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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

PUBLIC COPY



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Date: JUN 27 2011

Office: MEXICO CITY

FILE: 

IN RE: 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,

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 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 again seeking admission within ten years of her last departure from the United States. The applicant is the daughter of a United States citizen. She seeks a waiver of inadmissibility in order to reside in the United States with her family.

In a decision dated March 31, 2010, the Field Office Director found that the applicant failed to establish that her qualifying relative would experience extreme hardship as a consequence of her inadmissibility. The application was denied accordingly. *See Decision of the Field Office Director* dated March 31, 2010.

On appeal, the applicant provided an appeal brief in support of the applicant's waiver application. In the brief, the applicant's attorney contends that the qualifying parent would experience financial hardships due to the applicant's inadmissibility. Moreover, the applicant's attorney asserted that the qualifying parent has lived in and worked in the United States for about twenty five years, that he is fifty-six years old and that his entire immediate family lives in the United States. The attorney also indicates that the qualifying parent is the legal guardian for the applicant's United States citizen children and that he would have to care for his grandchildren without the applicant if she were to return to Mexico. Moreover, the applicant's attorney states that the qualifying parent could not travel to Mexico frequently due to the cost and that he could not relocate to Mexico due to the lack of jobs, safety and other conditions.

The record contains an approved Petition for Alien Relative (Form I-130), an Application for Waiver of Grounds of Inadmissibility (Form I-601), a Notice of Appeal (Form I-290B), Biographic Information (Form G-325A), the applicant's birth certificate, financial documentation regarding the qualifying parent's income and expenses, country condition materials, briefs and attorney letters written on behalf of the applicant, a naturalization certificate for the qualifying parent, immunization certificates and school enrollment information regarding the applicant's children, copies of documents regarding the qualifying parent's legal guardian status of the applicant's children, a letter from the qualifying parent written in Spanish, birth certificates and other identification documents for the applicant's children.

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.

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. The applicant's father 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 applicant’s qualifying relative in this case is her father, who is a United States citizen. The record indicates that the applicant entered the United States without inspection in September 1993, and remained until February 2007 when she voluntarily departed. The applicant accrued unlawful presence from May 18, 2003, when she turned eighteen years old, until February 2007, a period in excess of one year. In applying for an immigrant visa, the applicant is seeking admission within ten years of her departure from the United States. The applicant has not disputed her inadmissibility. Therefore, the applicant is inadmissible to the United States 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.

A waiver of the bar to admission under section 212(a)(9)(B)(v) of the Act is dependent first upon a showing that the bar imposes extreme hardship on a qualifying relative of the applicant. The AAO notes that extreme hardship to the applicant’s father must be established in the event that he relocates to Mexico and in the event that he remains in the United States, as he is not required to reside outside the United States based on the denial of the applicant’s waiver request. The AAO will consider the relevant factors in adjudication of this case.

The documentation submitted relating to the potential hardships facing the applicant's father includes Form I-601, Form I-290B, Form G-325A, financial documentation regarding the qualifying parent's income and expenses, country condition materials, briefs and attorney letters written on behalf of the applicant, copies of documents regarding the qualifying parent's legal guardian status of the applicant's children, birth certificates and other identification documents for the applicant's children. Although the applicant provided a letter from the qualifying parent in Spanish, the requisite translations were not provided. 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.

As such, the qualifying parent's letter written in Spanish, without a translation, cannot be considered as evidence in this case.

As previously stated, the applicant's attorney contends that the qualifying parent would experience financial hardships due to the applicant's inadmissibility. Moreover, the applicant's attorney asserted that the qualifying parent has lived and worked in the United States for about twenty five years, that he is fifty-six years old and that his entire immediate family lives in the United States. The attorney also indicates that the qualifying parent is the legal guardian for the applicant's United States citizen children and that he would have to care for his grandchildren without the applicant if she were to return to Mexico. Moreover, the applicant's attorney states that the qualifying parent could not travel to Mexico frequently due to the cost and that he could not relocate to Mexico due to the lack of jobs, safety and other conditions.

The applicant's attorney asserts that the qualifying parent is struggling financially to support his family and the applicant's attorney claims that the applicant could make on "average over \$20.00 per hour" to contribute financially to the family. While documentation of the income and expenses of the qualifying parent was provided, there is no documentation regarding how the applicant would be able to financially contribute to her family. Without documentary evidence to support the claim, the assertions of counsel will not satisfy the petitioner's burden of proof. The unsupported assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 n.2 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1,3 n.2 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980). Moreover, the Form G-325 indicates that the applicant was unemployed the entire time that she lived in the United States and therefore was not contributing to the financial support of her family. The applicant's attorney further indicates that the qualifying parent is the legal guardian for the applicant's children and that, if the children relocated to Mexico with their mother, they would endure many hardships. However, the hardships to the applicant's children are only relevant insofar as they cause the qualifying parent hardship, and no evidence was submitted concerning the effects of any hardship of the grandchildren on the qualifying spouse's parents. Moreover, the applicant's attorney asserts that the qualifying parent would not be able to visit the applicant in Mexico because of the cost of travel. However, there was no objective documentary evidence provided to substantiate this claim. Although the distress caused by separation from one's

family member is not in question, a waiver of inadmissibility is only available where the resulting hardship would be unusual or beyond that which would normally be expected upon removal. As such, the applicant has not met her burden in showing that her parents would suffer extreme hardship if he remained in the United States without the applicant.

The applicant's attorney asserts that the qualifying parent's entire immediate family lives in the United States. However, the record only contains documentation indicating that the qualifying parent's grandchildren are United States citizens and does not indicate that his other family members, aside from his wife, live in the United States. Further, the applicant's attorney also asserts that the qualifying parent no longer has close family ties to Mexico. However, there is no documentary proof for such claims made by the applicant's attorney. The assertions made by the applicant's attorney regarding the qualifying parent have been considered. However, assertions cannot be given great weight absent supporting evidence. Going on record without supporting documentary evidence generally is not sufficient for purposes of meeting the burden of proof in these proceedings. *See Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)). The applicant's attorney indicates that the qualifying parent would suffer from financial hardships if he were to relocate to Mexico. More specifically, he states that the qualifying parent would be unable to find a job in Mexico. The record contains two articles regarding the country conditions of Mexico, and neither of the articles directly addresses employment or substantiates these claims made by the applicant's attorney. Further, although the qualifying parent is fifty-six years old and has lived and worked in the United States for about twenty-five years, he is a native of Mexico and lived there for over half his life. As such, the applicant has not met her burden in demonstrating that her qualifying parent will suffer extreme hardship in the event that he relocates to Mexico.

The AAO therefore finds that the applicant has failed to establish extreme hardship to her parent, as required for a waiver of inadmissibility 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) 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.