

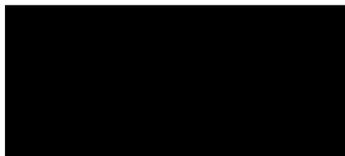
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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090



U.S. Citizenship
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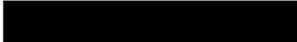
tlc

Date: DEC 02 2011

Office: CIUDAD JUAREZ

FILE: 

IN RE:

Applicant: 

APPLICATION: Application for Waiver of Grounds of Inadmissibility pursuant to section 212(a)(9)(B)(v) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 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 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. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The record reflects that the applicant is a native and citizen of Mexico who was found to be inadmissible to the United States pursuant 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. The applicant is married to a U.S. citizen and 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), in order to reside with his wife and children in the United States.

The field office director found that the applicant failed to establish extreme hardship to a qualifying relative and that the favorable factors in the case do not outweigh the unfavorable factors. The field office director denied the application accordingly. *Decision of the Field Office Director*, dated March 31, 2009.

On appeal, counsel contends the applicant established extreme hardship, particularly considering that his wife is suffering from clinical depression, anxiety, and gastritis, her home is on the verge of being foreclosed, and the couple's two U.S. citizen children have health problems.

The record contains, *inter alia*: a letter from the applicant; two letters from the applicant's wife, a letter from a father; a psychological evaluation for letters from the children's physician; a letter from a teacher; copies of bills and other financial documents; copies of photographs of the applicant and his family; and an approved Petition for Alien Relative (Form I-130). The entire record was reviewed and considered in rendering this decision on the appeal.

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.

....

(v) Waiver. - The Attorney General [now the 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 to the satisfaction of the Attorney General [Secretary] 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.

In this case, the record shows, and the applicant does not contest, that he entered the United States in February 1994 without inspection and remained until February 2008. The applicant accrued unlawful presence for over nine years, from April 1, 1997, the date of enactment of unlawful presence provisions under the Act, until his departure from the United States in February 2008. Accordingly, he is inadmissible to the United States under section 212(a)(9)(B)(i)(II) of the Act for being unlawfully present in the United States for a period of one year or more and seeking admission to the United States within ten years of his last departure.

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 applicant’s wife, [REDACTED] states that she was born in the United States, but that her parents returned to Mexico when she was five years old. According to [REDACTED] her life changed tremendously when she moved to Mexico where she lived on a farm without indoor plumbing or electricity and the closest doctor was over an hour away. She states she had to shower using pre-heated buckets of water and that she sometimes bathed in a river. She states that the electricity was unreliable and it was hard to keep food in the refrigerator from going bad. [REDACTED] also states that her education suffered and that during harvest season, she had no choice but to miss school because her parents needed her to work in the fields. She states that her father traveled back and forth to the United States to work, and that she would go as long as eight months without seeing him. She states she returned to the United States when she was seventeen years old. [REDACTED] contends that she does not want her children going through what she went through by moving to Mexico. According to [REDACTED] both her and her husband’s families in Mexico continue to live on farms. She contends she cannot take her children to Mexico to live in conditions that would greatly affect them, as they did for her. [REDACTED] contends the healthcare system in Mexico is not comparable to the care her children receive in the United States. In addition, she states that she does not want her children to miss their father, like she missed her father. [REDACTED] states that her father currently lives with her and that she is very close with her father’s family, all of whom live in the Dallas area. She contends she would need to work at least two jobs in Mexico to pay for their expenses. *Letters from [REDACTED]* dated February 8, 2008, and undated.

A psychological evaluation of [REDACTED] states that [REDACTED] has been separated from her husband since February 2008. According to the psychologist, the applicant is living on a ranch in Guanajuato, Mexico, eighteen to twenty hours away from [REDACTED] Dallas, Texas. The psychologist states that [REDACTED] misses her husband terribly, but that she has visited less frequently

because the couple's son, [REDACTED] is now in school. In addition, the costs of trips to visit the applicant are very high to the extent that [REDACTED] purportedly had to request food stamps for the children and had to move in with her father and brother. [REDACTED] has reportedly been unable to find a full-time job and works as a babysitter. According to the psychologist, the applicant lives on a ranch where there is not dependable electricity, no running water, and no indoor restroom. Moreover, the psychologist states that [REDACTED] was diagnosed with gastritis and that she immediately feels pain when she eats anything that is a little acidic. She reported she feels depressed, stressed out, and nervous all the time, has difficulty falling asleep, and has headaches and severe pain in her neck. In addition, [REDACTED] reportedly is having a hearing problem and the couple's daughter has high lead levels in her blood. The psychologist states that [REDACTED] will not move to Mexico with her children because when she lived in Mexico, there was barely anything to eat and her entire support system is in the United States. The psychologist states that [REDACTED] description of her symptoms points to the fact that she is suffering from clinical depression, also known as major depression. *Evaluation of Extreme Hardship*, dated March 27, 2009.

A letter from the children's physician states that the couple's daughter, [REDACTED] has suffered from respiratory problems requiring breathing treatments and that she has elevated blood lead levels. The physician states that the couple's son, [REDACTED] has had recurrent ear infections and may have hearing loss. The physician recommends that both children stay in the United States for continued testing, treatment, and follow-up care. *Letters from [REDACTED]* dated April 15, 2009.

A letter from [REDACTED] preschool teacher states that [REDACTED] has become angry in class and has hit other students. The teacher states that she thought this problem would cease by the end of the year, but that it has, in fact, escalated. *Letter from [REDACTED]* dated April 21, 2009. A letter from [REDACTED] father contends that it would be very hard for his daughter to raise the children on her own and that they all want the best for the children with regard to education, safety, and healthcare. *Letter from [REDACTED]* dated February 8, 2008.¹

After a careful review of the record, the AAO finds that if [REDACTED] had to move to Mexico to be with her husband, she would experience extreme hardship. The record shows that [REDACTED] was born in the United States. According to [REDACTED] she moved to Mexico with her family when she was five years old and was greatly impacted by this move. She states she was accustomed to living in the United States where she had indoor plumbing, electricity, a stove, and a refrigerator, and that she moved to live on a farm in Mexico where there was no running water, electricity, or indoor plumbing and her education suffered. In addition, the record shows that [REDACTED] has two U.S. citizen children who are currently three and seven years old. After her childhood experience of moving to Mexico, [REDACTED] reasonably has concerns about moving her young children to Mexico, particularly considering the

¹ The AAO notes that the record also contains an undated letter signed by the applicant which appears to contain numerous inaccuracies. *Letter from [REDACTED]* undated (stating that Alan has been "forced to live with his Mother in Mexico" and, therefore, cannot be enrolled in pre-school and that "my [the applicant's] salary as a junior enlisted member does not allow me to maintain two households both here in the United States and in Mexico.").

record shows that her daughter has had respiratory problems requiring breathing treatments and has high lead levels in her blood, and her son had recurrent ear infections and may have hearing loss. Considering these unique circumstances cumulatively, the AAO finds that the hardship [REDACTED] would experience if she had to move to Mexico is extreme, going beyond those hardships ordinarily associated with inadmissibility.

Nonetheless, [REDACTED] has the option of staying in the United States and the record does not show that she would suffer extreme hardship if she were to remain in the United States without her husband. With respect to the psychological evaluation, the evaluation describes [REDACTED] self-reported symptoms of depression, stress, nervousness, sleeping difficulties, headaches, and neck pain. Although the AAO is sympathetic to the family's circumstances, the evaluation does not show that [REDACTED] situation, or the symptoms she is experiencing, are unique or atypical compared to others in similar circumstances. To the extent the evaluation contends [REDACTED] has gastritis and that stress exacerbates the condition, [REDACTED] herself makes no mention of gastritis and the record does not include a letter or other documentation from a physician or other health care professional addressing the diagnosis, prognosis, treatment, or severity of her purported condition. Regarding the financial hardship claim, although the record contains copies of some bills, there is no evidence, such as copies of tax records or pay stubs, addressing the applicant's previous wages. Although the psychologist reports that [REDACTED] had to request food stamps for the children and had to move in with her father and brother, neither [REDACTED] nor her father address these issues and there is no evidence, such as a letter from the state, corroborating the claim that she has applied for or is receiving food stamps. Similarly, although counsel contends [REDACTED] home is on the verge of being foreclosed, there is no evidence in the record to corroborate this claim. Regarding the children's medical issues, the letters from the children's physician state only that the children need continued testing, treatment, and follow-up care, and fail to provide sufficient details regarding the prognosis, treatment, or severity of the children's health conditions such that they amount to extreme hardship to [REDACTED]. In sum, if [REDACTED] decides to stay in the United States, their situation is typical of individuals separated as a result of inadmissibility or exclusion and does not rise to the level of extreme hardship based on the record. *See Perez v. INS*, 96 F.3d 390 (9th Cir. 1996) (holding that the common results of deportation are insufficient to prove extreme hardship and defining extreme hardship as hardship that was unusual or beyond that which would normally be expected upon deportation).

Although the applicant has demonstrated that the qualifying relative would experience extreme hardship if she relocated abroad to reside with the applicant, we can find extreme hardship warranting a waiver of inadmissibility only where an applicant has shown extreme hardship to a qualifying relative in the scenario of relocation *and* the scenario of separation. The AAO has long interpreted the waiver provisions of the Act to require a showing of extreme hardship in both possible scenarios, as a claim that a qualifying relative will relocate and thereby suffer extreme hardship can easily be made for purposes of the waiver even where there is no actual intention to relocate. *Cf. Matter of Ige*, 20 I&N Dec. 880, 886 (BIA 1994). Furthermore, to relocate and suffer extreme hardship, where remaining in the United States and being separated from the applicant would not result in extreme hardship, is a matter of choice and not the result of inadmissibility. *Id.*, *also cf. Matter of Pilch*, 21 I&N Dec. 627, 632-33 (BIA 1996). As the applicant has not demonstrated

extreme hardship from separation, we cannot find that refusal of admission would result in extreme hardship to the qualifying relative in this case.

A review of the documentation in the record fails to establish the existence of extreme hardship to the applicant's wife caused by the applicant's inadmissibility to the United States. 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, 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.