

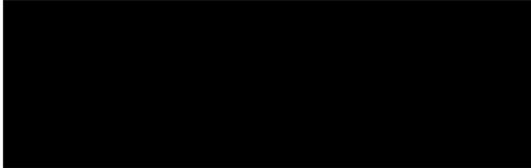
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U.S. Department of Homeland Security  
U.S. Citizenship and Immigration Services  
Administrative Appeals Office (AAO)  
20 Massachusetts Ave., N.W., MS 2090  
Washington, DC 20529-2090



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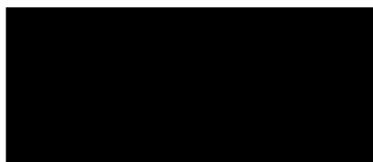
DATE: Office: CIUDAD JUAREZ, MEXICO File:

NOV 02 2011

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:



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, 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. 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 January 28, 2009.

On appeal, counsel for the applicant asserts that the Field Office Director erred in finding that the record did not establish that the applicant's inadmissibility would result in extreme hardship to the applicant's spouse. *Form I-290B*, received on March 3, 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 May 1998 and remained until she departed in September 2007. 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, counsel's brief; statements from the applicant's spouse; a statement from the applicant's spouse's employer; a statement and psychological evaluation from [REDACTED], regarding the applicant's spouse; copies of a residential mortgage statement; documents pertaining to a residential property price evaluation; statements from friends and associates of the applicant and her spouse; medical records pertaining to fertility treatments for the applicant and her spouse; a handwritten note from Salud Medical Center, dated October 31, 2007; two medical charts from [REDACTED]; a statement from [REDACTED] of

the Oregon Department of Human Services, dated September 26, 2007; a copy of the Oregon Adoption Assistance Handbook; a copy of the CIA World Factbook section on Mexico; and a copy of a Blue Cross Blue Shield account statement issued to the applicant's spouse.

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 an applicant or applicant's 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-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.

Counsel for the applicant asserts the applicant’s spouse will experience physical and financial hardship upon relocation to Mexico. *Appellant’s Brief*, received March 28, 2009. Counsel explains that the applicant has been diagnosed with Diabetes Mellitus and depends on the health insurance provided by the company where he has worked since 1991. She states that the applicant’s spouse has been promoted into a supervisory position with his employer and that he would be unable to earn sufficient income to support himself and his spouse if he relocated to Mexico. In addition, counsel explains, the applicant and her spouse purchased a house in 2006, that the applicant’s spouse is in danger of losing the house without his wife’s financial contributions and that he would have to sell their property at a loss if the applicant’s spouse relocated. Counsel further asserts that the applicant and her spouse were in the process of adopting a special needs child through the Oregon Department of Health and Services due to infertility problems, and that they would be unable to do so if the applicant’s spouse relocated to Mexico, resulting in an emotional hardship to him.

The applicant's spouse has submitted a statement which includes the assertions made in counsel's brief and notes that he and his spouse have been married for 17 years as of the filing of the instant appeal.

The record contains a single, hand written note from a [REDACTED] which states that the applicant's spouse is being treated for Diabetes at their office. There are also two medical charts with patient data which list the applicant's spouse's name. This evidence is sufficient to establish the applicant's spouse is being treated for Diabetes. However, the evidence submitted does not describe the severity of the condition or what treatment is necessary, nor does it establish that the applicant would be unable to receive treatment for his condition in Mexico. Without further evidence which is probative of the level of impact this has on the applicant's spouse the AAO cannot determine that the applicant's spouse is unable to care for himself or will experience any significant physical hardship based on this condition.

The record contains evidence that the applicant and her spouse owed over \$223,000 on their home as of March 2009. The record also contains evidence supporting counsel's assertion that the current value of homes comparable to that owned by the applicant and her spouse is approximately \$200,000.00. However, the record does not contain evidence that the applicant's spouse has fallen behind on payments for the property or that, due to other financial obligations, he is unable to pay the mortgage or maintain this property in his wife's absence. Further, loss on the sale of a home is not considered an uncommon hardship factor. *Marquez-Medina v. INS*, 765 F.2d 673, 676 (7<sup>th</sup> Cir. 1985).

The record also contains a copy of the CIA World Factbook section on Mexico. General economic conditions in an alien's native country will not establish extreme hardship in the absence of evidence that the conditions would specifically impact the qualifying relative. In this case there is no evidence that the applicant's spouse would be unable to find employment in Mexico. However, the record contains a letter from the applicant's spouse's employer which states that the applicant has been employed since 1991 and has worked his way up to a supervisory position. Further, the record shows that the applicant's spouse has health insurance through his current employer. The AAO notes the applicant's spouse's concerns regarding the loss of his long-term employment in the United States.

The record also shows that the applicant and her spouse began the process of adopting a special needs child in Oregon through the Oregon Adoption Assistance Program. Counsel notes that the applicant and her spouse would not be able to continue this process in Mexico and that there would not be a similar opportunity to adopt in Mexico.

Based on the record as a whole, including the applicant's spouse's long time residence in the United States, community ties in the United States, financial concerns, loss of employment and loss of health insurance, the AAO finds that the applicant's spouse would suffer extreme hardship if he were to relocate to Mexico to be with the applicant.

Counsel also asserts that the applicant's spouse would suffer extreme hardship if he remains in the U.S. without the applicant. Counsel asserts that the applicant's spouse has been diagnosed with diabetes and that his spouse assists him with his medication and diet plan, and that due to this the applicant's spouse would experience physical hardship upon separation. *Applicant's Brief*, received March 28, 2009. Counsel also asserts that, without the applicant's financial assistance, the applicant's spouse is at risk of losing their home. Counsel further asserts the applicant is suffering emotional hardship and refers to a psychological examination submitted into the record. Finally, counsel asserts that the applicant's spouse will suffer emotional hardship because he will be unable to adopt a special needs child through the state of Oregon without the applicant's presence in the United States.

The applicant's spouse has submitted a statement and asserts that the applicant helps him maintain control over his diet, and that due to her absence he is suffering from stress which aggravates his condition and is not motivated to maintain a proper diet. *Statement of the applicant's spouse*, March 26, 2009.

As discussed above, the record does not provide sufficient evidence to establish that the impact of his diabetes is severe. The applicant indicates that he takes medication twice daily and has been advised to change his diet. While the applicant's spouse asserts he is unmotivated to do this in the absence of his wife, there is no objective evidence in the record which establish that the impact on his ability to function on a daily basis is such that he is incapable of taking his pills and changing his diet. He has continued to work and function on a daily basis since he was diagnosed, and there is no prognosis in the record to indicate this will change.

Also discussed above is the lack of documentation to support that the applicant's spouse is unable to meet his financial obligations. As discussed above, the record shows that the applicant's spouse has stable employment in the United States. The record also contains a copy of the applicant's spouse's mortgage statement, however there is nothing in the record that indicates that the applicant's spouse is in danger of losing his house to foreclosure or is otherwise unable to meet his financial obligations. Further, there is no evidence of the applicant's income or financial obligations so the financial impact of her absence is unclear.

The record contains a psychological report from [REDACTED], dated October 29, 2007. [REDACTED] indicates the applicant's spouse is experiencing a high degree of anxiousness and depression, and that his symptoms are likely to continue if he remains separated from the applicant. The AAO will give due consideration to the [REDACTED] evaluation.

As noted, the applicant and her spouse began the process to adopt a special needs child through the state of Oregon. However, the AAO notes that being unable to start a family due to separation is a common hardship, and as such, does not rise to the level of extreme hardship.

The AAO acknowledges that the applicant's spouse will experience emotional hardship if he remains in the United States without the applicant, but the applicant has failed to demonstrate that

this hardship, even when combined with other hardship factors, will be extreme. The AAO recognizes the significance of family separation as a hardship factor, but concludes that the hardship articulated in this case, based on the evidence in this record, does not rise above the common result of removal or inadmissibility and thus does not constitute extreme hardship. 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. As the applicant has failed to establish extreme hardship to a qualifying relative, no purpose would be served in determining whether she warrants 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.