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



**U.S. Citizenship
and Immigration
Services**



H6

DATE: OCT 05 2011

Office: MEXICO CITY

FILE:



IN RE: Applicant:



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

ON BEHALF OF APPLICANT:

SELF-REPRESENTED

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 law was inappropriately applied by us in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$630. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

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Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Acting District Director, Mexico City, Mexico, 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 Mexico who entered the United States without authorization in January 2002 and did not depart the United States until April 2006. The applicant was thus 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.¹

In addition, the AAO notes that subsequent to filing the instant appeal, the applicant attempted to procure entry to the United States in May 2011 by presenting a B1/B2 Border Crossing Card that did not belong to her. *See Record of Sworn Statement in Proceedings*, dated May 15, 2011. The applicant was removed on July 14, 2011. *See Notice to Alien Ordered Removed/Departure Verification*. As such, the applicant is also inadmissible to the United States pursuant to section 212(a)(6)(C)(i) of the Act, 8 U.S.C. § 1182(a)(6)(C)(i), as an alien who has sought to procure entry to the United State through fraud or willful misrepresentation. The applicant seeks a waiver of inadmissibility in order to reside in the United States with her U.S. citizen spouse.

The acting district director concluded that the applicant had failed to establish that extreme hardship would be imposed on a qualifying relative and denied the Application for Waiver of Grounds of Excludability (Form I-601) accordingly. *Decision of the Acting District Director*, dated August 18, 2008.

On appeal, the applicant² submits the following: a letter from the applicant's spouse; medical documentation pertaining to the applicant's spouse; birth certificates for the applicant and her family; photographs of the applicant and her family; financial documentation; and support letters. The entire record was reviewed and considered in rendering this decision.

Section 212(a)(6)(C) of the Act states, in pertinent part, the following:

- (i) Any alien who, by fraud or willfully misrepresenting a material fact, seeks to procure (or has sought to procure or has procured) a visa, other documentation, or admission into the United States or other benefit provided under this Act is inadmissible.

¹ The applicant does not contest the acting district director's finding of inadmissibility. Rather, she is filing for a waiver of inadmissibility.

² The applicant appears to be represented; however the record does not contain the Form G-28, Notice of Entry of Appearance as Attorney or Representative. All representations will be considered but the decision will be furnished only to the applicant.

Section 212(i) of the Act states, in pertinent part, the following:

(1) The Attorney General [now the Secretary of Homeland Security (Secretary)] may, in the discretion of the Attorney General [Secretary], waive the application of clause (i) of subsection (a)(6)(C) in the case of an alien who is the spouse, 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 the United States of such immigrant alien would result in extreme hardship to the citizen or lawfully resident spouse or parent of such an alien.

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

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.

....

(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....

Waivers of inadmissibility under sections 212(i) and 212(a)(9)(B)(v) of the Act are 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 U.S. citizen spouse is the only qualifying relative in this case. Hardship to the applicant or the children, born in 2003 and 2008, can be considered only insofar as it results in hardship to a 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*, 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's U.S. citizen spouse contends that he will suffer emotional, physical and financial hardship were he to remain in the United States while his spouse resides abroad due to her inadmissibility. In a declaration he states that he loves his wife very much and wants to be together but long-term separation is causing him hardship. He asserts that he is under a physician's care for stress and depression and he nearly had a heart attack and had to be hospitalized. In addition, the applicant's spouse explains that his son lives with him while his daughter resides abroad with the applicant and such an arrangement is causing him hardship. Finally, the applicant's spouse contends that he is supporting two households, one in the United States and one in Mexico, and such a predicament is causing him financial hardship. *Letter from*

In support of the emotional and physical hardship referenced by the applicant's spouse, documentation has been provided establishing that the applicant's spouse was given a 30 day prescription for Fluoxetine, an antidepressant, in September 2008. In addition, a bill has been provided establishing a hospitalization for a heart condition in March 2008. However, no letter has been provided on appeal from the applicant's spouse's treating physician(s) outlining his current medical and mental health conditions, the gravity of the situation, the short and long-term treatment plan, and what specific hardships the applicant's spouse will face were his wife to remain abroad due to her inadmissibility. Nor has it been established that the children are suffering due to the applicant's inadmissibility and their current living arrangements. 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)). Moreover, it has not been established that the applicant's spouse is unable to travel to Mexico, his native country, on a regular basis to visit his wife.

Finally, regarding the financial hardship referenced, the applicant has not provided documentation establishing the applicant's and his spouse's current income and expenses and any assets and liabilities to support the assertion that without the applicant's physical presence in the United States, the applicant's spouse will suffer financial hardship. The AAO notes that copies of overdue bills, without context regarding the family's financial picture as a whole, do not establish financial hardship. Nor has any documentation been provided indicating the applicant's financial

contributions to the household prior to her departure from the United States to establish that her absence is causing her spouse financial hardship. Finally, it has not been established that the applicant is unable to obtain gainful employment in Mexico that would allow her to support herself, thereby ameliorating the hardships referenced by the applicant's spouse in regards to having to support two households.

The AAO recognizes that the applicant's spouse will endure hardship as a result of separation from the applicant. However, his situation, if he remains in the United States, is typical to individuals separated as a result of removal and does not rise to the level of extreme hardship based on the record.

With respect to relocating abroad to reside with the applicant, the applicant's spouse contends that were he to relocate abroad, he would be unable to obtain gainful employment to maintain his standard of living. In addition, the applicant's spouse explains that his parents reside in the United States and a long-term separation from them would cause him hardship. Finally, the applicant's spouse references that the health care and educational systems are substandard in Mexico and thus, a relocation abroad would cause him and his children hardship. *Letter from* [REDACTED]

[REDACTED] The applicant has failed to provide any supporting documentation establishing the hardships the applicant's spouse contends he will experience were he to relocate to Mexico, his native country, to reside with the applicant due to her inadmissibility. As noted above, assertions without supporting documentation do not suffice to establish extreme hardship.

The record, reviewed in its entirety and in light of the *Cervantes-Gonzalez* factors, cited above, does not support a finding that the applicant's U.S. citizen spouse will face extreme hardship if the applicant is unable to reside in the United States. Rather, the record demonstrates that he will face no greater hardship than the unfortunate, but expected, disruptions, inconveniences, and difficulties arising whenever a spouse is removed from the United States and/or refused admission. Although the AAO is not insensitive to the applicant's spouse's situation, the record does not establish that the hardship he would face rises to the level of "extreme" as contemplated by statute and case law.

In proceedings for application for waiver of grounds of inadmissibility, 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. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed. The waiver application is denied.