



U.S. Citizenship
and Immigration
Services

(b)(6)

DATE: JAN 02 2013

OFFICE: MEXICO CITY, MEXICO

FILE: [REDACTED]

IN RE: [REDACTED]

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

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 AAO inappropriately applied the law in reaching its decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen with the field office or service center that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$630. The specific requirements for filing such a motion can be found at 8 C.F.R. § 103.5. **Do not file any motion directly with the AAO.** Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires any motion to be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

Ron Rosenberg
Acting Chief, Administrative Appeals Office

(b)(6)

DICUSSION: The waiver application was denied by the District Director, Mexico City, Mexico and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native and citizen of Mexico who was found inadmissible to the United States pursuant to section 212(a)(2)(A)(i)(I) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(2)(A)(i)(I), for having committed crimes involving moral turpitude and section 212(a)(9)(B)(i)(II) of 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 seeking admission within ten years of his last departure. The applicant is the spouse and father of U.S. citizens. He seeks waivers of his inadmissibilities under sections 212(h) and 212(a)(9)(B)(v) of the Act, 8 U.S.C. §§ 1182(h) and 1182(a)(9)(B)(v), in order to reside in the United States.

The District Director determined that the applicant had failed to establish that the bars to his admissibility would result in extreme hardship for a qualifying relative and denied the Form I-601, Application for Waiver of Ground of Excludability, accordingly. *Decision of the District Director*, dated July 22, 2010.

On appeal, the applicant's spouse asserts that she would experience extreme hardship if the waiver application is not approved. She states that she has medical problems and is struggling financially. *Notice of Appeal or Motion*, dated August 12, 2010; *Applicant's Spouse's Statements*.

The evidence of record includes, but is not limited to: statements from the applicant, his spouse, his stepson and his granddaughter; medical documentation relating to the applicant's spouse and a letter from the applicant's former employer. The entire record was reviewed and all relevant evidence considered in reaching a decision on the appeal.

Section 212(a)(2)(A)(i)(I) of the Act provides:

- (i) [A]ny alien convicted of, or who admits having committed, or who admits committing acts which constitute the essential elements of –
 - (I) a crime involving moral turpitude (other than a purely political offense) or an attempt or conspiracy to commit such a crime . . . is inadmissible.

The record reflects that the applicant pled nolo contendere to second degree Petty Theft, Florida Statutes § 812.014, a second degree misdemeanor, on August 24, 2000. Adjudication was withheld and he was sentenced to six months of probation, fined \$100 and ordered to pay \$20 in court costs. The AAO notes that the District Director also indicated in his decision that in October 2001, the applicant was arrested on a second theft charge, as well as for a probation violation, and that he pled guilty to both. The record, however, indicates that the applicant's 2001 arrest did not involve a second theft offense but was related solely to a probation violation in connection with his 2000 conviction. Accordingly, the applicant is found to have only one conviction for theft.

Section 212(a)(2)(A)(ii) of the Act states in pertinent:

(b)(6)

(ii) Exception.-Clause (i)(I) shall not apply to an alien who committed only one crime if-

- (I) the maximum penalty possible for the crime of which the alien was convicted (or which the alien admits having committed or of which the acts that the alien admits having committed constituted the essential elements) did not exceed imprisonment for one year and, if the alien was convicted of such crime, the alien was not sentenced to a term of imprisonment in excess of 6 months (regardless of the extent to which the sentence was ultimately executed).

In the present case, the applicant has only one conviction, that for second degree Petty Theft, Florida Statutes § 812.014, a second degree misdemeanor. As the maximum sentence for the applicant's offense is limited to 60 days of imprisonment and he was not sentenced to any time in jail, his theft offense, even if a crime involving moral turpitude, would not bar his admission to the United States pursuant to section 212(a)(2)(A)(i)(I) of the Act. Therefore, the applicant is not inadmissible to the United States as a result of his 2000 conviction for theft.

Section 212(a)(9)(B) states in pertinent part:

(B) Aliens Unlawfully Present.-

(i) In general. - Any alien (other than an alien lawfully admitted for permanent residence) who-

- (I) was unlawfully present in the United States for a period of more than 180 days but less than 1 year, voluntarily departed the United States . . . and again seeks admission within 3 years of the date of such alien's departure or removal, or

- (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.

The record reflects that the applicant stated to the consular officer who conducted his August 2009 immigrant visa interview in Mexico that he had entered the United States without inspection in February 1998 and did not depart until July 2009. Based on this history, the AAO finds the applicant to have accrued more than one year of unlawful presence in the United States. As he is

seeking admission within ten years of his July 2009 departure, he is inadmissible to the United States pursuant to section 212(a)(9)(B)(i)(II) of the Act. The applicant does not contest this finding on appeal.

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, the U.S. citizen or lawfully resident spouse, parent or child of an applicant. The qualifying relative in this proceeding is the applicant's spouse. Therefore, hardships claimed in relation to the applicant or other family members will be considered only insofar as they result in hardship to her. If the applicant establishes extreme hardship to his spouse, he will be found statutorily eligible for a waiver, and United States Citizenship and Immigration Services (USCIS) will assesses whether a favorable exercise of discretion is warranted in his case. See *Matter of Mendez-Moralez*, 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 BIA 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 BIA 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 BIA 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 BIA 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.

In statements submitted in support of the Form I-601 and on appeal, the applicant’s spouse asserts that denial of the applicant’s waiver application would be mentally, emotionally and physically stressful for her health. She states that her prior husband was abusive, physically and verbally, and that the applicant restored her hope for life, provided her sons with a second chance and has been a loving grandfather to their children. The applicant’s spouse also states that she and the applicant have been together since 2004 and that she does not know if she will be able to cope if he is not able to return to the United States. She contends that it took a lot of time and money to deal with the damage resulting from the abuse she received at the hands of her first husband and that she is still paying for the days and months of counseling she required. The applicant’s spouse maintains that her mental health treatment put a “hole in [her] wallet” that still exists and that only the applicant’s presence can help her cope with “all this.”

The applicant’s spouse further reports that she has been diagnosed with two cysts on her right ovary and one cyst on her liver, and that she also suffers from *Helicobacter pylori* (*H. pylori*) and is on medication for this condition. She states that she is having a difficult time because of her medical problems and, as a result, is struggling to pay her bills. The applicant’s spouse indicates that even though she feels sick all the time, she must still go to work every day since she has no one to help her financially.

In an August 18, 2010 statement, one of the applicant's stepsons asserts that while his mother is generally unhappy without the applicant, his absence is even more painful for her when she is sick with asthma. He states that he and his brothers are trying to build their lives and do not have the time or financial freedom to help her. He also indicates that even when his mother is just out of the hospital, she has to go to work because she has monthly bills. The applicant's stepson concludes that if the applicant is not allowed to return to the United States, it would result in great hardship for his mother, and for him and his siblings.

In a handwritten letter, the applicant's granddaughter states that since he left, her grandmother is sad all the time. She reports that she cries every day because her grandfather is not by her side and asks that he be allowed to come back to the United States.

In support of the applicant's spouse's claims regarding her health, the record contains two Pelvic Sonogram Reports, dated October 7, 2010 and November 2, 2010, that indicate two cysts have been found on her right ovary, that their appearance is "worrisome" and that further evaluation or short-term reevaluation is recommended. The October 7, 2010 report also indicates that the applicant's spouse has a cyst on the right lobe of her liver. The record further contains a printout of an online article on H. pylori, gastritis and peptic ulcers, as well as a November 27, 2010 medical referral for epigastric discomfort and a test report indicating that applicant's spouse underwent metabolic, blood and thyroid testing on an unknown date.

The AAO notes the hardship claims made by the applicant's spouse, his stepson and granddaughter and acknowledges that the separation of families results in significant hardship for all concerned. However, in the present case, the record does not contain sufficient evidence to establish that the denial of the applicant's waiver application would result in hardship for his spouse that would exceed that normally created by removal or exclusion, as required for a finding of extreme hardship.

The applicant's spouse has indicated that her prior marriage was abusive and that she needs the applicant's support to help her cope with the emotional and financial impacts of that abuse. However, the record offers no evidence in support of the applicant's spouse's claims, e.g., proof that she continues to pay for the counseling she required after the end of her first marriage or statements from individuals knowledgeable about the abuse she previously suffered, including any counselors who may have provided her with treatment. While we note the sonogram reports submitted for the record, they do not provide a medical diagnosis or indicate that the identified cysts are affecting the applicant's spouse's health. We also note the medical referral, the medical record that indicates the applicant's spouse underwent testing and the online article on H. Pylori, gastritis and peptic ulcers. However, this documentation is not accompanied by any medical statement or report to establish that the applicant's spouse has been diagnosed with H. Pylori or, again, the impact that this condition is having on her health. We also find no evidence in the record to support the claim by the applicant's stepson that his mother suffers from asthma. Going on record without supporting documentation is not sufficient to meet the applicant's burden of proof in this proceeding. *See 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 AAO also finds no documentation in the record that would support the applicant's spouse's claims of financial hardship as a result of her medical problems. No evidence has been submitted to

establish the applicant's spouse's income or her financial obligations. While we observe that the applicant's spouse's youngest son states that he and his brothers have neither the time nor the finances to assist their mother, his statement is not sufficient to demonstrate that his three brothers, all of whom are adults, are unable to assist their mother in the applicant's absence.

Without additional documentation to support the hardship claims found in the record, the AAO cannot conclude that the applicant's spouse would experience extreme hardship if the waiver application is denied and she continues to reside in the United States.

In the undated statement she submitted on appeal, the applicant's spouse states that she has visited the applicant in Mexico and has found the conditions there to be heartbreaking and in some parts of the country to be practically inhuman. She reports that she has lived in Florida for 21 years (now 23 years), and is a teacher who has worked with primary school children for 20 years. She also indicates that she looks after her father who has diabetes and that it would be very difficult for her to leave him.

In his August 18, 2010 statement, the applicant's stepson asserts that it would be a significant hardship if his mother decides to move to Mexico as it is not safe, either for persons born in Mexico or for foreigners. He states that she is the only parent he and his brothers have left in their lives.

The AAO notes that the record reflects that the applicant's spouse was born and reared in the United States; that her family ties are to the United States and that she has no ties to Mexico, other than the applicant. We also acknowledge her youngest son's concerns regarding her safety in Mexico, which are supported by the U.S. Department of State travel warning for Mexico, last updated on November 20, 2012. The travel warning states the following regarding the State of Coahuila, the location of the applicant's birth and where the record indicates he now resides:

You should defer non-essential travel to the [S]tate of Coahuila. The State of Coahuila continues to experience high rates of violent crimes and narcotics-related murders. TCOs [Transnational Criminal Organizations] continue to compete for territory and coveted border crossings to the United States. In September 2012, more than 100 prisoners escaped from a prison in Piedras Negras. The majority of these prisoners are known or suspected to be connected with TCO activity and believed involved in a series of violent incidents since the escape

When the specific hardships raised by the record and the disruptions and difficulties routinely created by relocation are considered in the aggregate, we find the applicant to have established that his spouse would suffer hardship that exceeds that usually associated if she joins him in Mexico.

The AAO, however, 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 in 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 for his spouse.

As the record fails to demonstrate that the applicant's inadmissibility would result in extreme hardship for a qualifying relative, he has not established eligibility for a waiver under section 212(a)(9)(B)(v) of the Act. Having found the applicant statutorily ineligible for relief, no purpose would be served in discussing whether he merits a waiver as a matter of discretion.

In proceedings for an application for a waiver of grounds of inadmissibility under section 212(a)(9)(B)(v) of the Act, the burden of establishing that the application merits approval remains entirely with the applicant. *See* 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.