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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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[Redacted]

FILE: [Redacted] Office: CLEVELAND, OHIO Date: MAR 11 2011  
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, Cleveland, Ohio, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The record reflects that 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 readmission within ten years of his last departure from the United States. The applicant is the son of lawful permanent residents of the United States and the father of three United States citizen children. He is the beneficiary of an approved Immigrant Petition for Alien Worker (Form I-140). The applicant 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 in the United States with his lawful permanent resident parents, Mexican citizen wife, and United States citizen children.

The Field Office Director found 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. *Decision of the Field Office Director*, dated November 24, 2008.

On appeal, the applicant, through counsel, asserts that when the applicant was granted advance parole, the United States Citizenship and Immigration Services (USCIS) "issued [the applicant] a document upon which he relied. He used this document in good faith. Based on his good faith use of the document, the USCIS proceeded to deny [the applicant] the benefit of adjustment of status." *Form I-290B*, filed December 24, 2008.

The record includes, but is not limited to, counsel's appeal brief, a statement from the applicant's parents, letters of support for the applicant, medical documents for the applicant's father, tax documents, and utility bills. The entire record was reviewed and considered in arriving at a decision on the appeal.

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.
  - .....
- (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 [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.

In the present case, the record indicates that on or about May 25, 1994, the applicant entered the United States without inspection. On June 8, 2002, the applicant filed an Application to Register Permanent Resident or Adjust Status (Form I-485) based on a Form I-140 worker petition filed by his employer on his behalf. On July 1, 2002, the applicant was granted advance parole. Sometime after July 1, 2002, the applicant departed the United States. On September 19, 2002, the applicant was paroled back into the United States.

The applicant accrued unlawful presence from April 1, 1997, the effective date of the unlawful presence provisions under the Act, until June 8, 2002, the day he filed a Form I-485. The applicant is seeking admission into the United States within ten years of his departure in 2002. The applicant is, therefore, inadmissible to the United States under section 212(a)(9)(B)(i)(II) of the Act for being unlawfully present in the United States for a period of more than one year.

In counsel's appeal brief dated December 23, 2008, counsel claims that after the applicant was granted advance parole, he "understood this to mean that he had permission to travel outside the borders of the United States. He did so, leaving the United States to visit relatives in Mexico." Counsel contends that "USCIS induced [the applicant's] reliance on a travel document issued by USCIS against agency policy.... In good faith, believing that he was acting according to the law, [the applicant] relied on this wrongfully issued document. Based upon his reliance on the document the USCIS issued in contravention of agency policy, the USCIS denied [the applicant] the immigration benefit he was seeking." Counsel claims that "instead of taking responsibility for and correcting a set of circumstance[s] that the agency directly caused, one which will destroy the lives of [the applicant] and his family, the USCIS justifies this clearly unjust denial with a disingenuous excuse." Counsel contends that since the warning in the advance parole document indicates that one "may be found inadmissible" for unlawful presence, "the recipient of the document cannot tell whether this warning will apply to him or her." The AAO notes that even if the applicant could not tell if the warning would apply to him, he was put on notice that if he departed the United States after 180 days of unlawful presence in the United States, he may be found inadmissible. Counsel claims that because the applicant's native language is not English, "he cannot have been 'duly warned' of the consequences of his actions." The AAO notes that it is the applicant's responsibility to ensure he understood the consequences of his application.

While the AAO notes the concerns expressed by counsel, they do not alter the facts in the present case, which are that the applicant departed the United States on advance parole after accruing more than one year of unlawful presence, thereby triggering the bar to admission in section 212(a)(9)(B)(i)(II) of the Act. To qualify for a waiver, he, like any other waiver applicant, must satisfy the extreme hardship requirement set forth in section 212(a)(9)(B)(v).

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 children can be considered only insofar as it results in hardship to a qualifying relative. The applicant's parents 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-Moralez*, 21 I&N Dec. 296, 301 (BIA 1996).

As a qualifying relative is not required to depart the United States as a consequence of an applicant's inadmissibility, two distinct factual scenarios exist should a waiver application be denied: either the qualifying relative will join the applicant to reside abroad or the qualifying relative will remain in the United States. Ascertaining the actual course of action that will be taken is complicated by the fact that an applicant may easily assert a plan for the qualifying relative to relocate abroad or to remain in the United States depending on which scenario presents the greatest prospective hardship, even though no intention exists to carry out the alleged plan in reality. Cf. *Matter of Ige*, 20 I&N Dec. 880, 885 (BIA 1994) (addressing separation of minor child from both parents applying for suspension of deportation). Thus, we interpret the statutory language of the various waiver provisions in section 212 of the Act to require an applicant to establish extreme hardship to his or her qualifying relative(s) under both possible scenarios. To endure the hardship of separation when extreme hardship could be avoided by joining the applicant abroad, or to endure the hardship of relocation when extreme hardship could be avoided by remaining in the United States, is a matter of choice and not the result of removal or inadmissibility. As the Board stated in *Matter of Ige*:

[W]e consider the critical issue . . . to be whether a child would suffer extreme hardship if he accompanied his parent abroad. If, as in this case, no hardship would ensue, then the fact that the child might face hardship if left in the United States would be the result of parental choice, not the parent's deportation.

*Id.* See also *Matter of Pilch*, 21 I&N Dec. 627, 632-33 (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).

Family separation, for instance, has been found to be a common result of inadmissibility or removal in some cases. See *Matter of Shaughnessy*, 12 I&N Dec. at 813. Nevertheless, family ties are to be considered in analyzing hardship. See *Matter of Cervantes-Gonzalez*, 22 I&N Dec. at 565-66. The question of whether family separation is the ordinary result of inadmissibility or removal may depend on the nature of family relationship considered. For example, in *Matter of Shaughnessy*, the Board considered the scenario of parents being separated from their soon-to-be adult son, finding that this separation would not result in extreme hardship to the parents. *Id.* at 811-12; see also *U.S. v. Arrieta*, 224 F.3d 1076, 1082 (9th Cir. 2000) (“Mr. Arrieta was not a spouse, but a son and brother. It was evident from the record that the effect of the deportation order would be separation rather than relocation.”). In *Matter of Cervantes-Gonzalez*, the Board considered the scenario of the respondent’s spouse accompanying him to Mexico, finding that she would not experience extreme hardship from losing “physical proximity to her family” in the United States. 22 I&N Dec. at 566-67.

The decision in *Cervantes-Gonzalez* reflects the norm that spouses reside with one another and establish a life together such that separating from one another is likely to result in substantial hardship. It is common for both spouses to relocate abroad if one of them is not allowed to stay in the United States, which typically results in separation from other family members living in the United States. Other decisions reflect the expectation that minor children will remain with their parents, upon whom they usually depend for financial and emotional support. See, e.g., *Matter of Ige*, 20 I&N Dec. at 886 (“[I]t is generally

preferable for children to be brought up by their parents.”). Therefore, the most important single hardship factor may be separation, particularly where spouses and minor children are concerned. *Salcido-Salcido*, 138 F.3d at 1293 (quoting *Contreras-Buenfil v. INS*, 712 F.2d 401, 403 (9th Cir. 1983)); *Cerrillo-Perez*, 809 F.2d at 1422.

Regardless of the type of family relationship involved, the hardship resulting from family separation is determined based on the actual impact of separation on an applicant, and all hardships must be considered in determining whether the combination of hardships takes the case beyond the consequences ordinarily associated with removal or inadmissibility. *Matter of O-J-O-*, 21 I&N Dec. at 383. Nevertheless, though we require an applicant to show that a qualifying relative would experience extreme hardship both in the event of relocation and in the event of separation, in analyzing the latter scenario, we give considerable, if not predominant, weight to the hardship of separation itself, particularly in cases involving the separation of spouses from one another and/or minor children from a parent. *Salcido-Salcido*, 138 F.3d at 1293.

The first prong of the analysis addresses hardship to the applicant’s parents if they relocate to Mexico. In counsel’s brief in support of the applicant’s waiver application dated June 7, 2004, counsel states that the applicant’s parents are lawful permanent residents of the United States, the applicant has United States citizen children, and he cannot take them to Mexico. Counsel claims that if the applicant’s parents and children join him in Mexico, his children will be prevented “from obtaining the right attention and education they need to progress in life,” and his parents will be prevented “from the opportunity to live in a safe environment,” obtaining necessary medical care, and prevented from becoming United States citizens. The AAO notes that the record establishes that the applicant’s father suffers from esophageal reflux and colon polyps. In a statement dated May 25, 2004, the applicant’s parents state their grandchildren “are in constant need of proper medical attention and proper education.” The AAO notes that no medical documentation has been submitted establishing that the applicant’s children are in need of any medical attention. The AAO notes the claims made regarding the difficulties the applicant’s parents and children would face in relocating to Mexico.

The AAO acknowledges that the applicant’s parents have resided in the United States for many years and that they may experience some hardship in relocating to Mexico. However, they are citizens of Mexico, and it has not been established that they do not speak Spanish or lack family ties to Mexico. The AAO notes counsel’s claim regarding the applicant’s parents living in a safe environment; however, no documentary evidence was submitted establishing that the applicant’s parents would face an unusual risk of harm should they reside in Mexico. Going on record without supporting documentation is not sufficient to meet the applicant’s burden of proof in this proceeding. *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)). Additionally, the AAO notes that the applicant’s father is suffering from various medical conditions; however, there is no evidence in the record that he cannot receive treatment for his medical conditions in Mexico, that he has to remain in the United States to receive treatment, or that his medical conditions would affect his ability to relocate. Further, the AAO finds that the applicant has not shown that hardship to his children will elevate his parents’ challenges to an extreme level. The AAO notes that other than the claims made regarding education and medical care for the applicant’s parents and children, no other claims are made in regard to this prong of the analysis. In that the record does not include

sufficient documentation of financial, medical, emotional or other types of hardship that the applicant's parents would experience if they joined the applicant in Mexico, the AAO does not find the applicant to have established that his parents would suffer extreme hardship upon relocation.

The second prong addresses hardship to the applicant's parents upon remaining in the United States. In a letter dated May 12, 2004, [REDACTED] states he has been following the applicant's father for esophageal reflux and colon polyps. [REDACTED] indicates that the applicant's father "relies very heavily on [the applicant]." Counsel claims that the applicant "is supporting his father and mother. Their son's deportation from this country will cause [them] extreme hardship both emotionally and financially, will break the family unity protected by the United States, and it will not be in the public interest." The applicant's parents state the applicant "supports [them] financially and emotionally." [REDACTED] reports that the applicant's father "is very dependent on [the applicant] for his subsistence, relying heavily on the [applicant's] income in order to pay his bills – not only medical but on a day to day basis." [REDACTED] states it would be a hardship if the applicant's father could not depend on the applicant's economic support. Counsel claims that the applicant will not find employment in Mexico, so he will be unable to support his family in the United States. The AAO notes the financial and medical concerns of the applicant's parents.

The AAO acknowledges that the applicant's parents may experience some financial hardship in being separated from the applicant; however, the AAO notes that the applicant has not provided sufficient documentation to establish his parent's financial situation. Additionally, the AAO notes that the applicant has submitted no evidence to establish that he will be unable to obtain employment in Mexico and, thereby, financially assist his parents from outside the United States. The record supports that the applicant has at least one sister in the United States, yet the applicant has not identified whether he has other siblings, or shown whether his sister or any other siblings would be available to assist his parents in his absence. In that the record does not include sufficient documentation of financial, medical, or other types of hardship that the applicant's parents would experience, the AAO finds that the applicant failed to establish that his parents would suffer extreme hardship if his waiver application is denied and they remain in the United States.

As the record does not establish that the applicant's parents would experience extreme hardship as a result of his inadmissibility, he is not eligible for a waiver under section 212(a)(9)(B)(v) of the Act. Having found the applicant statutorily ineligible for relief, the AAO finds 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 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.