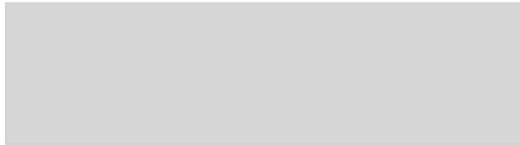




U.S. Citizenship
and Immigration
Services

(b)(6)



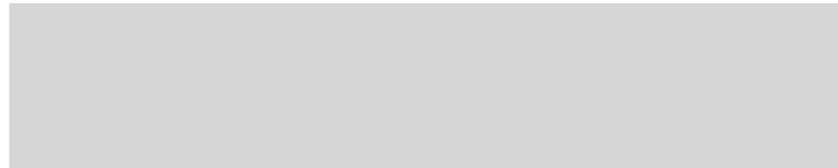
DATE: **JUN 12 2015**

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:



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) 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 that reads "Ron Rosenberg".

Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The Nebraska Service Center Director denied the waiver application. 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 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 one year or more. The applicant is married to a naturalized citizen of the United States and is the beneficiary of an approved Form I-130, Petition for Alien Relative. 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.

The director concluded that the applicant had failed to establish that her bar to admission would impose extreme hardship on her qualifying relative, her U.S. citizen spouse. The application was denied accordingly. *Decision of the Director*, dated August 13, 2014.

On appeal, the applicant, through counsel, asserts that the director failed to consider the U.S. Department of State's 2013 Country Report for Ecuador, which describes Ecuador's high crime rate. The applicant further asserts that the director failed to consider the mental health of her two children, as it affects her qualifying spouse. Finally, the applicant asserts that the director failed to consider the applicant's spouse's own mental-health problems, physical exhaustion and severe migraine headaches. *Form I-290B, Notice of Appeal or Motion*, filed September 11, 2014, and accompanying brief.

The record includes, but is not limited to, statements from the applicant, her qualifying spouse, friends, family, and co-workers; identity and relationship documents; financial documentation; medical documentation; psychosocial evaluations; and reports on conditions in Ecuador. The entire record, with the exception of documents in Spanish, was reviewed and considered in rendering a decision on the appeal.¹

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-

¹ The applicant submits untranslated evidence of what appear to be remittance receipts. Because the applicant does not submit certified translations of these documents, we are unable to determine whether the evidence supports the applicant's claims. See 8 C.F.R. § 103.2(b)(3) (any document containing foreign language submitted to USCIS shall be accompanied by a full English language translation which the translator has certified as complete and accurate, and by the translator's certification that he or she is competent to translate from the foreign language into English).

....

(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 the Department 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.

In the present case, the record indicates that the applicant entered the United States without inspection in 2006 and departed the United States in May 2008. She married her spouse, a native of Ecuador and a U.S. citizen, in Ecuador in 2010. As she resided unlawfully in the United States for more than one year and seeks admission within 10 years of her last departure from the United States, the director correctly found the applicant inadmissible to the United States under section 212(a)(9)(B)(i)(II) of the Act. The applicant does not contest this finding.

A section 212(a)(9)(B)(v) waiver of the bar to admission resulting from section 212(a)(9)(B)(i)(II) of the Act is dependent first upon a showing that the bar imposes an extreme hardship to a qualifying relative, i.e., the U.S. citizen or lawfully resident spouse or parent of the applicant. Hardship to the applicant or her children is not relevant under the statute and will be considered only insofar as it results in hardship to a qualifying relative. Once extreme hardship is established, it is but one favorable factor to be considered in the determination of whether the Secretary should exercise discretion. See *Matter of Mendez-Morales*, 21 I&N Dec. 296 (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.

The applicant asserts that her qualifying spouse would face extreme hardship if he relocated to Ecuador in order to reside with her. Concerning the emotional hardship he would experience upon relocation, the applicant's qualifying spouse states that he came to the United States in 1995 and became a U.S. citizen in 2008. He adds that he is close to his extended family in the United States

and does not want to separate from them. The applicant's spouse states that most of his family, including his four brothers and two sisters and their children, reside in the United States. Moreover, the applicant's two children, now ages 16 and 22, recently immigrated and live with her spouse in the United States. The record also reflects that the applicant's spouse's parents and one brother still reside in Ecuador. The qualifying spouse asserts that he would be emotionally adversely affected if he and their children relocated to Ecuador, given the high levels of crime and violence there. The a licensed psychoanalyst and pastoral counselor who prepared a letter describing the family's emotional issues reports that the applicant's stepdaughter is afraid both she and the applicant could be kidnapped in Ecuador.

In addition, the applicant's spouse states he could not move to Ecuador because if he did so, he would lose his career and health insurance. He states that he has built up his own business in construction. The record includes letters from former co-workers and clients supporting the applicant's claim about his business. In support of the applicant's assertion that her spouse would face financial hardship if he relocated to Ecuador, she submits a letter written by a licensed certified social worker, who states that there are high rates of unemployment in Ecuador and it is difficult to find work without a college degree. She says that given the applicant's spouse's age (40) and length of time in the United States, it would be extremely difficult for him to find stable employment.

The applicant submits country reports that address Ecuador's high crime rate and state that corruption is widespread. In 2013, the U.S. Department of State published a report stating that violent crime has increased over the last few years with American citizens being victims of crimes such as homicide, armed assault, robbery, sexual assault and home invasions. Tourists have been robbed at gunpoint on beaches and along hiking trails. The report states that kidnappings have occurred along the northern border with Colombia. The applicant, through counsel, asserts that the local police in Ecuador are ill-equipped to curtail the violence.

The record, reviewed in its entirety, does not show that the applicant's spouse, a native of Ecuador, would experience extreme hardship if he were to relocate to Ecuador. Though he may have difficulty finding employment, the applicant does not submit corroborating evidence documenting her spouse's employment prospects and labor conditions for individuals similarly situated to him in Ecuador. Though a social worker concludes finding work would be difficult for the applicant's spouse, her qualifications to address these matters are unclear in the record. Moreover, though he may experience emotional hardship caused by separation from his extended family, the record reflects that the applicant's spouse also maintains some close family ties to Ecuador. The record does not contain sufficient evidence to show that the hardships faced by the qualifying relative, considered in the aggregate, rise beyond the common results of removal or inadmissibility to the level of extreme hardship.

The applicant asserts that her qualifying spouse would face extreme hardship if he remains in the United States and her waiver application is denied. According to a letter she submits on appeal from a licensed psychoanalyst and pastoral counselor, the applicant suffers from reactive depression, high levels of anxiety, insomnia and migraine headaches. According to a licensed clinical social worker's

reports submitted over a period of several months, the applicant's qualifying spouse is sad, lonely, stressed, hopeless, and isolated as the result of his separation from the applicant. She states that according to the applicant's spouse, he avoids seeing his family members because of his emotional state. Because she perceived signs of depression in the applicant's spouse, they discussed the possibility of his seeking regular mental-health counseling. The applicant's spouse sustained an injury to his shoulder, and has sought medical attention for muscle, back and chest pain. He says that he believes that these were caused by the tremendous stress he feels being responsible for his step-children in the applicant's absence.

The applicant's spouse asserts that if his step-children continue to reside in the United States without the applicant, their emotional suffering will continue to cause him distress. The pastoral counselor writes that the step-children miss the applicant terribly and that they both suffer from reactive depression, anxiety and insomnia due to the separation. He further states that the applicant's son lacks adequate parental supervision and his academic performance is suffering.

Concerning the financial hardship that her spouse would experience if he remained in the United States without her, the applicant submits letters from her qualifying spouse's employers and co-workers, who assert that her qualifying spouse has lost income and incurred substantial expense as the result of his travel to Ecuador to see her. The record does not include evidence of the travel expenses the applicant's spouse has incurred. Although the applicant's assertions are relevant and have been taken into consideration, little weight can be afforded them in the absence of supporting evidence. See *Matter of Kwan*, 14 I&N Dec. 175 (BIA 1972) ("Information in an affidavit should not be disregarded simply because it appears to be hearsay; in administrative proceedings, that fact merely affects the weight to be afforded it."). Moreover, 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 states that he visits the applicant between two and three times annually and that he supports her financially. The record includes an English-language list of remittances from the applicant's spouse, sent to her between February 2013 and August 2014, in addition to a Spanish-language list that is untranslated.

The statements of the applicant, her qualifying spouse, and children coupled with reports from two counselors all indicate that the applicant's qualifying spouse and children miss the applicant. Although the applicant's spouse may experience some emotional hardship in the applicant's absence, the record does not establish that the hardship goes beyond what is normally experienced by qualifying relatives of inadmissible individuals. Moreover, while the record reflects that the applicant's qualifying spouse is successfully self-employed, it lacks evidence of his financial obligations, other than his remittances, and his inability to meet those obligations in the applicant's absence. Therefore the record, reviewed in its entirety and in light of the *Cervantes-Gonzalez* factors, cited above, lacks sufficient evidence to show that the hardships faced by the qualifying relative, considered in the aggregate, rise beyond the common results of removal or inadmissibility to the level of extreme hardship.

U.S. court decisions have repeatedly held that the common results of deportation or exclusion are insufficient to prove extreme hardship. See *Hassan v. INS*, 927 F.2d 465, 468 (9th Cir. 1991). For example, *Matter of Pilch*, 21 I&N Dec. 627 (BIA 1996), held that emotional hardship caused by severing family and community ties is a common result of deportation and does not constitute extreme hardship. In addition, *Perez v. INS*, 96 F.3d 390 (9th Cir. 1996), held that the common results of deportation are insufficient to prove extreme hardship and defined extreme hardship as hardship that was unusual or beyond that which would normally be expected upon deportation. *Hassan v. INS*, *supra*, held further that the uprooting of family and separation from friends does not necessarily amount to extreme hardship but rather represents the type of inconvenience and hardship experienced by the families of most aliens being deported.

In this case, the record does not contain sufficient evidence to show that the hardships faced by the qualifying relative, considered in the aggregate, rise beyond the common results of removal or inadmissibility to the level of extreme hardship. 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.