

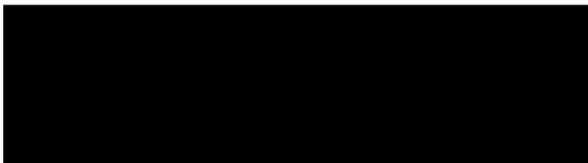
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U.S. Department of Homeland Security  
U.S. Citizenship and Immigration Services  
Administrative Appeals Office (AAO)  
20 Massachusetts Ave., N.W., MS 2090  
Washington, DC 20529-2090



U.S. Citizenship  
and Immigration  
Services

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HLG

DATE: NOV 02 2011 Office: MEXICO CITY, MEXICO File: [REDACTED]

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 (the Act), 8 U.S.C. section 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 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. He 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 his last departure. He 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 his admission would impose extreme hardship on a qualifying relative, his U.S. citizen spouse, and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) on June 10, 2009.

On appeal, the applicant's spouse asserts that she is experiencing physical, financial and emotional hardships due to the applicant's inadmissibility. *Attachment, Form I-290B*, received on July 15, 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 November 1999 and remained until he departed in February 2008. As the applicant resided unlawfully in the United States for over a year and is now seeking admission within ten years of his last departure from the United States, he is inadmissible under section 212(a)(9)(B)(i)(II) of the Act.

The record includes, but is not limited to, statements from the applicant's spouse; a copy of an auto insurance statement; a copy of a phone bill; a Notice of Performance Deficiency from the applicant's spouse's employer; a Consultation Evaluation by [REDACTED], [REDACTED] Board of Behavioral Sciences; a prescription form for Zoloft issued to the applicant's spouse, dated June 29, 2009; a statement from [REDACTED], regarding the applicant's spouse's mother; college transcript records for the applicant's spouse; and photographs of the applicant's children.

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 the applicant or his 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 spouse asserts on appeal that she would not be able to uproot herself from the United States to relocate to Mexico with the applicant. *Statement of the Applicant on Appeal*, dated July 3, 2009. She states that she has no assets accrued to help generate any income in Mexico, that she and her children would not be eligible for medical services or social security benefits and that she does not want her children to attend Mexican schools. She asserts that she should not be forced out of the United States where she and her family will be exposed to drug war violence.

The record does not contain any documentation to support the applicant’s spouse’s assertions, such as country conditions materials and documentation establishing they would have to reside in an area plagued with drug war violence. There is nothing in the record which indicates that she would be unable to find employment or health benefits in Mexico. Further, while the AAO recognizes that she would prefer that her children attend school in the United States, this is not a basis of extreme hardship. The AAO does take note of the fact that the applicant’s spouse is a U.S. citizen and would have to sever some family and community ties in the United States upon relocation. Nonetheless, even when considered in the aggregate, the record does not establish that the applicant’s spouse would experience hardship factors upon relocation rising to the level of extreme hardship.

The applicant's spouse asserts she is experiencing physical, emotional and financial hardship due to separation from the applicant. *Statement of the Applicant's Spouse*, dated July 3, 2009. She explains that she and her two children are residing in one room in her parents house, that she is struggling to meet their financial obligations, cannot afford to visit the applicant in Mexico and that frequent absences are impacting her employment. She further states that she has been unable to continue her education, may be forced to file for bankruptcy and have her car repossessed by the bank, and that she cannot afford childcare. The applicant's spouse also states that she is suffering from depression.

The record contains copies of some monthly bills owed by the applicant's spouse, and she lists her expenses as a \$439 monthly car payment, \$250 monthly telephone bill, \$500 monthly rent payment, \$100 monthly credit card payment, \$70 monthly insurance payment and \$300 in miscellaneous expenses. The record does not contain any evidence that the applicant's spouse is paying \$500 in rent. The applicant's spouse lives with her parents and her two brothers, but does not explain why other family members cannot assist her financially. While the record contains medical documents which presumably relate to her mother in order to explain why her mother has difficulty caring for her children, the record does not establish that she would be unable to afford outside child care. There is evidence in the record that the applicant's spouse has been sending money to support the applicant in Mexico, but as noted above, there is no evidence that the applicant would not be able to obtain some type of employment to order to support himself or help support his spouse from abroad. The applicant's spouse asserts that her income is \$1900 a month and that her expenses are \$1800 a month. Thus, her current income exceeds her financial obligations. As noted above, some of her claimed expenses are not supported by the record, and the applicant has not explained why she would not be able to reduce some of her expenses in order to ease the financial impact of the applicant's departure. Based on these observations the record does not establish that the applicant's spouse will experience an uncommon financial impact due to separation from the applicant.

The applicant's spouse has asserted that she is raising her and the applicant's two children by herself and that she has been unable to continue her college education as she had dreamed. There is a statement from the applicant's spouse's employer which notes a deficiency in her performance due to absenteeism and tardiness. As noted above, the applicant's spouse has not established that she is unable to afford childcare, why some of her immediate family members are unable to assist her in caring for her children and more specifically how and why it has resulted in absences from work. It is reasonable to acknowledge that there will be some degree of impact from having to assume additional parenting duties, but the record does not distinguish the impact on the applicant's spouse from the impacts commonly experienced by relatives of inadmissible family members who remain in the United States. Further, an inability to pursue a college education is not considered an uncommon impact.

The record contains a mental health evaluation by [REDACTED] [REDACTED] narrates emotional impacts on the applicant's spouse as relayed to him by the applicant's spouse and concludes that she is suffering Major Depression – single episode, and General Anxiety Disorder with severe somatic symptoms. The AAO will give due consideration to the emotional impact on the applicant's spouse when aggregating the hardship impacts on her.

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 record fails to establish that a qualifying relative will experience extreme hardship, there is no purpose in determining whether the applicant 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.