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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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#6

Date: Office: HARLINGEN, TEXAS FILE:   
IN RE: JUL 06 2011 Applicant: 

APPLICATION: Application for Waiver of Grounds of Inadmissibility under section 212(a)(9)(B) of the  
Immigration and Nationality Act, 8 U.S.C. § 1182(a)(9)(B)

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,

*Michael Shumway*

for Perry Rhew  
Chief, Administrative Appeals Office

**DISCUSSION:** The waiver application was denied by the Field Office Director, Harlingen, Texas. 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 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 for more than one year and seeking readmission within 10 years of his last departure. The applicant seeks a waiver of inadmissibility in order to reside in the United States with his lawful permanent resident father and mother.

The field office director found that the applicant failed to establish extreme hardship to his father or mother and denied the Form I-601 application for a waiver accordingly. *Decision of the Field Office Director*, dated September 9, 2008.

On appeal, counsel for the applicant asserts that the record shows that the applicant's parents will suffer extreme hardship if the present waiver application is denied, and that the field office director failed to adhere to precedent decisions or properly evaluate the evidence in the record. *Statement from Counsel on Form I-290B*, dated October 9, 2008.

The record contains, but is not limited to: a brief from counsel; statements from the applicant and his father; tax records and some bills and financial documentation for the applicant's parents; a copy of the applicant's birth certificate; documentation relating to the applicant's siblings' school activities; documentation in connection with the applicant's mother's purchase of a lot; documentation in connection with another individual's economic sponsorship of the applicant, the applicant's mother and his siblings; and documentation in connection with the applicant's conviction for driving under the influence. The entire record was reviewed and considered in rendering a decision on the appeal.

Section 212(a)(9) 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 a sworn statement dated March 5, 2008, the applicant testified that he first entered the United States without inspection in 1992 or 1993. He testified that he remained until 2006, when he

departed to Mexico to visit a club. He claimed he returned in 2006 at the Hidalgo point of entry, yet he did not have identification with him. He stated that he encountered an immigration inspector, and the inspector instructed him to bring his identification the next time. He asserted that he was asked if he was a U.S. citizen and he did not answer.

Based on these assertions, the applicant accrued unlawful presence from April 1, 1997, the date the unlawful presence provisions in the Act took effect, until he departed in 2006. This period totals over eight years. He now seeks admission as an immigrant pursuant to an approved Form I-130 relative petition filed by his father on his behalf. He was deemed inadmissible to the United States under section 212(a)(9)(B)(i)(II) of the Act for having been unlawfully present for more than one year and seeking readmission within 10 years of his last departure. The applicant does not contest his inadmissibility on appeal.

It is noted that the applicant has not provided sufficient explanation or evidence to support his claimed manner of entry in 2006. If he in fact entered without inspection in 2006, he is also inadmissible under section 212(a)(9)(C) of the Act. If he made a false claim to U.S. citizenship to an immigration inspector in 2006 to gain admission, he is also inadmissible under section 212(a)(6)(C)(ii)(I) of the Act for which there is no waiver. However, the AAO will not further address additional grounds of inadmissibility, as the applicant has not shown that he is eligible for a waiver under section 212(a)(9)(B)(v) of the Act.

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 can be considered only insofar as it results in hardship to a qualifying relative. The applicant's father and mother are the only qualifying relatives 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 deportation, 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. at 631-32; *Matter of Ige*, 20 I&N Dec. at 883; *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.*

We observe that 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., In re 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).

In a statement dated October 2, 2008, the applicant states that his parents brought him to the United States when he was six years old, and he began working to help support them and his siblings after the 10<sup>th</sup> grade. The applicant indicates that he contributed cash to help his family purchase a lot and build a house, and he performed labor for its construction. He explains that his family's home was struck by a hurricane and badly damaged. He states that he pays rent for his family to reside in an apartment until they can repair their home and return. He adds that his father resides away from the family in Clute, Texas in order to work as a carpenter, and that his mother and siblings rely on him for their economic needs. He notes that his mother does not drive, thus he must provide transportation for her. He explains that he is paid for his work in cash, thus he does not have

documentation of his earnings or expenses. He provides that his parents and siblings all have a legal status in the United States now, yet he does not and they rely on him.

In a statement dated June 2, 1989, the applicant's father stated that he has been a lawful permanent resident since June 2, 1989, and he resided in the United States for years before that date. He provided that he resides in Mission, Texas with the applicant's mother, the applicant, and their other three children. He added that he spends three weeks each month working as a carpenter in Clute, Texas, which he has done since 1999. He stated that he relies on the applicant to assist their family when he is away, including caring for the applicant's mother when she is sick and performing maintenance on their home. The applicant's father indicated that the applicant, and the applicant's mother and siblings came to the United States in 1993, and that he would suffer emotional hardship if the applicant returns to Mexico. He expressed concern for the applicant's experience in Mexico, as the applicant is unfamiliar with the country, does not have family there, and would be unable to support himself. The applicant's father asserted that the applicant's mother would suffer emotional hardship should she be separated from the applicant, as she has never been separated from her children.

In a brief submitted on appeal, counsel asserts that the field office director applied an erroneous legal standard when evaluating hardship to the applicant's parents. Counsel contends that the field office director's decision reflects that she did not assess the specific facts of this case. Counsel notes that the applicant's parents and all of his siblings reside in the United States, and that the applicant has no ties outside the country. He asserts that the applicant's parents and siblings would not relocate to Mexico, as it has extremely limited opportunities for uneducated male workers and high unemployment. He adds that the applicant's parents would not leave the United States without their other three children. Counsel contends that the applicant's departure would have a devastating financial impact on his parents, noting that their home was destroyed by a hurricane.

Upon review, the applicant has not provided sufficient explanation or evidence to show that his parents will suffer extreme hardship should the present waiver application be denied. The AAO has carefully examined the statements from the applicant, the applicant's father, and counsel, and recognizes that the applicant plays an integral role in his family of providing assistance and support. While the applicant indicates that his family relies on him for financial contribution, the record does not show that they would endure extreme economic consequences should he reside outside the United States.

It is noted that the record contains Forms I-864, Affidavit of Support, from the applicant's father and another individual, Mr. [REDACTED], by which they obligate themselves to the United States government to support the applicant, the applicant's mother, and the applicant's three siblings should they fall below 125 percent of the Federal Poverty Guidelines for their household size. While the applicant explains that he works to provide support for his mother and siblings, his application for permanent residence is, in part, based on his father's and [REDACTED] agreement to support him and his family members. The AAO has considered the applicant's explanation that evidence of his earnings and expenditures is not available due to the fact that he earns cash for his labor. Yet, the record lacks other probative evidence of his family's economic circumstances that should be

available, including recent tax filings, utility bills, or bills for claimed medical treatment for his mother. The AAO takes notice that economic conditions in Mexico are generally less favorable than those in the United States. Yet, the applicant has not shown that he would be unable to engage in employment there that is sufficient to meet his needs. Thus, he has not shown that his father would be compelled to support him from the United States. Accordingly, the applicant has not shown that his family will suffer significant economic hardship should they lose his financial contribution to the household and he reside in Mexico.

The AAO acknowledges that the separation of family members often results in significant emotional hardship, and that the applicant's mother and father will endure such hardship should they reside apart from the applicant. It is noted that the applicant's family home is approximately 20 miles from the United States border with Mexico, and the applicant has not shown that his family would be unable to visit him in Mexico. The AAO gives careful consideration to the psychological impact of family separation, yet in the present matter, the applicant has not distinguished his parent's emotional difficulty from that which is commonly faced by family members who reside apart due to inadmissibility.

Counsel indicates that the applicant's parents would not relocate to Mexico with the applicant to maintain family unity. The AAO acknowledges that the applicant's parents have resided in the United States for a lengthy duration, and due consideration is given to the emotional and economic challenges they would face should they now return to Mexico, with or without their other three children. However, while counsel references high unemployment and limited opportunities for uneducated males in Mexico, the applicant has not presented detailed explanation of difficulties his family members would face should they reside there. In the absence of clear assertions from the applicant, the AAO may not speculate regarding hardships the applicant's parents may face. In proceedings regarding a waiver of grounds of inadmissibility under section 212(a)(9)(B) of the Act, the burden of proving eligibility remains entirely with the applicant. *See* section 291 of the Act, 8 U.S.C. § 1361. The applicant has not established that his parents would suffer extreme hardship should they join him in Mexico.

The AAO has considered all stated elements of hardship to the applicant's mother and father in aggregate. Based on the foregoing, the applicant has not established that denial of the present waiver application "would result in extreme hardship" to his mother or father, as required 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 he merits a waiver as a matter of discretion.

As noted above, in proceedings regarding a waiver of grounds of inadmissibility under section 212(a)(9)(B) 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.