

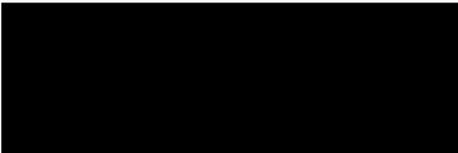
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U.S. Department of Homeland Security  
U.S. Citizenship and Immigration Services  
Office of Administrative Appeals  
20 Massachusetts Ave. NW MS 2090  
Washington, DC 20529-2090  
**U.S. Citizenship  
and Immigration  
Services**



H6



DATE: AUG 17 2011      OFFICE: CIUDAD JUAREZ      FILE: [REDACTED]

IN RE:                      Applicant: [REDACTED]

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

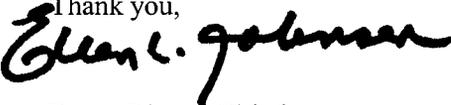
ON BEHALF OF APPLICANT:

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,  
  
Perry Rhew, Chief  
Administrative Appeals Office

**DISCUSSION:** The waiver application was denied by the Field Office Director, Ciudad Juarez, 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 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 and seeking readmission within 10 years of his last departure from the United States. The applicant seeks a waiver of inadmissibility in order to reside in the United States with his U.S. Citizen spouse and children.

The Field Office Director concluded that the applicant failed to establish the existence of extreme hardship to the applicant's spouse caused by the applicant's inadmissibility to the United States and denied the application accordingly. *See Decision of Field Office Director*, dated December 23, 2008.

On appeal, the applicant's spouse submits that she suffers from gastritis and a hernia, and needs an operation which she cannot afford in Mexico. She explains that the family lives in Jalisco, Mexico to be together, but she suffers from depression and anxiety because she cannot return to the United States with her husband and children. The applicant's spouse states that her U.S. Citizen children suffer from various illnesses and are having trouble adjusting to life and schools in Mexico. The applicant's spouse then alleges that she would be unable to support the family financially if she were to return to the United States alone, and that the separation is causing a hardship to her lawful permanent resident parents, the applicant's in-laws.

The record includes, but is not limited to, statements from the applicant's spouse, a letter from the spouse's physician, "Continuation of Medical Treatment" forms for the applicant's spouse and two children, copies of prescriptions for the applicant's spouse and two children,<sup>1</sup> a declaration from the lawful permanent resident parents of the applicant's spouse, photographs of the applicant and his family, and documents from the children's schools. The entire 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-

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<sup>1</sup> These prescriptions are not translated into English and certified, as required by 8 C.F.R. § 103.2(b)(3), and thus cannot be considered in adjudicating this appeal.

(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.

(ii) Construction of unlawful presence.- For purposes of this paragraph, an alien is deemed to be unlawfully present in the United States if the alien is present in the United States after the expiration of the period of stay authorized by the Attorney General or is present in the United States without being admitted or paroled.

....

(v) Waiver.-The Attorney General 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 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. No court shall have jurisdiction to review a decision or action by the Attorney General regarding a waiver under this clause.

The record reflects that the applicant was born in Jalisco, Mexico on July 30, 1979. Under oath during a visa interview on August 9, 2007, the applicant stated that he entered the United States without inspection in May 2000 and returned to Mexico in November 2000.<sup>2</sup> The applicant further stated that he re-entered the United States without inspection in August 2001 and accrued unlawful presence until he returned to Mexico on August 1, 2007. The applicant and his U.S. Citizen spouse married in Zacatecas, Mexico on January 11, 2001. Shortly thereafter, the applicant's spouse filed an I-130 Petition for Alien Relative for the applicant, which was approved on June 25, 2002. The applicant and his spouse have two children. The applicant's qualifying relative in this case is his U.S. Citizen spouse.

The record contains references to hardship the applicant's children and parents-in-law would experience if the waiver application were denied. It is noted that Congress did not include hardship to an alien's children or parents-in-law as a factor to be considered in assessing extreme hardship. In the present case, the applicant's spouse is the only qualifying relative for the waiver under section 212(i) of the Act, and hardship to the applicant's child and parents-in-law will not be separately considered, except as it may affect the applicant's spouse.

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*,

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<sup>2</sup> Given that the applicant was unlawfully present for less than a year during his first stay in the United States, he is not inadmissible under section 212(a)(9)(C)(i)(I) of the Act, 8 U.S.C. § 1182(a)(9)(C)(i)(I). The applicant remains inadmissible under 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).

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.

On appeal, the applicant's spouse states that she suffers from gastritis and a hernia, and that she cannot afford treatment in Mexico. She states that she "suffer[s] great bodily pain because [she] is in need of medical care." *Declaration of applicant's spouse*, January 17, 2009. She further states that she has "extreme pain in [her] abdomen because [her condition] is worsening over time." *Id.* In addition to her "gastritis and a hernia," the applicant's spouse alleges that she has "anxiety attacks" and "depression." *Id.* The applicant asserts that she is "unable to have the operation because [she does] not have the money to pay for the operation," however, "in the United States, [she has] access to medical treatment and insurance." *Id.* In support, the record contains a letter from Dr. [REDACTED] with photographs, which discusses her esophagus, stomach, and "duodeno" in technical terms. *Letter from physician*, May 27, 2008. There is also a letter titled "Continuation of Medical Treatment" from the Secretary of Health State of Jalisco, which states that the applicant's spouse "has been attended in this institution. [She has] been seen on January 01, 2009 to January 05, 2009 for the following condition, Prescription refill, ruptured hernia, depression and should return to an appointment on \_\_\_\_ day \_\_\_\_ month \_\_\_\_ year at \_\_\_\_ hour." *Continuation of medical treatment form for applicant's spouse*, January 5, 2009. The letter from the parents of the applicant's spouse also states that the applicant's "condition is deteriorating to the point that she cannot afford the surgery she will need in Mexico. Additionally, she suffers from depression and needs to receive treatment for that as well." *Joint declaration of applicant's parents-in-law*, undated.

The applicant's spouse further asserts that their two U.S. Citizen children, [REDACTED] Fernando, "have been ill a lot and [the applicant's spouse has] had to take them to the doctor frequently, each time costing [her] money that [she does] not have." *Declaration of applicant's spouse*, January 17, 2009. There are "Continuation of Medical Treatment" letters from the Secretary of Health State of Jalisco for each child in the record, stating that each child has "been seen on January 01, 2009 to January 05, 2009 for the following condition, Prescription recurring symptoms and should return to an appointment on \_\_\_\_ day \_\_\_\_ month \_\_\_\_ year at \_\_\_\_ hour." *Continuation of medical treatment forms for applicant's children*, January 5, 2009. There are certificates and awards for the children in the record, as well as a letter from a teacher stating that [REDACTED] was a student in my class and made remarkable educational progress. The family was very caring and participated whenever possible in his educational pursuits." *Letter from [REDACTED]* [REDACTED] undated. In contrast, the applicant's spouse states that her "children are also suffering from the trauma of leaving the known of their home life, grandparent[s], cousins, friends and school... [her] 7 year-old cries a lot because he does not want to be in Mexico, he wants to return to him school. He misses his school, and he does not want to go to school here in Mexico because he is often ostracized and sometimes physically assaulted." *Declaration of applicant's spouse*, January 17, 2009. Lastly, the applicant's spouse states that her "mother is very ill" and "also suffers from depression and anxiety, especially knowing our condition here in Mexico." *Id.*

The applicant's spouse then describes her financial hardship. She states that "if [she were to] return to the United States alone, [she would be] unable to adequately support [their] children with [her] income." *Id.* She explains that the applicant "has been a hard worker, and contributes to the financial well-being of our family." *Id.*

Despite these assertions of financial hardship, the applicant does not provide any evidence of his own or his spouse's employment, income, or household expenses to support those assertions. Without details of the family's expenses and income, the AAO is unable to assess the nature and extent of financial hardship, if any, the applicant's spouse will face. It is noted that the record fails to demonstrate that the applicant will be unable to contribute to his family's financial well-being from a location outside of the United States.

Additionally, although the applicant submits a letter from Dr. [REDACTED] as evidence of his spouse's medical difficulties, that letter only contains technical descriptions of the qualifying relative's esophagus, stomach, and "duodeno." *Letter from physician*, May 27, 2008. For example, that letter states that the stomach "has form, volume, elasticity, and capability [which is] normal. [The] creases have thickness, elasticity, and habitual distribution. The mucous one of the fund and body show diffuse reddening and petequeal moderated without another alteration." *Id.* The "Continuation of Medical Treatment" letter mentions that the applicant's spouse is being seen for "the following condition, Prescription refill, ruptured hernia, depression." *Continuation of Medical Treatment form for applicant's spouse*, January 5, 2009. However, neither letter nor any other documentation in the record contains details about the spouse's complete medical and psychological condition or supporting documentation to allow an assessment of the spouse's medical needs and whether the applicant can assist with those needs. Absent an explanation in plain language from the treating physician of the exact nature and severity of any condition 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, or the nature and extent of any hardship the applicant's spouse would suffer as a result of the applicant's inadmissibility.

It is noted that although the applicant asserts that the U.S. Citizen children have recurring illnesses and are suffering because they have left their family and home in the United States and dislike their life in Mexico, there is no assertion or evidence to show that the children's suffering causes extreme hardship to the applicant's spouse. Even given such an assertion, the evidence in the file is insufficient to prove the children are experiencing sufficient hardship. The letter from [REDACTED] teacher makes no reference to emotional problems, educational issues, or bullying; instead it reveals that [REDACTED] was a student in [her] class and made remarkable educational progress. The family was very caring and participated whenever possible in his educational pursuits." *Letter from [REDACTED]* undated. Although the applicant's spouse also declares the children are ill, there is no concrete evidence regarding medical conditions for the children – in fact, the only evidence in the record regarding the children's health state that they are being given or are having "prescription recurring symptoms." *Continuation of medical treatment forms for the applicant's children*, January 5, 2009. There is no description or analysis of the children's medical conditions or the recurring symptoms. *Continuation of medical treatment forms for the*

*applicant's children*, January 5, 2009. The same is true for the applicant's mother-in-law. Even though the applicant's spouse asserts that she "would also like the opportunity to return to the United States because [her] mother is very ill, [and] ... suffers from depression and anxiety," there is no evidence from a medical services provider to support this, and in fact, the mother-in-law fails to discuss these medical or psychological conditions in her own declaration. *See Declaration of applicant's parents-in-law*, undated.

While the AAO acknowledges that the applicant's spouse would face difficulty as a result of the applicant's inadmissibility, we do not find evidence of record to demonstrate that her hardship would rise above the distress normally created when families are separated as a result of inadmissibility or removal. In that the record fails to provide sufficient evidence to establish the financial, medical, emotional or other impacts of separation on the applicant's spouse, the AAO cannot conclude that she would suffer extreme hardship if the waiver application is denied and she returns to the United States without the applicant.

There is currently no separation because the applicant's spouse lives in Jalisco, Mexico with the applicant and their children. Regarding extreme hardship upon remaining in Mexico, the only hardship the applicant's spouse claims for herself is that she does not have the money to pay for medical care in Mexico. *Declaration of applicant's spouse*, January 17, 2009. However, that assertion alone, without evidence in support, is insufficient to show extreme hardship to the applicant's spouse if she remains in Mexico.

In this case, the record does not contain sufficient evidence to show that the hardships faced by the qualifying relative, considered in the aggregate, rise beyond the common results of removal or inadmissibility to the level of extreme hardship. The AAO therefore finds that the applicant has failed to establish extreme hardship to his U.S. Citizen spouse as required under section 212(a)(9)(B)(v) of the Act. As the applicant has not established extreme hardship to a qualifying family member no purpose would be served in determining whether the applicant merits 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 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.