

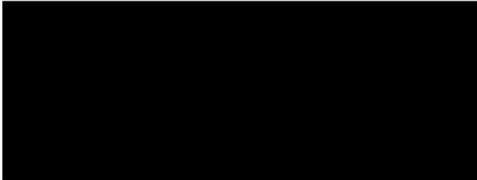
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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090



U.S. Citizenship and Immigration Services

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DATE: **NOV 14 2011** Office: MEXICO CITY, MEXICO FILE:

IN RE: Applicant

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

ON BEHALF OF APPLICANT:

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 be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Field Office Director, Mexico City, Mexico. 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 Mexico. She was found to be inadmissible to the United States pursuant to 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 one year or more and seeking admission within ten years of her last departure. She is married to a naturalized United States citizen and has one U.S. citizen child. She 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).

The Field Office Director concluded that the applicant had failed to establish that the bar to her admission would impose extreme hardship on a qualifying relative, her U.S. citizen spouse, and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) on June 10, 2009.

On appeal, counsel for the applicant asserted that new evidence establishing extreme hardship is available for the case and that it would be submitted within thirty days. *Form I-290B*, received on August 22, 2009. Subsequently, counsel submitted additional evidence relating to the claim of extreme hardship.

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.

....

The record indicates that the applicant entered the United States without inspection in May 2001 and remained until she departed in July 2007. As the applicant has resided unlawfully in the United States for over a year and is now seeking admission within ten years of her last departure from the United States, she is inadmissible under section 212(a)(9)(B)(i)(II) of the Act.

The record includes, but is not limited to, counsel's brief; a statement from the applicant's spouse; statements from friends of the applicant and her spouse; a psychological evaluation of the applicant's spouse by David Mirich, Ph.D., dated July 24, 2009; a prescription receipt for the applicant's spouse; and copies of the birth certificates for the applicant's children.

The entire record was reviewed and all relevant evidence considered in rendering this decision.

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.

The Field Office Director examined the applicant's waiver application based on her inadmissibility for unlawful presence. The AAO notes, however, that subsequent to the Field Office Director's decision, on March 19, 2010, the applicant attempted to enter the United States with fraudulent documentation. The applicant was allowed to withdraw her request for admission and returned to Mexico. As a result, the applicant is inadmissible under 212(a)(6)(C)(i) for misrepresentation.¹

Section 212(a)(6)(C) Misrepresentation, states in pertinent part:

- (i) **In general.** 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 chapter is inadmissible.

Section 212(a)(6)(C)(iii) authorizes a waiver, in the discretion of the Attorney General, as proscribed by Section 212(i):

- (1) The Attorney General may, in the discretion of the Attorney General, waive the application of clause (i) of subsection (a)(6)(C) of this section in the case of an immigrant 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 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

A waiver under either provision will also waive the applicant's other ground of inadmissibility, as such, the AAO will examine her application under the original basis of inadmissibility, unlawful presence. 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

¹ The AAO notes that, because the applicant was not ordered removed as a result of her March 19, 2010, attempted entry and was instead allowed to withdraw her request for admission and return to Mexico, she is not inadmissible under section 212(a)(9)(C) of the Act.

the U.S. citizen or lawfully resident spouse or parent of the applicant. Hardship to the applicant or her children can be considered only insofar as it results in hardship to a qualifying relative. The applicant's 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 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 spouse has asserted that it would be impossible for him to relocate to Mexico due to the social and economic conditions there and the violence that would beset his family. *Statement of the Applicant's Spouse*, dated January 18, 2008. He explains that he would not be able to find employment as a truck driver in Mexico, and that upon relocation he would lose his current employment and the benefits that come with the employment, and states that he would not be able to afford health coverage or medical coverage in Mexico in the event his family were to become sick. He states that the healthcare system in Mexico does not meet the standards of the system in the United States and that his son, who resides with him in the United States, has a relationship with a family pediatrician familiar with his history. He asserts that his children would not have access to adequate education in Mexico and provides statistics on the educational system in Mexico. He asserts that his children do not speak Spanish and would have significant trouble adapting to Mexico and its educational system.

The AAO can take notice of the fact that certain areas Mexico are currently plagued with narcotics related violence, and the April 22, 2011, Travel Warning by the U.S. Department of State establishes the security concerns for Americans travelling in certain border regions in Mexico. However, the record does not establish that the applicant and her spouse would reside in an area which is experiencing such violence. As such, the AAO does not find the record to establish this as an uncommon hardship factor.

The record does not contain any country conditions materials to support the applicant's spouse's assertions that he would not be able to find employment as a truck driver, or a job with benefits, nor does it contain any documentation to support that the applicant, her spouse and their children would not have access to health services or education. The AAO also notes that children are not qualifying relatives in this proceeding, and as such it may only consider impacts on them which rise to a level of creating an indirect hardship on a qualifying relative. In this case the record does not establish that the applicant's children would experience uncommon hardship to such a degree that it would result in a hardship factor to the applicant's spouse.

The AAO recognizes that the applicant's spouse would prefer to remain in the United States where he has found gainful employment with benefits that he needs for his family. Nonetheless, the loss of employment or benefits associated with it is also not considered an uncommon hardship factor, and thus fails to distinguish any impact on the applicant's spouse from that which is normally experienced by the relatives of inadmissible aliens who relocate.

While the AAO is acknowledges that the applicant's spouse would experience difficulties as a result of relocation, the record fails to distinguish the impacts upon relocation, even when considered in the aggregate, from those which are normally associated with the relocation with an inadmissible family member.

With regard to separation the applicant's spouse asserts that he is suffering emotionally, physically and financially due to separation from the applicant. *Statement of the Applicant's Spouse*, dated January 28, 2008. He explains that his son misses the applicant and describes the emotional impacts on him. He states that he is unable to meet his financial obligations and has to bear the costs of supporting his wife and young daughter in Mexico, travelling to Mexico to see the applicant and his daughter and that he cannot provide for his children's basic needs without the assistance of the applicant. He notes that he has had to ask for deferments on his rent, has to cover car payments, insurance payments, child care costs, groceries, utilities, medical bills such as glasses for his son and phone service so that he and his son can maintain contact with the applicant and his daughter. The applicant's spouse also states that the violent conditions in Mexico and the threat of influenza viruses in the country cause him anxiety with regard to the safety of his wife and young daughter.

The record contains a psychological examination of the applicant's spouse by [REDACTED] [REDACTED] narrates a psychological history of the applicant's spouse, and concludes that the applicant's spouse is suffering from Dysthymia, Major Depression and Dysthymia due to the applicant's inadmissibility. He notes that the applicant has been prescribed antidepressant medication and the record contains a copy of a pharmacy receipt for the medication. This evidence is sufficient to establish that the applicant's spouse is suffering emotional hardship due to the applicant's inadmissibility and will be considered in an aggregation of the impacts to the applicant's spouse.

The AAO recognizes that the applicant's spouse is struggling emotionally as he witnesses the emotional impacts on his son due to the applicant's inadmissibility, as noted above, however, children are not qualifying relatives in these proceedings, and the record does not indicate that the applicant's son or daughter will experience any uncommon hardship to such a degree that it indirectly creates a hardship factor on the applicant's spouse.

With regard to the financial hardship asserted by the applicant's spouse, the AAO does not find the record to support the applicant's spouse's assertions. While the AAO has no doubt that the applicant's spouse is experiencing some degree of financial impact, without evidence to support his assertions, the AAO cannot distinguish the financial impact on the applicant's spouse from that which is commonly experienced by the relatives of inadmissible aliens who remain in the United States.

The AAO acknowledges that the applicant's spouse will experience emotional hardship if he remains in the United States without the applicant, but the applicant has failed to demonstrate that this hardship, even when combined with other hardship factors, will be extreme. The AAO recognizes the significance of family separation as a hardship factor, but concludes that the hardship articulated in this case, based on the evidence in this record, does not rise above the common result of removal or inadmissibility and thus does not constitute extreme hardship. U.S. court decisions have repeatedly held that the common results of removal or inadmissibility are insufficient to prove extreme hardship. *See Hassan v. INS*, 927 F.2d 465, 468 (9th Cir. 1991). 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. As the applicant has failed to establish extreme hardship to a qualifying relative, no purpose would be served in determining whether she warrants a waiver as a matter of discretion.

In proceedings for application for waiver of grounds of inadmissibility under section 212(a)(9)(B)(v) of the Act, the burden of proving eligibility rests 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.