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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**



HLG

DATE: Office: CIUDAD JUAREZ, MEXICO

File: 

AUG 31 2011

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).

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,

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. 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. He 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 his last departure. He is married to a United States citizen. He 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 his admission would impose extreme hardship on a qualifying relative, his U.S. citizen spouse, and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) on August 18, 2009.

On appeal, counsel for the applicant asserts that the applicant is eligible for a waiver of his unlawful presence and that the evidence submitted on appeal will show that his spouse will experience extreme hardship. *Form I-290B*, received on October 10, 2009.

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 April 2005 and remained until he departed voluntarily in February 2008. As the applicant has resided unlawfully in the United States for over a year and is now seeking admission within ten years of his last departure from the United States, he 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; copies of school records for the applicant's spouse; copies of documents related to the birth of the applicant's daughter; statements from friends and family of the applicant; country conditions materials on Mexico; a statement from [REDACTED] dated August 28, 2009; copies of prescription notes and pharmacy receipts for the applicant's spouse; and a Form I-864, Affidavit of Support, and related financial documents.

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.

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 the U.S. citizen or lawfully resident spouse or parent of the applicant. Hardship to the applicant or their 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.

On appeal, counsel for the applicant asserts the applicant’s spouse will experience emotional and financial hardship due to the applicant’s inadmissibility. *Brief in Support of Appeal*, received October 10, 2009. Counsel asserts that the applicant’s spouse dropped out of high school at the age of 15 when she became pregnant with the applicant’s daughter, and that she has been unable to maintain employment sufficient to cover the costs of child care, rent and daily living expenses. Counsel asserts that the applicant’s spouse has been unable to continue her education and is suffering emotional hardship due to separation from the applicant. Counsel asserts that if the applicant were admitted then both he and his spouse could work to support themselves financially and he could help care for their daughter. Counsel asserts that the applicant’s daughter will suffer emotional hardship and cites documentation discussing the impacts of children raised without fathers in the household. Counsel also asserts that the applicant’s spouse would experience extreme hardship if she were to relocate to Mexico because she does not speak Spanish, has never lived in Mexico, has no family ties in Mexico, would be unable to find affordable health care for their daughter and would be unable to find employment sufficient to sustain her and her family.

The applicant's spouse has also submitted a statement outlining the impacts on her due to the applicant's inadmissibility. *Statement of the Applicant's Spouse*, dated September 10, 2009. She states that the United States has more opportunities for her and her child, and that in Mexico she would be unable to find employment or take her daughter to the doctor as often as needed and that she would be unable to afford an education or medicines for her daughter. In a previous, undated statement the applicant's spouse asserted that the violent conditions in Mexico would create a hardship for herself and her daughter if they were to relocate to Mexico, in addition to having to separate from her family members in the United States.

The record contains country conditions materials discussing the general social, political and economic conditions throughout Mexico. General economic conditions in an alien's native country will not establish extreme hardship in the absence of evidence that the conditions would specifically impact the qualifying relative. *Kuciemba v. INS*, 92 F.3d 496 (7<sup>th</sup> Cir. 1996), citing *Marquez-Medina v. INS*, 765 F.2d 673, 676 (7<sup>th</sup> Cir. 1985). The AAO recognizes that the applicant's spouse's parents and immediate family reside in the United States, and that relocation would result in separation from them. The AAO also acknowledges that the applicant's spouse claims she does not speak Spanish and has never resided in Mexico, but the AAO also notes that she travelled to Mexico in 2005 where she met the applicant and conceived a child. The general country conditions materials that have been submitted do not establish that she would not have access to health care or medical facilities, or that she would be unable to find employment or continue her education. Although the AAO notes that violent conditions are a problem in some areas of Mexico, in this case there is insufficient evidence that the applicant and his spouse would reside in an area where they would be specifically impacted by these conditions. When these impacts are examined in the aggregate it is not clear from the record that she would experience uncommon impacts upon relocation to Mexico.

With regard to the hardship the applicant's spouse is experiencing due to separation from the applicant, the record contains statements from friends and family members, some financial documents related to the applicant's spouse's previous employment, education and the birth of their child, a statement from [REDACTED] and a prescription note and pharmacy receipts for anti-depressant medication.

The statements from friends and family members attest to the emotional difficulties expressed by the applicant's spouse. The statement from [REDACTED] asserts the applicant's spouse is depressed and that the cause of the depression is separation from the applicant. *Statement of the [REDACTED]* dated August 28, 2009. The AAO notes that the statement from [REDACTED] does not provide a sufficient basis to distinguish the impact on the applicant's spouse from the common emotional impacts of separation. The prescription notes and pharmacy receipts indicate that the applicant's spouse has been prescribed and has purchased anti-depressant medication. While the evidence submitted with regard to emotional hardship indicates that the applicant's spouse is experiencing some emotional impacts, it is not sufficient to distinguish the impact on her from that which is commonly experienced by the relatives of inadmissible aliens upon separation. Nonetheless, the AAO will give some consideration to the emotional impact on the applicant's spouse.

The financial documents in the record indicate that the applicant's spouse was previously employed, but there is nothing which establishes what her monthly financial obligations are, such as health care or other daily living costs. She also states that she is living with her parents and the record indicates that they are supporting her financially. Counsel has also asserted that being unable to continue her education constitutes a hardship, but does not provide any basis or authority for this assertion. The AAO would note that the applicant's spouse has asserted that she dropped out of high school in 2004 or 2005, and there is no evidence that she was in school while the applicant was in the United States. Thus, the AAO cannot determine that separation from the applicant is the reason she is not finishing her high school education. Based on the evidence in the record the AAO cannot establish that the applicant's spouse will experience uncommon financial hardship due to separation from the applicant.

With regard to hardships impacting the applicant's daughter, either upon separation or relocation to Mexico, the AAO notes that children are not qualifying relatives. As such, any impacts on them are not directly related to a determination of extreme hardship to the qualifying relative. In this case, the record does not establish that the impacts to the applicant's daughter are such that they would indirectly create an uncommon hardship factor on the applicant's spouse.

The AAO acknowledges that the applicant's spouse will experience some emotional impact if she 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. Having found the applicant statutorily ineligible for relief, no purpose would be served in discussing whether he 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 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.