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



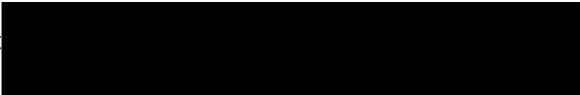
**U.S. Citizenship
and Immigration
Services**



H6

DATE: DEC 23 2011 OFFICE: CIUDAD JUAREZ, MEXICO

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,

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 admission within 10 years of his last departure from the United States. The applicant through counsel does not contest this finding of inadmissibility. Rather, he seeks a waiver of inadmissibility in order to reside in the United States with his U.S. citizen spouse and grandchildren.

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 Field Office Director's Decision*, dated February 19, 2009.

On appeal, counsel asserts that the evidence demonstrates that the applicant's spouse will suffer extreme emotional, financial, and medical hardship if the U.S. Citizenship and Immigration Services (USCIS) denies the applicant's waiver. *See Notice of Appeal or Motion (Form I-290B)*, dated March 11, 2009; *see also I-290B Brief in Support of Appeal*, dated March 12, 2009.

The record includes, but is not limited to: counsel's brief; letters of support from the applicant's spouse; letters of support from the applicant's mother-in-law, cousin, and friends; identity documents; employment records; financial records and various bills; medical documentation relating to the applicant's spouse; and photographs.¹ The entire record, with the exception of the untranslated Spanish language documents, was reviewed and considered in rendering a decision on the appeal.

Section 212(a)(9) of the Act states in pertinent part:

(B) ALIENS UNLAWFULLY PRESENT.-

¹The AAO notes that the record includes letters of support in the English and the Spanish languages. 8 C.F.R. § 103.2(b)(3) states:

(3) Translations. Any document containing foreign language submitted to USCIS shall be accompanied by a full English language translation which the translator has certified as complete and accurate, and by the translator's certification that he or she is competent to translate from the foreign language into English.

The AAO also notes that the letters of support in the Spanish language do not contain a certified translation to the English language. Accordingly, the AAO will not consider these letters of support.

(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. No court shall have jurisdiction to review a decision or action by the Attorney General [Secretary] regarding a waiver under this clause.

The record establishes that the applicant entered the United States without inspection by U.S. immigration officials in or around January 2000 and remained until in or around January 2008, when he voluntarily departed. The applicant accrued unlawful presence from in or around January 2000 until in or around January 2008, a period in excess of one year. As the applicant is seeking admission within 10 years of departure, he is inadmissible pursuant to section 212(a)(9)(B)(i)(II) of the Act.

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 his grandchildren can be considered only insofar as it results in hardship to a qualifying relative. The applicant's wife 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 the Service 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.

The record contains references to hardship the applicant's grandchildren would experience if the waiver application were denied. It is noted that Congress did not include hardship to an alien's grandchildren as a factor to be considered in assessing extreme hardship. In the present case, the applicant's spouse is the only qualifying relative for the waiver under section 212(a)(9)(B)(v) of the Act, and hardship to the applicant's grandchildren will not be separately considered, except as it may affect the applicant's spouse.

Counsel contends that the applicant's spouse will experience extreme emotional hardship as a result of separation from the applicant because the spouse is extremely attached to the applicant; relies on the applicant for daily emotional support; and feels lost without the applicant. *See I-290B Brief in Support of Appeal, supra.* Counsel further contends that the applicant and his spouse are taking care of the spouse's three grandchildren and that the spouse is affected emotionally because she has to witness the grandchildren in a depressed state due to being separated from the applicant. *Id.* In support of his contentions, counsel submitted a statement from the applicant's spouse in which the spouse discusses the circumstances in which she and the applicant met and fell in love as well as the emotional effect of witnessing her grandchildren's depression due to being separated from the applicant. *See Letter of Support from [REDACTED] [REDACTED]* dated March 13, 2009.

Additionally, counsel contends that the applicant's spouse will experience extreme financial hardship as a result of separation from the applicant because the spouse relies on the applicant's self-employed income to supplement her own income so that they can keep the bills in order and keep the family financially intact. *See I-290B Brief in Support of Appeal, supra.* Counsel further contends that the spouse sends the applicant \$400/month to support his household in Mexico and that this is taxing the spouse. *Id.* In support of his contentions, counsel submitted a statement from the applicant's spouse in which the spouse discusses her employment status and salary; the applicant's financial contribution to the household before he left for Mexico; and the amount of money that she sends to the applicant each month and the effect it is having on her. *See Letter of Support from [REDACTED] supra.* The record also includes residential mortgage documents; bank statements; utility bills; and automobile-related bills. *See Tax Receipt*, dated January 14, 2009; *see also Residential Contract (Resale)*, dated January 6, 2003; *Wells Fargo Account Statement*, activities from January 9 – February 6, 2009; *CapitalOne Bank Overdraft Letter*, dated May 27, 2008; *Commerce Energy Past Due Letter*, dated January 29, 2009; *AT&T/Dish Network Statement*, dated April 25, 2007; *Allied Waste Services Statement*, dated November 20, 2008; *Drive Statement*, dated June 27, 2008; and *Customer Receipt from Fay Allen Insurance*, dated February 21, 2007.

Further, counsel contends that the applicant's spouse will experience extreme medical hardship as a result of separation from the applicant because the spouse suffers from uncontrolled diabetes and high blood pressure and relies on the applicant to support her and the grandchildren when her illnesses become extreme. *See I-290B Brief in Support of Appeal, supra.* In support of his contention, counsel submitted a statement from the applicant's spouse in which the spouse discusses her medical conditions and treatments; how she relies on the applicant to support her and the grandchildren during times when she is unable or too weak to do so; and how the applicant is

the only person who can take her to the doctor. *See Letter of Support from [REDACTED] supra; see also Letter of Support from [REDACTED], dated January 24, 2008.* Counsel also submitted a medical letter from the spouse's treating physician in which he indicates the spouse's diagnoses and medications as well as the need for the spouse to have the applicant present to operate a motorized vehicle when her diabetes impacts her. *See Letter of Support from [REDACTED], undated; see also Medical Report Issued by [REDACTED] Family Medicine Clinic, dated November 7, 2007.* And, counsel submitted a letter from the applicant's cousin and mother-in-law in which they indicate that the applicant's spouse is ill and needs the applicant's presence to support her. *See Letter of Support from [REDACTED] dated January 27, 2008; see also Letter of Support from [REDACTED] [last name illegible], undated.*

The AAO notes that the applicant's spouse may experience some emotional hardship because of separation from the applicant. However, the record does not establish that the hardship that the spouse may experience goes beyond what is normally experienced by qualified family members of inadmissible individuals. The record does not include any evidence of the spouse's current mental health or the effect that separation from the applicant has had on the spouse's overall wellbeing. And, the record does not contain any evidence that the spouse's grandchildren are experiencing depression and how their mental state directly impacts the spouse in the applicant's absence. The AAO recognizes the challenges in caring for grandchildren without the daily support of the other grandparent and the pain that the spouse's and the applicant's grandchildren have been experiencing since the applicant's separation. However, the difficulties described do not take the present case beyond those hardships ordinarily associated with the inadmissibility of a family member.

Further, the AAO notes that the applicant's spouse also may experience some financial hardship because of the applicant's absence from the United States. However, the record does not establish that the hardship that the spouse may experience goes beyond what is normally experienced by qualified family members of inadmissible individuals. The record demonstrates that the spouse has long-term employment with [REDACTED] and is currently employed in the capacity of General Manager with an annual salary of \$63,000. *See Employment Letter from [REDACTED] Owner, [REDACTED] Inc., dated March 10, 2009.* Also, there is no evidence in the record of the applicant's financial contributions to his and the spouse's households or that the spouse would be unable to support herself in the applicant's absence. The difficulties described do not take the present case beyond those hardships ordinarily associated with the inadmissibility of a family member.

Also, the AAO notes that the applicant's spouse may experience some medical hardship because of the applicant's absence from the United States. The record is sufficient to establish that the applicant has been diagnosed with uncontrolled diabetes and high blood pressure. However, the record does not contain sufficient evidence how the applicant's presence would assist the spouse because of her medical conditions. The spouse's treating physician only indicates that the spouse may need the applicant's assistance to operate a motorized vehicle because of her uncontrolled diabetes. The treating physician does not indicate the specific effects of uncontrolled diabetes on the spouse's basic life functions and daily routines and activities. Absent an explanation in plain

language from the treating physician of the exact nature and severity of any condition and a description of any treatment or family assistance needed, the AAO is not in the position to reach conclusions concerning the severity of a medical condition or the treatment needed.

The AAO recognizes that the applicant's spouse may experience some hardships as a result of separation from the applicant. However, the AAO finds that even when these hardships are considered in the aggregate, the record fails to establish that the applicant's spouse will suffer extreme hardship as a result of separation from the applicant.

Additionally, the AAO notes that counsel does not address how the applicant's spouse would endure extreme hardship if the spouse were to relocate to Mexico to be with the applicant. *See I-290B Brief in Support of Appeal, supra.* Although the spouse was born in the United States and has immediate family members in the United States and may experience some hardship upon separating from them, the evidence in the record does not indicate that the hardship that the spouse may experience goes beyond what is commonly experienced by qualified relatives of inadmissible family members. Also, there is no evidence in the record whether the spouse would have to sell her home upon relocating or that the sale of her home would cause significant financial hardship. Moreover, the record does not include any country conditions information concerning economic, political, or social conditions in Mexico and how such conditions would impact the spouse or her medical conditions. Also, the record does not contain any country conditions information concerning employment opportunities in Mexico or the transferability of the spouse's skills and abilities acquired in the United States. Accordingly, the AAO cannot conclude that the spouse's relocation to Mexico would result in extreme hardship.

Although the spouse may experience some hardships as a result of relocation to Mexico with the applicant, the AAO finds that even when these hardships are considered in the aggregate, the record fails to establish that the applicant's spouse will suffer extreme hardship as a result of relocation with the applicant.

In this case, the record does not contain sufficient evidence to show that the hardship faced by the qualifying relative, considered in the aggregate, rises 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 his United States citizen spouse 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.