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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

H6



DATE: Office: CIUDAD JUAREZ, MEXICO FILE:

IN RE: **NOV 02 2011** Applicant:

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:

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 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. 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 seeking readmission within ten years of his last departure from the United States. The applicant's spouse and three stepchildren are U.S. citizens and he seeks a waiver of inadmissibility in order to reside in the United States.

The field office director found that the applicant had failed to establish extreme hardship to a qualifying relative and the application was denied accordingly. *Decision of the Field Office Director*, dated January 27, 2009.

On appeal, the applicant refers to new evidence of extreme hardship. *Form I-290B*, dated February 26, 2009.

The record includes, but is not limited to, letters in Spanish, children's statements, a pastor's letter, medical letters, educational records, medical record and financial records.¹ The entire record was reviewed and considered, except for the statements in Spanish, in rendering a decision on the appeal.

The record reflects that the applicant entered the United States without inspection in January 2005 and departed the United States in August 2006. The AAO notes that the applicant listed his departure date as July 2005 on his Form I-601. However, he has not provided documentary evidence that he departed the United States in July 2005. Therefore, the AAO finds that the applicant accrued unlawful presence from January 2005 until August 2006. The applicant is 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 and seeking readmission within ten years of his August 2006 departure from the United States. The applicant does not contest his inadmissibility on 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-

....

¹ The AAO notes the letters in Spanish, but they will not be considered as they do not include translations, as required by the regulation at 8 C.F.R. § 103.2(b)(3).

(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.

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 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.

The applicant’s oldest child states that her dream is to go to college and this would be affected by going to Mexico. *Applicant’s Oldest Child’s Statement*, dated February 21, 2009. The applicant’s oldest child’s teacher states that interruption of her education would be detrimental to her emotionally and would impede her future academic goals. *Teacher’s Letter*, dated February 23, 2008.

The record reflects that the biological father of the applicant’s spouse’s children was awarded joint custody and visitation rights. *Divorce Decree*, filed August 25, 2004. The record is not clear as to whether he would permit the applicant’s spouse to take their children to Mexico to reside with her. The record lacks sufficient documentary evidence of emotional, financial, medical or other types of hardship that, in their totality, establish that the applicant’s spouse would suffer extreme hardship if she were to relocate to Mexico.

The applicant’s youngest child states that she cannot concentrate at school; she is close to him and misses him; she cries when she sees her other friends with their dads; her mother does not go out to

the mall or parks anymore; she does not have birthday parties due to lack of money; and her mother is sad and tired all of the time. *Applicant's Youngest Child's Statement*, dated February 17, 2009. The applicant's middle child states that the applicant took care of his family; his mother is sick all of the time and cannot afford to buy them anything; and his heart is broken when he sees his mother crying all of the time. *Applicant's Middle Child's Statement*, dated February 21, 2009. The applicant's oldest child states that her life is miserable and everything is getting destroyed; she is tired of seeing her mother crying all of the time; her biological father never treated her mother well; and her mother was happy when she married her new father. *Applicant's Oldest Child's Statement*. The record includes educational records for the applicant's children.

With respect to emotional hardship to the applicant's spouse, the applicant's spouse's pastor states that the applicant's spouse was previously in an abusive relationship; the applicant and his spouse attended his church and were involved in the ministry; the applicant's spouse's three children seem to be attaching to the applicant; the applicant's spouse has lost her emotional and financial support; and the children are missing out on a chance to have a loving and caring environment. *Pastor's Statement*, dated February 23, 2009. The record includes a domestic assault incident report, dated February 14, 2001, which lists the applicant's spouse as the victim. The record reflects that the applicant's spouse was referred by the [REDACTED] for counseling with different organizations on February 11, 2009. The health center issued a letter, dated February 16, 2009, stating that the applicant's spouse is clinically depressed and needs the support of her spouse.

With respect to financial hardship, the record reflects that the applicant's spouse is employed in the United States and earns approximately \$1,400.00 per month but that the applicant is unemployed in Mexico. The record includes numerous bills for the applicant's spouse which show significant financial obligations including a mortgage and credit card debt. Although the record is insufficient to establish that the applicant's spouse is unable to support herself and her children in the United States, the AAO acknowledges that the applicant's spouse is experiencing some financial hardship as a result of separation.

The record contains a letter from [REDACTED] which states that the applicant and his spouse underwent initial treatment for infertility; there are time pressures due to the applicant's spouse's age; treatment would be on both spouses; and the applicant would need to be in the United States to proceed with the treatment. *Letter from Physician*, dated October 26, 2007. The record also includes medical documents for someone with herniation with spinal stenosis and myelopathy. However, the record is not clear as to whom these medical documents relate.

Considering the unique issues presented, including the hardship to the applicant's spouse's children, the difficulties in raising three children in the applicant's absence, the applicant's spouse's emotional hardship, past relationship history, and financial issues, the AAO finds that the applicant's spouse would suffer extreme hardship if she remained in the United States.

Although the applicant has demonstrated that the qualifying relative would experience extreme hardship if separated from the applicant, we 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, we cannot find that refusal of admission would result in extreme hardship to the qualifying relative in this case.

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.