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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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HLS



Date: Office: MEXICO CITY, MEXICO
(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, 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 Acting District Director, Mexico City, Mexico, 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 her last departure from the United States. The record indicates that the applicant is married to a United States citizen and she is the beneficiary of an approved Petition for Alien Relative (Form I-130). 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 her United States citizen spouse.

The Acting District Director found that the applicant had 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 Acting District Director*, dated October 15, 2008.

On appeal, the applicant's husband asserts that United States Citizenship and Immigration Services (USCIS) erroneously denied the applicant's waiver application as he is suffering hardship. *Form I-290B*, dated November 14, 2008.

The record includes, but is not limited to, statements from the applicant and her husband in English and Spanish¹, letters of support for the applicant and her husband in English and Spanish, a letter from the applicant's husband's employer, medical documentation for the applicant's husband and mother-in-law, and telephone bills. The entire record was reviewed and considered, with the exception of the Spanish language statements, 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-

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¹ Pursuant to the regulation at 8 C.F.R. § 103.2(b)(3), an applicant who submits a document in a foreign language must provide a certified English-language translation of that document. As letters of support and a statement from the applicant are in Spanish and are not accompanied by English-language translations, the AAO will not consider them in this proceeding.

(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.

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- (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 application, the record indicates that in July 2001, the applicant entered the United States without inspection. In September 2007, the applicant departed the United States.

The applicant accrued unlawful presence from July 2001, when she entered the United States without inspection, until September 2007, when she departed the United States. The applicant is attempting to seek admission into the United States within ten years of her September 2007 departure from the United States. 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.

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 husband 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.

In a statement filed December 31, 2008, the applicant's husband states he has never lived in Mexico and all of his family is in Arizona including his sick mother and father. The AAO notes that no medical documentation was submitted establishing that the applicant's father-in-law is suffering from any medical conditions, how serious his medical conditions are, or what treatment he is receiving or may require. 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)). However,

the AAO notes that medical documents in the record establish that the applicant's mother-in-law has hypercholesterolemia, hypertension, hip pain, mild arthritis, epicondylitis, menometrorrhagia, and anemia, and she had a hysterectomy.

The applicant's husband claims that his parents need him in the United States to run errands for them. The AAO notes that other than the applicant's husband's statement, no documentary evidence has been submitted establishing that the applicant's parents-in-law require the applicant's husband's assistance. Additionally, the AAO notes that the record establishes that the applicant's sister-in-law assists her mother during doctor's appointments. *See medical record*, dated April 17, 2007; *see also medical record*, dated July 9, 2007. The applicant's husband states there are no jobs and he cannot further his education in Mexico. The AAO notes the applicant's husband's concerns regarding the difficulties he would face in relocating to Mexico.

In a statement dated October 23, 2007, [REDACTED] reports that the applicant's husband "has experienced a decline in his overall well being since [the applicant's] inability to return to the United States. He is experiencing an increase in gastroesophageal reflux disease (GERD), an increase in frequency of his migraines, and he is reporting weight loss of 10 pounds." [REDACTED] also reports that the applicant's husband states he has signs of depression. The AAO notes the applicant's husband's medical and emotional concerns.

The AAO acknowledges that the applicant's husband is a citizen of the United States and that he may experience some hardship in joining the applicant in Mexico. However, the AAO notes that the record does not contain documentary evidence, e.g., country conditions reports on Mexico, that demonstrate that the applicant's husband would be unable to obtain employment upon relocation that would allow him to use the skills he has acquired in the United States. The AAO notes that the record establishes that the applicant's husband is suffering from depression; however, [REDACTED] does not describe the severity of the applicant's husband's depression and does not describe the specific treatment that he is receiving. Additionally, the AAO notes that the applicant's husband 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. The AAO acknowledges that the applicant's parents-in-law may suffer some hardship in being separated from their son; however, the AAO notes that the applicant's parents-in-law are not qualifying relatives, and the applicant has not shown that her parents-in-law will experience challenges that elevate her husband's difficulty to an extreme hardship. Therefore, based on the record before it, the AAO finds that the applicant has failed to establish that her husband would suffer extreme hardship if he relocated to Mexico.

With respect to separation from the applicant, the applicant's husband states that he needs the applicant to support him "emotionally, morally, and financially." In a statement dated November 3, 2007, the applicant's husband states the separation from the applicant "has caused a decrease in [his] personal health." He claims that he has had an increase in migraines, heartburn, weight loss, and depression. As noted above, medical documentation in the record establishes that the applicant's husband is suffering from GERD, migraines, weight loss, and depression. Additionally, the applicant's husband states they

cannot start a family because they need fertility treatments. Further, the applicant's husband states his parents have high blood pressure and diabetes, and his father has arthritis. As noted above, the record contains no medical documentation that the applicant's father is suffering from any medical conditions. However, as noted above, medical documents in the record establish that the applicant's mother-in-law has hypercholesterolemia, hypertension, hip pain, mild arthritis, epicondylitis, menometrorrhagia, and anemia, and she had a hysterectomy. The AAO notes the medical concerns of the applicant's husband and his parents.

The applicant's husband states he needs the applicant to help with his house and financial problems. The applicant's husband states the applicant cooks for him and cleans the house. He also states the applicant balances the checkbook and pays the bills. He claims that he has been in a "financial bind since September 2007 cause [sic] of the lack of [the applicant] not [being] able to come back" and help him "keep [his] payments on time." The applicant's husband states his "phone bill has gone up by 400 dollars a month." The record contains two phone bills dated June 23, 2007 and August 23, 2007, for \$475.42 and \$641.39, respectively; however, the AAO notes that these bills are dated before the applicant departed the United States. The applicant's husband also states it would be a financial hardship supporting the applicant and visiting her in Mexico. Additionally, he claims that because of the stress of being separated from the applicant, his work performance has suffered. In an undated letter, [REDACTED] indicates that the applicant's husband has worked for him since April 24, 2007, and since the applicant departed the United States, her husband's demeanor and work habits have changed. The AAO notes the applicant's husband's financial and employment issues.

While the AAO notes the applicant's husband's claims of financial hardship, it does not find the record to support them. The AAO notes that other than the two phone bills, the record contains no documentation that establishes the applicant's husband's income or expenses in the applicant's absence. Additionally, the AAO notes that the applicant has submitted no evidence to establish that she is unable to obtain employment in Mexico and, thereby, reduce the financial burden on her husband.

However, the AAO finds that when the applicant's husband's emotional, financial, and employment issues are considered in combination with the normal hardships that result from separation of a spouse, the applicant has established that her husband would experience extreme hardship if he 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)(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.