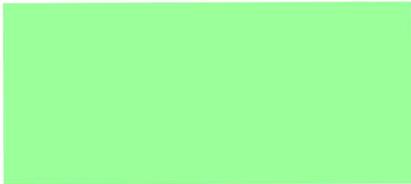


(b)(6)

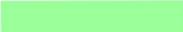
U.S. Department of Homeland Security  
U.S. Citizenship and Immigration Services  
Administrative Appeals Office (AAO)  
20 Massachusetts Ave., N.W., MS 2090  
Washington, DC 20529-2090

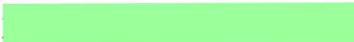


U.S. Citizenship  
and Immigration  
Services



DATE: **JUL 15 2013** Office: ANAHEIM, CA

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 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,

Ron Rosenberg,  
Acting Chief, Administrative Appeals Office

**DISCUSSION:** The waiver application was denied by the International Adjudications Support Branch of behalf of the Field Office Director, Ciudad Juarez, 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), and section 212(a)(6)(C)(i) of the Act, 8 U.S.C. § 1182(a)(6)(C)(i), for having been unlawfully present in the United States for one year or more and seeking admission within 10 years of her last departure, and misrepresenting her intent to reside in the United States when entering in a temporary nonimmigrant status. 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), and section 212(i) of the Act, 8 U.S.C. § 1182(i).

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 father, and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) on July 25, 2012.

On appeal, the applicant's attorney asserts the the applicant and her family will experience extreme hardship if the waiver application is not approved. *Form I-290B*, received on January 15, 2013.

The record includes, but is not limited to, statements from two sons and a daughter of the applicant; a statement from the applicant's spouse; a statement from [REDACTED] PA, pertaining to the applicant's father; tax and income information for the applicant's sons; and a copy of naturalization documents for her spouse. The entire record was reviewed and all relevant evidence considered in rendering this decision.

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 with a valid border crossing card in 2004 and was authorized to remain until June 11, 2005. She remained beyond her authorized period of stay until she departed in December 22, 2011, a period over one year. As the applicant has resided unlawfully in the United States for over a year and is now seeking admission within 10 years

of her last departure from the United States, she is inadmissible under section 212(a)(9)(B)(i)(II) of the Act.

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.

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.

The Field Office Director concluded that the applicant had misrepresented herself by telling the CBP agent upon entry in 2004 that her stay was temporary, when she was in fact intending to immigrate to the United States. As the applicant admitted that her intent was to reside in the United States when she represented that she intended to only remain for a temporary period, she is inadmissible pursuant to section 212(a)(6)(C) of the Act for misrepresenting her intent to reside in the United States to gain admission. The applicant does not contest this finding on appeal.

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 of inadmissibility under sections 212(a)(9)(B)(v) and 212(i) 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. Hardship to the applicant or her children can be considered only insofar as it results in hardship to a qualifying relative. The applicant's father 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 asserts on appeal that the applicant's father, a U.S. citizen, will experience extreme hardship due to the applicant's inadmissibility. *Form I-290B*, received January 15, 2013.

Submitted on appeal is a letter from [REDACTED] stating that the applicant's father has been diagnosed with Hypertension, Osteoarthritis and Grave's Disease, and that he recently had gallbladder surgery. The letter states that it is necessary for him to have someone in his home to help care for him, and requests that the applicant's waiver be approved.

The letter from [REDACTED] indicates that the applicant's father suffers from several medical conditions, however, the letter is brief, and the record is not supplemented with other corroborating documentation. Nonetheless, the AAO will give consideration to the medical conditions of the applicant's father.

The record contains numerous statements from members of the applicant's family, including her adult daughters, her spouse and her mother. Each asserts that the applicant's father needs her in the United States to provide a comfortable quality of life for him.

However, the record does not contain any evidence that the applicant has actually lived with or near her parents, her father in particular. In addition, while [REDACTED] requested that the applicant's waiver be approved so she can help care for her father, this statement is isolated in its context, as the record does not make clear why the applicant's mother or other family members are unable to provide for her father. While this evidence is not generally required, in this case the record contains a brief statement from a doctor which asserts that the applicant's waiver application should be approved, rather than a body of objective evidence establishing the presence and impacts of the applicant's spouse's father's conditions on his ability to function on a daily basis. There is no evidence that the applicant provides any financial support for her father, nor is there evidence that she resides with him in Odessa, Texas, in order to provide the type of care referenced by [REDACTED]

The AAO finds it reasonable to accept that disrupting the applicant's father's continuity of care in order to relocate to the Mexico would result in a substantial hardship. However, the applicant fails to specifically articulate what other impacts, if any, would arise if her father relocated to Mexico with her. There are no country conditions materials in the record and no evidence that the applicant would be unable to provide any necessary care for her father in Mexico.

While the record indicates the presence of significant hardship in the form of medical conditions, based on the lack of evidence corroborating other hardship impacts and the reduced probative value of the single medical document pertaining to the applicant's father, the AAO does not find the record to establish extreme hardship upon relocation, even when the impacts are considered in the aggregate with other common factors of hardship.

With regard to hardship due to separation, counsel has asserted that the applicant's father needs the applicant to care for him. As discussed above, however, the AAO does not find the record to be sufficiently documented to establish that the applicant resides with her father to care for him or that it must be the applicant who cares for her father or that the applicant's father does not have other relatives such as his spouse, other daughter or grandsons who could provide for him.

There is no other evidence which indicates that the applicant's father is financially dependent on her, or evidence which demonstrates the presence of other hardship impacts. As such, the AAO does not find the record to establish that the applicant's father would experience extreme hardship due to separation.

The AAO therefore finds that the applicant has failed to establish extreme hardship to her U.S. citizen father as required under sections 212(a)(9)(B)(v) and 212(i) of the Act. Having found the applicant statutorily ineligible for relief, no purpose would be served in discussing whether she merits a waiver as a matter of discretion.

In proceedings for application for waiver of grounds of inadmissibility under sections 212(a)(9)(B)(v) and 212(i) 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.