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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



Htg

[REDACTED]

DATE: DEC 28 2011 OFFICE: CIUDAD JUAREZ, 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:

[REDACTED]

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, 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 is the spouse of a U.S. Citizen and is the beneficiary of an approved Petition for Alien Relative (Form I-130). Through counsel, the applicant does not contest this finding of inadmissibility. Rather, 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), in order to reside with his wife and stepchildren in the United States.

The Field Office Director concluded that the applicant failed to establish that extreme hardship would be imposed on a qualifying relative, and in the alternative, the applicant's waiver request should be denied as a matter of discretion, and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) accordingly. *See Decision of Field Office Director, Ciudad Juarez, Mexico*, dated June 30, 2009.

On appeal, counsel asserts that the United States Citizenship and Immigration Services (USCIS) did not sufficiently consider the extreme hardship that the applicant's U.S. citizen spouse will suffer because of the applicant's inadmissibility: psychological damage, feelings of abandonment, and the inability to cope with leaving behind strong family ties in the United States. *See Form I-290B, Notice of Appeal or Motion*, dated July 27, 2009.

The record includes, but is not limited to: a brief from previous counsel; a letter of support from the applicant's spouse; a psychological evaluation; identity documents; medical documents; residential documents; letters of support from employers; student records; religious documents; Internet articles; and photographs.¹ The entire record, with the exception of the additional waiver application and supporting documents, was reviewed and considered in rendering a decision on the appeal.

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

¹ The AAO notes that counsel indicated on Form I-290B that he would be submitting a brief in support of the applicant's appeal within 30 days of filing the appeal. On November 10, 2011, the AAO received correspondence from counsel that an additional brief and/or evidence was not filed in support of the applicant's appeal. Rather, the applicant through counsel submitted an additional I-601 waiver application with the U.S. Embassy in Ciudad Juarez, Mexico on July 9, 2010. The adjudication of the additional I-601 waiver application is pending. Accordingly, the AAO will only consider the evidence in the record that existed at the time that counsel filed the applicant's appeal on July 27, 2009.

(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 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 September 1993 and remained until in or around March 2008, when he voluntarily departed to Mexico. The applicant accrued unlawful presence from April 1, 1997, the effective date of the unlawful presence provisions in the Act, until in or around March 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 stepchildren 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 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.

The record contains references to hardship the applicant's stepchildren would experience if the waiver application were denied. It is noted that Congress did not include hardship to an alien's children 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 stepchildren will not be separately considered, except as it may affect the applicant's spouse.

Previous counsel contends the applicant's spouse will suffer extreme emotional hardship as a result of separation from the applicant because the applicant fulfills the spouse's emotional needs and provides her with mental stability given that the spouse had difficulties trusting anyone and lived for many years in solitude after her emotionally damaging marriage prior to the applicant. *See I-601 Brief in Support of Waiver*, dated March 14, 2008. In support of his contention, counsel submitted a statement from the spouse in which she describes her five-year relationship with the applicant; how he emotionally and financially supports her and her daughters; and how he assists her with the rearing of her daughters. *See Letter of Support from Georgina Tellechea*, dated February 7, 2008. Additionally, counsel submitted a psychological evaluation in which the spouse was tested for various anxiety levels and determined to have stressors from cleanliness compulsion; daily activities; worry over the applicant's immigration status; and the anticipation of needing to work more, resulting in spending less time with her daughters. *See Psychological Report, Issued by Licensed Psychologist Pete Gomez, L.E.P. #1286*, dated February 13, 2008. The evaluation further discusses the physical manifestations of the spouse's stressors, that the applicant brings a feeling of trust to the spouse, and has a calming, balancing effect on her. *Id.* Also, the applicant's spouse contends that she will suffer extreme financial hardship as a result of separation from the applicant because their combined incomes help to sustain their family and to provide for their children's needs and schooling. *See Letter of Support from Georgina Tellechea, supra.*

The evidence on the record is sufficient to establish that the applicant's spouse has suffered from anxiety and because of this condition, may experience some hardship in 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 does not contain any evidence how the spouse is being treated for her anxiety and how the applicant's presence in the United States would assist the spouse with that treatment. The record only contains general statements from a mental health professional that the applicant's presence is necessary to assist the spouse with her mental condition and the rearing of her daughters. Moreover, the record does not establish that the spouse would be unable to function without the applicant's presence.

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 the [REDACTED] as a Traffic Officer and makes an annual salary of over \$50,000. Also, there is no evidence in the record of the applicant's financial contributions to his and the spouse's households and that the spouse would be unable to support herself in the applicant's absence. The AAO notes the concerns regarding the applicant's spouse's mental health issues and financial obligations, but finds that even when this hardship is 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.

Previous counsel also contends that the applicant's spouse and daughters will suffer extreme emotional hardship if they were to relocate to Mexico because of their strong family ties; community activities; educational opportunities in the United States; and their inability to articulate themselves and read in the Spanish language in formal environments such as school. *See I-601 Brief in Support of Waiver, supra*. Counsel further contends that the daughters would be stigmatized because they are "Americanized," and that they will be permanently handicapped because they will lose their ability to speak in the English language. *Id.* In support of counsel's contentions, the applicant's spouse discusses her family ties; her employment history and opportunities; the establishment of her home; her dreams and goals for her daughters' educational opportunities in the United States; her mother's medical history; and her fear of the violence and crime in Mexico. *Letter of Support from [REDACTED]* And, various Internet articles were submitted, in which the economic, political, and social conditions in Mexico were discussed.

The record contains sufficient evidence demonstrating that the applicant's spouse would experience extreme hardship if she and her children were to relocate to Mexico. The spouse has continuously resided in the United States for approximately 43 years. There is no indication in the record that she maintains any immediate family or economic ties to Mexico. Rather, her immediate family members are U.S. citizens, and they live in the same area as the spouse. Also, her mother has been diagnosed with hypertension, and she assists her mother with the condition by taking her to the hospital and providing financial support for past due medical bills when needed. *See Certificate of Disability and/or Return to Work or School issued by [REDACTED] Clinics, dated December 20, 2007; see also [REDACTED] Statement, dated October 17, 2007; [REDACTED] Statement, dated December 4, 2007; [REDACTED] Ambulance Billing, dated December 27, 2007; and [REDACTED] Statement, dated January 7, 2008.* Although the record is unclear concerning the amount of physical and financial assistance that the spouse's other family members would provide to the mother in the spouse's absence, the record shows that the spouse is essential to the mother's wellbeing.

Additionally, the spouse has been employed as a Traffic Officer for [REDACTED] over 20 years. Her duties are essential to the [REDACTED] and law enforcement given that she assists with parking violations; intersection control; abandoned vehicles; and recovery of stolen vehicles. [REDACTED] *Inter-Departmental Correspondence issued by [REDACTED] at the Department of Transportation, Bureau of Parking Enforcement and Intersection Control, dated February 8, 2008; see also Employment Letter issued by [REDACTED]*

██████████ *Personnel Records Supervisor at the Department of Transportation*, dated August 8, 2007. And, the spouse's abilities have enabled her to serve in an acting supervisory capacity when necessary. ██████████ *Inter-Departmental Correspondence issued by ██████████ ██████████ at the Department of Transportation, Bureau of Parking Enforcement and Intersection Control, supra*. Although there is no evidence in the record that the spouse would be unable to find employment in Mexico, the AAO acknowledges that the loss of her long-term employment in the United States would be a hardship.

Further, the AAO notes that the U.S. Department of State has issued a Travel Warning to U.S. citizens traveling and living in Mexico because of the widespread violence and crime due to drug-trafficking and security-related activities, especially in the border regions. The record indicates that the applicant is currently located in ██████████ a border town. Thereby, the spouse's subjective fears of the criminal and violent activities in Mexico, upon relocating to Tijuana, are supported by country conditions information.

The AAO also notes the spouse's aspirations for her children to receive an education in the United States and to pursue a course of study that capitalizes on their academic talents. However, country conditions information in the record fails to demonstrate how the children's educational opportunities in Mexico directly impact the spouse. The spouse may suffer hardship because of the loss of educational opportunities for her children, but the hardship does not go beyond what is commonly experienced by qualifying relatives of inadmissible family members.

Nevertheless, in the aggregate, the AAO finds that the applicant has established that the spouse would suffer extreme hardship if she were to relocate to Mexico because of her immediate family ties in the United States; her lack of immediate family ties in Mexico; her continuous residence in the United States; her length of employment; and the current social conditions in Mexico.

Although the applicant has demonstrated that the qualifying relative would experience extreme hardship upon relocation with the applicant, the AAO 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*, 20 I&N Dec. 880, 886 (BIA 1994). 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*, 21 I&N Dec. 627, 632-33 (BIA 1996). As the applicant has not demonstrated extreme hardship from relocation, the AAO cannot find that refusal of admission would result in extreme hardship to the qualifying relative in this case.

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.