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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

H6

DATE: **DEC 07 2011** OFFICE: MEXICO CITY, MEXICO

IN RE: Applicant: [REDACTED]

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)

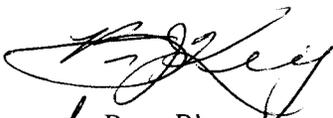
ON BEHALF OF APPLICANT:

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 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 admission within ten years of her last departure from the United States. The applicant is married to a United States citizen and 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.

The Field Office Director found that the applicant had 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. *Decision of the Field Office Director*, dated August 10, 2009.

On appeal, counsel asserts that the United States Citizenship and Immigration Services (USCIS) abused its discretion in denying the waiver application and that the evidence submitted on appeal will establish extreme hardship. *See Notice of Appeal or Motion (Form I-290)*. Counsel submits a brief and additional evidence.

The record includes, but is not limited to, a statement from the applicant's spouse describing the hardship claim;¹ a psychological evaluation of the applicant's spouse; earnings statements for the applicant's spouse; a 2008 income tax transcript; school record for the applicant's older daughter; statements from a friend and a family member of the applicant; and counsel's brief. The entire record was reviewed and considered in arriving at a decision on the appeal.

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.

In the present application, the record indicates that the applicant entered the United States without inspection in December 2001. In August 2008, the applicant departed the United States for Mexico.

¹ Two statements and seven newspaper articles submitted in support of the Form I-601 are written in Spanish and are not accompanied by English-language translations. Accordingly, they will not be considered. 8 C.F.R. § 103.2(b)(3).

The applicant accrued unlawful presence from December 2001, when she entered the United States without inspection, until August 2008, when she departed the United States. The applicant is seeking admission to the United States within ten years of her August 2008 departure. The applicant is, therefore, inadmissible under section 212(a)(9)(B)(i)(II) of the Act for having been unlawfully present in the United States for a period of more than one year.

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 an applicant or other family members 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-Moralez*, 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 asserts that separation from the applicant has resulted in severe physical, mental, and emotional stress for her spouse. He reports that the applicant’s spouse suffers from high blood pressure, high cholesterol, and spells of dizziness and that his health has deteriorated since the applicant’s departure. Counsel also indicates that with the applicant and his children in Mexico, the applicant’s spouse is missing the love and companionship of his family and that he is experiencing fear, depression, fatigue, and worry, as well as attention, concentration and memory deficits. Counsel further states that the applicant’s spouse is concerned for his children in Mexico because his older daughter suffers from asthma and frequent colds and allergies, and his younger daughter from frequent ear infections and colds.

In an October 7, 2009 statement the applicant’s spouse asserts that he needs his family with him, that they all work together to make ends meet, that he needs help with his medical condition, that his children need to attend school in the United States, and that he needs his wife here to care for their home and their children. He also states that he suffers from high blood pressure, high cholesterol, and dizziness, and is concerned about his periods of depression and anxiety. The applicant’s spouse further states that he is worried about his children in Mexico because their health conditions have worsened because of separation, and conditions in Mexico. He also contends that his children’s chances of learning English and attending college in the United States will be harmed by continued residence in Mexico.

In an October 5, 2009 psychological evaluation, psychologist [REDACTED] states that the applicant's spouse reported experiencing intermittent headaches lasting several hours since the applicant returned to Mexico; a sensation of pins and needles in his back and shoulders; and an increase in dizzy spells. [REDACTED] finds the applicant's spouse to be suffering significant physical and emotional stress. She indicates that he has high blood pressure, high cholesterol and vertigo, with sudden loss of consciousness and that, in the applicant's absence, he also developed physical symptoms of fatigue, severe daily intermittent headaches, back and shoulder pain which, combined with the vertigo from which he suffers, makes it more difficult for him to do his job. Based on her interview with the applicant's spouse and the results of the Beck Depression Inventory and Beck Anxiety Inventory she administered to him, [REDACTED] diagnoses the applicant's spouse with Adjustment Disorder with Mixed Anxiety and Depression (Diagnostic and Statistical Manual of Mental Disorders, 309.3). She concludes that the applicant's spouse is at risk for a full-blown disorder with depression and anxiety, particularly if the applicant is not granted lawful status. [REDACTED] also concludes that the applicant's spouse needs to follow a special low-fat, low-salt and low-carbohydrate diet to reduce his dizzy spells and indicates that the applicant would be instrumental in preparing the special diet he requires. She also notes that his children need his care, a stress-free environment, and well-prepared meals, and that he is necessary to ensure the applicant's and his children's well-being.

The AAO notes that the findings by [REDACTED] regarding the applicant's spouse rely, in part, on his and his children's medical conditions, conditions that are not established by the record. No medical statements or records demonstrate that the applicant's spouse suffers from high blood pressure, high cholesterol, vertigo or that he is experiencing the physical symptoms he reported to [REDACTED]. The record also lacks any medical documentation that establishes the applicant's older daughter has asthma or that her younger daughter experiences frequent ear infections.

[REDACTED] also based her conclusion that the applicant's spouse is suffering from Adjustment Disorder with Mixed Anxiety and Depression on her clinical interview of the spouse and the results of the Beck Depression Inventory and Beck Anxiety Inventory she administered. [REDACTED] reports that the applicant's spouse described having a harmonious and fulfilling relationship with his wife and children and that their absence causes him to be depressed and anxious. She also reports that the applicant's spouse worries and is uneasy about the safety of his wife and children in Mexico.

We acknowledge [REDACTED] findings, and her evaluation will be considered in determining extreme hardship.

[REDACTED] also indicates that the applicant's spouse is faced with demanding financial responsibilities in the applicant's absence as he is supporting two households. However, there is no supporting evidence in the record. There are no remittance receipts, bank statements, or other documentation to establish that the applicant's spouse is sending money to the applicant in Mexico.

The AAO acknowledges that the applicant's spouse will experience hardship as a result of separation. We find, however, that the record contains insufficient evidence to establish that this hardship, even when considered in the aggregate with the hardships that are a common result of separation would result in extreme hardship for the applicant's spouse if the waiver application is denied and he remains in the United States.

With respect to relocation, counsel contends that the applicant's spouse would suffer financial hardship if he joins the applicant in Mexico. He asserts that the applicant's spouse earns more than \$88,000 per year as a Senior Technician for his firm and would not earn comparable income in Mexico. Without his earnings, counsel states, his family would be deprived of much needed income. Counsel also contends that termination of the applicant's spouse's employment would mean the loss of medical, dental, and child support benefits. He further states that the applicant's spouse would be unable to travel back and forth to visit his relatives in the United States; and that it would be difficult for the applicant's spouse's family to attend medical appointments in the United States.

The applicant's spouse states that he has now lived in the United States for 21 years, all of his family members live in the United States, he has never worked in Mexico, and that he will not be able to pay his bills or maintain the same quality of life as in the United States, his children's health problems are made worse by living in Mexico, and that a continued stay in Mexico would irreparably damage their chances of learning English and attending college in the United States.

It is noted that the record contains a 2008 income tax transcript and earnings statements for the applicant's spouse that establishes that he earns approximately \$88,000 per year. However, it is also noted that the record does not include country conditions materials on the Mexican economy or Mexican employment and unemployment that demonstrate the applicant's spouse would not be able to obtain a job in Mexico that would provide him with income to support his family. Further, the record lacks evidence to establish that the applicant's children have health problems that would be affected by their continued residence in Mexico or that remaining in Mexico would prevent them from learning English or attending college in the United States. Moreover, the AAO notes that the applicant's children are not qualifying relatives and it has not been established how the applicant's spouse, the qualifying relative, is impacted by his children's circumstances.

The AAO finds, therefore, that the applicant has failed to establish that her spouse would suffer extreme hardship if he relocates to Mexico.

As the record has failed to establish that the applicant's spouse would experience extreme hardship as a result of the applicant's inadmissibility, she is not eligible for a waiver under section 212(a)(9)(B)(v) of the Act. Having found the applicant statutorily ineligible for relief, no purpose would be served in discussing whether she 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. *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.