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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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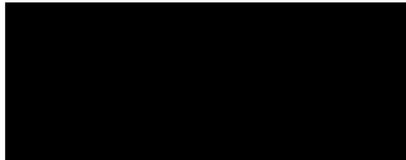
FILE: 

IN RE:

Applicant: 

APPLICATION: Application for Waiver of Grounds of Inadmissibility under Section 212(a)(9)(B)(v) of the Immigration and Nationality Act, 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, Mexico City, Mexico, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The AAO notes that on appeal, counsel requested 30 days to submit a brief and/or evidence to the AAO. *Form I-290B*, filed December 28, 2009. The record contains no evidence that a brief or additional evidence was filed within 30 days. On November 17, 2011, the AAO faxed counsel requesting evidence of the brief and/or additional evidence, or a statement by counsel that neither a brief nor evidence was filed; however, the AAO received no reply from counsel. Therefore, the record is considered complete.

The record reflects that 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 ten years of her last departure from the United States. The applicant is married to a United States citizen and the mother of two United States citizen children. She is the beneficiary of an approved Petition for Alien Relative (Form I-130). The applicant 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 in the United States with her spouse and children.

The Field Office Director found that the applicant had failed to establish that extreme hardship would be imposed on the applicant's qualifying relative and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) accordingly. *Decision of the Field Office Director*, dated December 1, 2009.

On appeal, the applicant, through counsel, claims that United States Citizenship and Immigration Services (USCIS) "erroneously denied" the applicant's waiver application. *Form I-290B, supra*. Additionally, counsel claims that the applicant's spouse "is in fact suffering extreme hardship and continues to suffer extreme hardship.... Applicant's spouse is suffering from depression and has sought medical help." *Id.*

The record includes, but is not limited to, counsel's brief in support of the applicant's Form I-601; statements from the applicant's husband and in-law's; letters of support in English and Spanish¹; medical documentation for the applicant's husband and daughter; a rental agreement for the applicant's husband's home; an employment verification for the applicant's husband; a money transfer receipt, household and utility bills, mortgage documents, tax documents, and insurance documents; and articles on asthma in children, anxiety disorder, chest pains and appendicitis. The entire record was reviewed and considered, with the exception of the Spanish language statements, in arriving at a decision on the appeal.

¹ Pursuant to the regulation at 8 C.F.R. § 103.2(b)(3), an applicant who submits a document in a foreign language must provide a certified English-language translation of that document. As some of the letters of support are in Spanish and are not accompanied by English-language translations, the AAO will not consider them in this proceeding.

Section 212(a)(9)(B) 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-
 -
 - (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 [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 the present application, the record indicates that in November 2000, the applicant entered the United States without inspection. In September 2008, the applicant departed the United States.

The applicant accrued unlawful presence from November 2000, when she entered the United States without inspection, until September 2008, when she departed the United States. The applicant is attempting to seek admission into the United States within ten years of her September 2008 departure from the United States. The applicant is, therefore, 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 more than one year and seeking admission within 10 years of her departure.

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 her children can be considered only insofar as it results in hardship to a qualifying relative. The applicant's husband 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 of Immigration Appeals (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 a statement dated October 15, 2008, the applicant's husband states he has lived almost his entire life in the United States and all of his family resides in the United States. He claims that they do not "have any family left in Mexico," and he "cannot imagine not being able to see [his] family daily, the thought alone is painful." The applicant's husband states that if he and his children moved to Mexico, they would "lose educational opportunities, ties to [their] friends, family, and church." He states he wants his children to "get a good education and go to college" and he "would like to finish [his] GED." He claims that he attends church every Sunday. The applicant's husband also states that his daughter has asthma. The AAO notes that medical documentation in the record establishes that the applicant's daughter has suffered from a respiratory infection, a cough, bronchitis, pneumonia, allergies, and dermatitis. However, the medical documentation does not show that the applicant's daughter has been diagnosed with asthma. The applicant's husband states that since his daughters have been in Mexico, they "have been sick a lot." The AAO notes that the record does not contain any documentary evidence establishing that the applicant's daughters are suffering any medical conditions in Mexico, how serious those medical conditions are, or what treatment they are receiving or may require. Additionally, there is no evidence in the record that the applicant's daughters cannot receive treatment for their medical conditions in Mexico or that they have to remain in the United States to receive treatment. The applicant's husband states that through his employment, he has health insurance, a 401K, and life insurance. The AAO notes the applicant's husband's concerns regarding the difficulties he and his children would face in relocating to Mexico.

In a statement dated March 25, 2009, [REDACTED] states the applicant's husband "is being treated for anxiety, insomnia and depression." The applicant's husband states he has been having "pains in [his] heart region" and he had "emergency surgery for...appendicitis." He claims that he still has pain from his appendicitis. The AAO notes that documentation in the record establishes that the applicant's husband had his appendix removed on July 17, 2007. *See report of operation, [REDACTED]* dated July 18, 2007. In counsel's brief in support of the applicant's Form I-601 dated April 21, 2009, counsel states the applicant's husband receives medication for his medical and mental health conditions, and he "attends individual counseling sessions every other week." In a statement dated March 5, 2009, the applicant's mother-in-law states her son "takes so many medicines," and he even takes "one for anxiety attacks." In a statement dated October 22, 2008, [REDACTED] states the applicant's husband had panic attacks, and he diagnosed the applicant's husband with generalized anxiety disorder. The AAO notes that [REDACTED] indicates that he wrote the applicant's husband a prescription for an antidepressant. The AAO notes the medical and mental health concerns for the applicant's husband.

The AAO acknowledges that the applicant's husband is a citizen of the United States and that he has resided in the United States for many years. However, the AAO observes that the applicant's husband is a native of Mexico and the record does not establish that he does not speak Spanish. Additionally, the AAO acknowledges that the applicant's husband may suffer some hardship in being separated from his family in the United States; however, the AAO notes that his family is not qualifying relatives, and the applicant has not shown that hardship to her husband's family will elevate her husband's challenges to an extreme level. The AAO acknowledges that the applicant's husband is suffering from some mental health issues; however, these issues appear to be due to his separation from the applicant. Further, there is no documentation in the record establishing that he cannot continue his therapy in Mexico or that he has to remain in the United States to receive therapy. The AAO acknowledges that the applicant's daughters

may be suffering some hardship in Mexico; however, the AAO finds that the applicant has not shown that hardship to her daughter's will elevate her husband's challenges to an extreme level. The AAO also notes that the record does not contain documentary evidence, e.g., country conditions reports on Mexico, that demonstrate that the applicant's husband would be unable to obtain employment upon relocation that would allow him to use the skills he has acquired in the United States. Therefore, based on the record before it, the AAO finds that, even considering the potential hardships in the aggregate, the applicant has failed to establish that her husband would suffer extreme hardship if he relocated to Mexico.

The applicant's husband states that without the applicant, his "two daughters and [he] will suffer emotionally, financially, and [their] health will suffer." He claims that he "cannot imagine being without [the applicant]." Counsel claims that the applicant's husband is being treated for "anxiety, insomnia, and depression," and even though he is treated with medication and counseling, his "health has worsened." Additionally, as noted above, the applicant's husband states he has heart pains and pain from his appendicitis. [REDACTED] reports that the applicant's medical and mental health conditions are "due to the fact that [the applicant's husband's] family was transport [sic] back to Mexico." Counsel claims that "[e]verybody around [the applicant's husband] is worried that his condition will only worsen the longer he remains separated from his family." Counsel states the applicant's mother-in-law is "truly worried about [the applicant's husband's] well[-]being and health." The applicant's mother-in-law states her son "is so depressed all the time.... He is always sad and is constantly getting sick." [REDACTED] states the stress from losing "his family is affecting [the applicant's husband] with his daily life such as eating, sleeping, and working." The applicant's mother-in-law claims that "[b]ecause of how lonely and depressed [the applicant's husband] was feeling, [he] had to move in with [them]." The AAO notes that the record contains a monthly rental agreement establishing that the applicant's husband entered into an agreement to rent his home to another individual beginning March 1, 2009, thus supporting the assertion that the applicant's spouse has moved in with his parents. The AAO notes the medical and mental health concerns for the applicant's husband.

The applicant's husband states he has to remain in the United States so that he can work to "support two households." Counsel states the applicant's husband "is in fear of losing his job because he took an extra week to see his family." She states "[m]uch of the money [the applicant's husband] earns[,] he sends to [the applicant] and his two daughters." The AAO notes that the record establishes that on October 28, 2008, the applicant wired the applicant \$1,000.00. The applicant's husband states they own a home and he "barely make[s] enough money on [his] own to cover all [their] expenses." The AAO notes that documentation in the record establishes that in August 2008, the applicant's husband made \$13.95 an hour. *See statement from* [REDACTED] [REDACTED] dated August 8, 2008. Additionally, the AAO notes that the record establishes that the applicant's husband's household expenses are approximately \$2,620.00 a month. The applicant's husband claims that he needs the applicant to help care for the children and work part-time when they are in school. The AAO notes the applicant's husband's financial concerns.

The AAO acknowledges that the applicant's husband is experiencing emotional and financial issues due to his separation from the applicant. The AAO finds that when the applicant's husband's emotional and financial issues are considered in combination with the normal hardships that result from separation of a

spouse, the applicant has established that her husband would experience extreme hardship if he remained in the United States in her absence.

Although the applicant has demonstrated that the qualifying relative would experience extreme hardship if separated from the applicant, we can find extreme hardship warranting a waiver of inadmissibility only where an applicant has demonstrated extreme hardship to a qualifying relative in the scenario of separation *and* the scenario of relocation. 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 remain in the United States and thereby suffer extreme hardship as a consequence of separation can easily be made for purposes of the waiver even where there is no intention to separate in reality. *See Matter of Ige, supra* at 886. Furthermore, to separate and suffer extreme hardship, where relocating abroad with the applicant would not result in extreme hardship, is a matter of choice and not the result of inadmissibility. *Id., see also Matter of Pilch, supra* at 632-33. As the applicant has not demonstrated extreme hardship from relocation, we cannot find the refusal of admission would result in extreme hardship to the qualifying relative in this case.

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. *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.