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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

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DATE: **DEC 29 2019** Office: MEXICO CITY, 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 (the Act), 8 U.S.C. section 1182(a)(9)(B)(v).

ON BEHALF OF APPLICANT:

SELF REPRESENTED

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 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. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native and citizen of Mexico. She was found to be inadmissible to the United States pursuant to 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 one year or more and seeking admission within ten years of her last departure. She is married to a United States citizen. She 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).

The Field Office Director concluded that the applicant had failed to establish that the bar to her admission would impose extreme hardship on a qualifying relative, her U.S. citizen spouse, and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) on August 10, 2009.

An appeal was filed and additional evidence was submitted. The applicant's spouse states that he is suffering physically, financially and emotionally due to the applicant's inadmissibility, and that his children, who are residing in Mexico, are suffering extreme hardship. *Statement in Support of Appeal*, received on September 10, 2009.

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.

....

The record indicates that the applicant entered the United States without inspection in February 1999 and remained until she departed in June 2008. As the applicant has resided unlawfully in the United States for over a year and is now seeking admission within ten years of her last departure from the United States, she is inadmissible under section 212(a)(9)(B)(i)(II) of the Act.

The record includes, but is not limited to: statements from the applicant's spouse; statements from friends and family members of the applicant's spouse; copies of medical records relating to the applicant's spouse; copies of medical records relating to the applicant's daughter; photographs of the applicant's children and the living conditions in Mexico; copies of pay stubs for the applicant's spouse; copies of tax returns for the applicant's spouse; and copies of money transfer receipts, monthly bills and statements.

The entire record was reviewed and all relevant evidence considered in rendering this decision.

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 the applicant or her children 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 the applicant’s spouse asserts that he is experiencing physical, emotional and financial hardship due to the applicant’s inadmissibility. *Brief in Support of Appeal*, received October 16, 2009. He asserts that his two U.S. born children, who are residing in Mexico, are suffering extreme hardship due to the conditions there. He explains that his daughter has medical problems and that they currently reside in an area with little or no access to medical facilities, schools or functioning infrastructure and that they are being denied access to the educational system of the United States. He states that they are suffering physically from lack of proper medical care, inadequate medical facilities, dirty conditions, environmental hazards such as scorpions and spiders, and crumbling roads

As noted above, children are not qualifying relatives in this proceeding. As such, any hardship to them is only relevant as it impacts the qualifying relative, in this case the applicant’s spouse. The applicant has submitted photographs of the conditions in Mexico. The record also includes medical records for the applicant’s daughter, which indicates that she suffers from chronic ear infections. The medical evidence is sufficient to establish that the applicant’s daughter has a medical condition, although the record also indicates that she is receiving medical care in Mexico. And a statement

from the state government where the applicant and her children reside discussing the poor conditions is sufficient to establish a significant decrease in the quality of living. However, there is no evidence that the children's living situation in Mexico is causing uncommon hardship for the applicant's spouse. Further, the record does not contain any evidence to establish that the applicant's spouse would be unable to afford childcare or otherwise care for his children if they were to reside with him in the United States. However, the AAO notes the applicant's spouse's concerns regarding his children.

The applicant's spouse asserts that he will experience financial hardship because he is unable to support two households, and notes that his income is barely more than what is listed as necessary on the federal poverty guidelines for a family of four. He lists his financial obligations as a mortgage payment, automobile insurance, gas and food. The record includes copies of the applicant's spouse's income statements, tax returns, monthly bills and financial obligations, money transfer receipts and letters from friends and family attesting to his hardship. However, the record does not include any evidence that the applicant's spouse is paying a mortgage or rent. In addition, the AAO notes that the Federal Poverty Guidelines, available at <http://aspe.hhs.gov/poverty/11poverty.shtml>, are based on the cost of living in the United States. In this case the applicant and her children are residing in Mexico, and as such reference to the Federal Poverty Guidelines does not provide a sufficient basis to distinguish the financial impact on him from that which is commonly experienced by the relatives of inadmissible aliens who remain in the United States. The applicant asserts that he has had to borrow money from his family to supplement his income, but the record does not contain sufficient evidence to establish what amount he has borrowed or even that he had to borrow the money due to an inability to pay meet his financial obligations. While the record does contain evidence that the applicant's spouse may be struggling financially, there is insufficient evidence to establish that he is experiencing any financial impact to such a degree that it presents an uncommon financial hardship.

When the hardship factors asserted upon separation are examined in the aggregate, the AAO can determine that the applicant's spouse may experience some physical impact and struggle financially, but based on the evidence in the record the applicant has not established that these hardship impacts rise to the level of extreme hardship.

With regard to hardship upon relocation, the applicant's spouse has asserted that he would be unable to relocate to Mexico without experiencing extreme physical and financial hardship. *Statement of the Applicant*, undated. He states that he would lose his home and he would not be able to earn a wage in Mexico which would support the applicant and their children.

However, there are no country conditions materials or other evidence indicating that the applicant's spouse would be unable to find employment in Mexico. In addition, the AAO notes that the applicant's spouse is a native of Mexico, and as such, is familiar with the language, social customs and security concerns, mitigating any acculturation impacts he might experience upon relocation.

Based on the evidence in the record, the AAO does not find the applicant to have established that he experience any uncommon hardship impacts upon relocation which rise to the degree of extreme hardship, even when considered in the aggregate.

The record, reviewed in its entirety and in light of the *Cervantes-Gonzalez* factors cited above, does not support a finding that the applicant's husband faces extreme hardship if his wife is refused admission. The AAO recognizes that the applicant's husband will have to make adjustments with his regard to his medical condition and financial concerns. These assertions, however, are common hardships associated with removal and separation, and do not rise to the level of "extreme" as informed by relevant precedent. U.S. court decisions have repeatedly held that the common results of removal or inadmissibility are insufficient to prove extreme hardship. *See Hassan v. INS*, 927 F.2d 465, 468 (9th Cir. 1991). In addition, *Perez v. INS*, 96 F.3d 390 (9th Cir. 1996), held that the common results of deportation are insufficient to prove extreme hardship and defined extreme hardship as hardship that was unusual or beyond that which would normally be expected upon deportation. The AAO therefore finds that the applicant has failed to establish extreme hardship to his U.S. citizen spouse as required 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 he 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 rests 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.