



U.S. Citizenship
and Immigration
Services



H5

Date: **OCT 24 2012** Office: ST. ALBANS, VERMONT FILE:

IN RE:

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

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Center Director, St. Albans, Vermont. 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 who was found 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 and again seeking admission within ten years of her last departure from the United States. She is also inadmissible to the United States under section 212(a)(6)(C)(i) of the Act, 8 U.S.C. § 1182(a)(6)(C)(i), for attempting to procure admission to the United States through fraud or misrepresentation. Because the applicant was ordered removed from the United States and is seeking admission within ten years of her removal from the United States, she is also inadmissible under section 212(a)(9)(A) of the Act, 8 U.S.C. § 1182(a)(9)(A). The applicant is married to a U.S. citizen. She seeks a waiver of inadmissibility in order to reside in the United States with her spouse and family.

The Center Director found that the applicant failed to establish that her qualifying relative would experience extreme hardship as a consequence of her inadmissibility. The application was denied accordingly. *See Decision of the Center Director*, dated November 4, 2010.

On appeal, the applicant asserts that her husband and children are suffering psychological and medical hardships and require her presence in the United States. *See Notice of Appeal or Motion (Form I-290B)*, dated December 1, 2010.

The record contains the Application for Waiver of Grounds of Inadmissibility (Form I-601); Form I-290B; a doctor's letter regarding the qualifying spouse; letters from a psychiatrist regarding their children; a letter from the qualifying spouse and an approved Petition for Alien Relative (Form I-130). In addition, the record also contains prescriptions that are not written in English. The requisite translations, however, were not provided. 8 C.F.R. § 103.2(b)(3) states:

Translations. 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.

As such, the prescriptions without translations cannot be considered in analyzing this case. The rest of the record was reviewed and considered in rendering 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.

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, "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 . . . 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.

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

- (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.

Section 212(i) of the Act provides:

- (1) The [Secretary] may, in the discretion of the [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 [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.

A waiver of inadmissibility under sections 212(i) and 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. The applicant's husband 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 entered the United States on an unknown date before she was married in [REDACTED], Texas on February 20, 1998. She admitted, in a sworn statement on September 14, 2001, taken at the Bridge of the Americas in El Paso, Texas, that her residence was in [REDACTED] and that she was residing at her mother-in-law's house in [REDACTED] with her husband for the past two years. See *Record of Sworn Statement* (Form I-867A); *Record of Deportable/Inadmissible Alien* (Form I-213). On September 14, 2001, the applicant applied for admission as a non-immigrant and was expeditiously removed as an intending immigrant not in possession of a valid immigrant visa, based on her admission that she resided in the United States for two years. She accrued over one year of unlawful presence between 1998 and 2001 and therefore is 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 more than one year and again seeking admission within ten years of her last departure from the United States. On August 26, 2006, the applicant presented her sister's border crossing card in an attempt to gain admission to the United States. She was again expeditiously removed from the United States. Therefore, as a result of the applicant's unlawful presence and misrepresentations, she is inadmissible to the United States under sections 212(a)(9)(B)(i)(II) and 212(a)(6)(C)(i) of the Act. The applicant has not disputed her inadmissibility.

The applicant must first establish that her U.S. citizen spouse would suffer extreme hardship were he to live in the United States while the applicant resides in Mexico due to her inadmissibility. The applicant indicates that her qualifying spouse is suffering medical and psychological hardships as a result of his separation from her. With regard to the qualifying spouse's medical hardships, the record contains a letter from the qualifying spouse's doctor in Mexico, who states that he is suffering from arterial hypertension and high blood pressure. The doctor indicates that the qualifying spouse's medical conditions are exacerbated by his travel to [REDACTED] to go to work and his return home to [REDACTED] via an international bridge. However, absent an explanation of the exact nature and severity of his conditions and a description of any treatment or family assistance needed, the AAO is not in the position to reach conclusions concerning the severity of a medical condition or the treatment needed. With regard to the qualifying spouse's psychological hardships, the record contains a letter from the qualifying spouse wherein he states that he is "psychologically destroyed" and very depressed by the applicant's situation. He also indicates that he fears for the safety of the applicant and their children living in [REDACTED]. However, the record contains little detail regarding how his psychological hardships are outside the ordinary consequences of separation from family members.

The applicant also contends that their children are experiencing psychological hardships related to their "troubles." The record contains letters from a psychiatrist diagnosing them with panic disorder. Although the record contains references to hardships the applicant's children are experiencing as a result of the applicant's inadmissibility, it is noted that Congress did not include hardship to an alien's children as a factor to be considered in assessing extreme hardship under section 212(i) or 212(a)(9)(B)(v) of the Act. In the present case, the applicant's spouse is the only qualifying relative for the waiver under the Act, and hardship to the applicant's children will not

be separately considered, except as it may affect the applicant's spouse. The record provides little detail regarding how the qualifying spouse's children's psychological issues are affecting him. As such, the evidence of the qualifying spouse's hardship upon separation, considered in the aggregate, including his emotional and psychological hardships, fails to establish that he is experiencing extreme hardship.

The applicant also failed to establish that her qualifying spouse, a native of Mexico, would experience hardship upon relocation to Mexico. The qualifying spouse notes in his letter that he would not be able to support his family if he relocated to Mexico. However, the record does not contain any documentation concerning his employment prospects in Mexico or his employment in the United States. Further, the record does not contain any financial documentation concerning the family's income and expenses. As such, there is insufficient documentation to draw any conclusions regarding the applicant's spouse's potential hardship upon relocation. The qualifying spouse also mentions that the area where the applicant and their children live is dangerous and not secure. The most recent Department of State Travel Warning, dated February 8, 2012, notes that non-essential travel to the state of Chihuahua, where the applicant is from, should be deferred. However, even were the AAO to take notice of the conditions in Mexico, the record lacks evidence demonstrating how the applicant's spouse would be affected specifically by any adverse conditions there. The current record does not establish that the applicant's spouse would experience extreme hardship upon relocating to Mexico and the applicant has not met her burden of demonstrating that her qualifying spouse will suffer extreme hardship in the event that her spouse relocates to Mexico.

In proceedings for applications for waiver of grounds of inadmissibility under sections 212(a)(9)(B) and 212(i) of the Act, the burden of proving eligibility 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.