatemala; she is always stressed, is unable to sleep, has a facial twitch and grinds her teeth from anxiety; she takes their daughter for medical and dental appointments; and she does not have time to take care of her own health. The applicant's spouse describes having anxiety attacks, panic attacks, insomnia, high blood pressure and severe depression; and her medical conditions are worsening without the applicant. The record includes letters from friends addressing the applicant's good character and his love for his daughter.

Although the record reflects that the applicant's spouse is experiencing emotional hardship without the applicant, the record does not include supporting documentary evidence to corroborate claims about her medical conditions; her expenses; her income; income that the applicant received while in the United States; her prior attendance in school; or other hardships she may be experiencing without the applicant. The record lacks sufficient documentary evidence of emotional, financial, medical or other types of hardship that, in their totality, establish that the applicant's spouse would experience extreme hardship upon remaining in the United States.

The documentation in the record does not establish the existence of extreme hardship to a qualifying relative caused by the applicant's inadmissibility to the United States. Therefore, we find that no purpose would be served in discussing whether he 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.