

identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

PUBLIC COPY

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**



tlc

DATE: **AUG 25 2011** OFFICE: CIUDAD JUAREZ, MEXICO

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,

A handwritten signature in black ink, appearing to read "Perry Rhew".

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 her last departure from the United States. The applicant seeks a waiver of inadmissibility in order to reside with her U.S. lawful permanent resident father in the United States.

The Field Office Director concluded that the applicant failed to establish that extreme hardship would be imposed on a qualifying relative and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) accordingly. See *Decision of the Field Office Director*, dated March 20, 2009.

On appeal, the applicant's qualifying relative father states that he is worried for the applicant's safety in Sinaloa, Mexico; that it is difficult for him and his other children to travel to visit the applicant; and that he worries for the safety of his other children when they go to visit the applicant. See *Form I-290B, Notice of Appeal or Motion*, dated April 17, 2008.

The record contains: a "hardship letter affidavit," signed by the applicant's father and dated April 17, 2008; an undated letter from the applicant's father asserting that he is an old man who needs the applicant to help him take care of himself and stay with him so that he can move to his own home; a doctor's letter dated February 5, 2008, stating that the applicant's father was examined and is in good health; and hardship letter affidavits from two of the applicant's sisters, dated April 17, 2008. The entire record was reviewed and considered in rendering this decision on the appeal.

Section 212(a)(9) of the Act provides:

(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.

...

(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 entered the United States without inspection in December 2001 and remained until September 2003. The applicant accrued unlawful presence for the entire time that she was in the United States. As the applicant was unlawfully present in the United States for more than one year and seeks readmission within 10 years of her September 2003 departure, she is inadmissible under section 212(a)(9)(B)(i)(II) of the Act, 8 USC § 1182(a)(9)(B)(i)(II). The applicant does not contest this finding on appeal.

A waiver of inadmissibility under section 212(9)(B)(v) of the Act is dependent on a showing that the bar to admission would impose 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 the 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.

In this case, the record reflects that the applicant’s father is a 76-year-old native and citizen of Mexico and a lawful permanent resident of the United States. With regard to hardship related to separation from the applicant, the applicant’s father asserts that he is an old man who needs her to help him take care of himself. He explains that his wife lives in Mexico with all his other sons, and that he needs the applicant to stay with him so that he can move to his own home. *Statement of the Applicant’s Father*, undated. No explanation or evidence was submitted with regard to why the applicant alone is a suitable caregiver for her father. Specifically, it is noted that on the *Hardship Letter Affidavits*, the applicant’s sisters listed the same address as the applicant’s father, and it has not been established that the applicant’s sisters are unable or unwilling to provide assistance to the father as needed. Moreover, in a letter from physician, [REDACTED] M.D., dated February 5, 2008, it is stated that the applicant’s father was examined and is in good health. No other medical evidence was submitted to support or contradict this letter. Additionally, no assertions were made or evidence submitted concerning any financial hardship resulting from denial of the applicant’s waiver. With regard to emotional hardship, the applicant’s father writes that there is something missing in his heart without his daughter. See *Form I-290B*, dated April 17, 2008. He states that he is worried “something may happen” to the applicant in Sinaloa “because there been killings around the place where she is staying.” Although country-conditions evidence was not submitted by the applicant, the AAO acknowledges that there is a Travel Warning from the U.S.

Department of State referring to violence in Sinaloa, Mexico. The applicant failed to submit any evidence, however, that the current conditions in Sinaloa, Mexico have specifically impacted the applicant, and thus no evidence that it causes extreme hardship to her father.

The AAO acknowledges that separation from the applicant may have caused various difficulties for the applicant's father. However, it finds the evidence in the record insufficient to demonstrate that the challenges encountered by the applicant's father, when considered cumulatively, meet the extreme hardship standard. The record contains a single medical letter, typed on a quarter page post-it note stating: "Mr. [REDACTED] was examined in my office today and he is in good health." See *letter of [REDACTED] M.D.*, dated February 5, 2008. Dr. [REDACTED] does not suggest that the applicant's father suffers from any medical conditions but rather states that he is in good health. No hardship can be surmised from this letter which, instead seems to indicate that the separation between the applicant and her father has resulted in no medical/physical detriment to the latter. Moreover, the applicant's father states that he has visited the applicant on more than one occasion in Mexico indicating that, while likely inconvenienced by so doing, he is willing, able, and healthy enough to travel back and forth between the two countries. See *Hardship Letter Affidavit*, signed by the applicant's father and dated April 17, 2008.

With regard to relocation, the applicant's father explains that "traveling in to Mexico" is difficult because of his age. See *Hardship Letter Affidavit*, dated April 17, 2008. He does not specifically assert an unwillingness to relocate to Mexico where his applicant daughter, wife, and "all of" his other sons live. The applicant's father also asserts that he worries about the safety of his other children in the U.S. if they were to visit the applicant in Sinaloa. Hardship to the applicant's siblings as a result of family separation and/or relocation is not calculated in the extreme hardship analysis, except to the extent that the hardship impacts the applicant's qualifying relative father. Here, the applicant has failed to demonstrate such hardship to her father. Accordingly, the AAO finds that the applicant has failed to demonstrate that the challenges her father faces are unusual or rise beyond the common results of removal or inadmissibility to the level of extreme hardship.

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 her lawful U.S. resident father 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.