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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
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Washington, DC 20529-2090

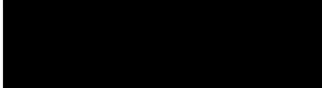


U.S. Citizenship
and Immigration
Services

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Date: NOV 09 2011 Office: MEXICO CITY, MEXICO FILE: 

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:

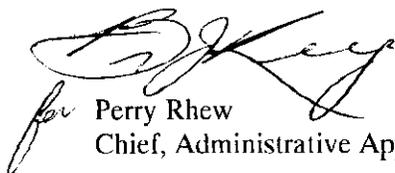


INSTRUCTIONS:

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,


for Perry Rhew
Chief, Administrative Appeals Office

(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.

In the present application, the record reflects that the applicant entered the United States in May 2005, without inspection. The applicant is the beneficiary of an approved Form I-130 petition, filed on his behalf by his U.S. citizen spouse, which was approved on February 25, 2006. The applicant voluntarily departed the United States in August 2007. On September 10, 2007, the applicant filed a Form I-601. On February 4, 2009, the Field Office Director denied the Form I-601, finding that the applicant was inadmissible for having accrued more than one year of unlawful presence and had failed to demonstrate extreme hardship to his United States citizen spouse.

The applicant accrued unlawful presence from May 2005, when he entered the United States without inspection, until August 2007, when he departed the United States. The applicant is attempting to seek admission into the United States within 10 years of his August 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.

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 other family members 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 United States Citizenship and Immigration Services 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 states that she will suffer many hardships if the applicant is not granted a waiver. She states that she and her husband live with her parents and are able to save to buy a house, but they had to postpone the dream of owning a home; and that she is working at getting her G.E.D. so that she can contribute to the family income but she had to stop the process. It is noted however, in his September 21, 2007 brief, counsel states that the applicant's spouse received her G.E.D. and that she has plans of finishing college.

In an evaluation, psychologist Dr. [REDACTED] states that the applicant's spouse reports having crying spells, a lack of energy, and a lack of interest in any event, as well as an overall feeling of sadness. Dr. [REDACTED] concludes that the applicant's spouse has symptoms of depression which warrants clinical attention and that she is in need of psychological and psychiatric treatment. Dr. [REDACTED] recommends that if the applicant's spouse remains in the United States with her children and her husband is not granted a visa she will require intensive individual psychotherapy with a bilingual therapist utilizing the cognitive behavioral approach to address her depressive symptoms; that during psychotherapy the applicant's spouse will need to learn the coping skills to manage her depressive symptoms and simultaneously be able to parent her two sons independently; that she requires a psychiatric evaluation and would likely benefit from psychopharmacological treatment in order to treat her depressive symptoms; that her lack of interest in grooming is indicative of a more severe level of depressive symptoms whereby psychiatric care is recommended; and that participation in a single parent support group may benefit the applicant's spouse as this setting may provide an avenue to express her thoughts and emotions freely and may assist in normalizing her emotions. Dr. [REDACTED] also states that the applicant's spouse does not meet the full criteria for Anxiety Disorder Not Otherwise Specified, but that this diagnosis is likely if the applicant's visa is not granted.

Though the input of any mental health professional is respected and valuable, the AAO notes, however, that Dr. [REDACTED] provides a psychological evaluation for the applicant's spouse which focuses essentially on the applicant's immigration status than on how the state of the applicant's spouse's mental health affects her. It is also noted that the conclusions reached in the submitted evaluation, being based on a single interview, do not reflect the insight and elaboration commensurate with an established relationship with a mental health professional, thereby rendering the findings speculative and diminishing the evaluation's value to a determination of exceptional hardship.

The applicant's spouse states that she needs her husband's financial support. She states that when her husband was in the United States he earned \$400.00 per week while she took care of their two children. The record includes a 2008 income tax return and 2008 Form W-2 that shows the applicant's spouse earned \$4,268.00 from her agricultural work in California. However, the applicant does not provide details of the family's income and recurring expenses.

The applicant's spouse's mother states that the applicant, her daughter, and her two grandsons lived with her and her husband while they were in the United States and that the applicant helped her and her husband with household bills. However, the record does not include evidence of any such financial contributions. It is noted that the applicant's spouse does not indicate whether she would be able to continue living with her parents and get the assistance of her parents with the care of their children. Also, the applicant does not specify the household bills for their home in the United States, and the expenses he will incur to maintain a separate household in Mexico. Without details of the family's expenses, the AAO is unable to assess the nature and extent of financial hardship, if any, the family will face.

The applicant's spouse will suffer hardship due to separation. However, it has not been established that even when the hardship factors are considered in the aggregate, together with hardships typical of separation, that such hardships would be beyond what would normally be expected as a result of separation.

With respect to relocation to Mexico, the applicant's spouse states that she could not live here without the applicant so she moved to Mexico to be with him; but, because she has always lived in the United States, she has "been suffering extreme emotional hardship due to the fact that [she is] living in a foreign land;" that she is concerned for her well-being and her education, and the education of their children if they reside in Mexico with the applicant; and, she fears for her and her family's lives and safety because of violence in Mexico. She states that her husband now earns \$70.00 per week in Mexico which she states "barely puts food on the table at times;" that as a result, she was forced to travel to California to work at a farm earning \$200.00 per week, but after six months she returned to Mexico because she "couldn't deal [with] living without [her husband] for so long."

Counsel points to the high level of violence in Mexico. Also, the applicant states that she lives in fear for her and her family's lives due to violence and frequent shootings in the area where the applicant resides in Mexico. The applicant's spouse also states that because of the poor economy in Mexico it is difficult for her husband to earn enough to provide for the family, and because she grew up in the United States and because of the low standard of living in Mexico, it is difficult for her to adjust to life there.

The record indicates that the applicant's spouse will relocate in [REDACTED] Mexico, as the applicant resides there with his parents. The AAO notes that recently the United States Department of State, *Bureau of Consular Affairs*, warned of dangers in Mexico. The travel warning states, in part, that:

[REDACTED] and [REDACTED] The level of violence and insecurity in [REDACTED] remains elevated. Local police and private patrols do not have the capacity to deter criminal elements or respond effectively to security incidents. As a result of a Department of State assessment of the overall security situation, on September 10, 2010, the Consulate General in Monterrey became a partially unaccompanied post with no minor dependents of U.S. government employees permitted.

TCOs continue to use stolen cars and trucks to create roadblocks or "blockades" on major thoroughfares, preventing the military or police from responding to criminal activity in Monterrey and the surrounding areas. Travelers on the highways between Monterrey and the United States (notably through [REDACTED] and [REDACTED]) have been targeted for robbery that has resulted in violence. They have also been caught in incidents of gunfire between criminals and Mexican law enforcement. In 2010, TCOs kidnapped guests out of reputable hotels in the downtown [REDACTED] area, blocking off adjoining streets to prevent law enforcement response. TCOs have also regularly attacked local government facilities, prisons and police stations, and engaged in public shootouts with the military and between themselves. Pedestrians and innocent bystanders have been killed in these incidents.

See, United States Department of State, *Bureau of Consular Affairs*, Washington, DC, *Travel Warning*, April 22, 2011.

The applicant's spouse would be concerned with her and her family's safety in the [REDACTED] area of Mexico; the financial well-being of her family as the applicant's earnings are insufficient to support the family and employment opportunities are limited and he cannot find employment that pays enough to provide for their family; the difficulty of adjusting in a foreign culture where she does not have family; and leaving her parents in the United States. The applicant's spouse would also be concerned about her inability to pursue her education in Mexico; and the lack of a quality education and lower living standards for her children in Mexico.

The AAO finds that these hardship factors, when added together with the common hardships resulting from relocation to another country, and the level of emotional stress that would result from living in such a high crime area of Mexico, would be beyond what would normally be expected as a result of inadmissibility.

Although the applicant has demonstrated that his spouse, the qualifying relative, would experience extreme hardship if she relocated abroad to reside with the applicant, we can find extreme hardship warranting a waiver of inadmissibility only where an applicant has shown extreme hardship to a qualifying relative in the scenario of relocation *and* the scenario of separation. 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 relocate and thereby suffer extreme hardship can easily be made for purposes of the waiver even where there is no actual intention to relocate. *Cf. Matter of Ige*, 20 I&N Dec. 880, 886 (BIA 1994). Furthermore, to relocate and suffer extreme hardship, where remaining in the United States and being separated from the applicant would not result in extreme hardship, is a matter of choice and not the result of inadmissibility. *Id.*, also *cf. Matter of Pilch*, 21 I&N Dec. 627, 632-33 (BIA 1996). As the applicant has not demonstrated extreme hardship from separation, we cannot find that refusal of admission would result in extreme hardship to the qualifying relative in this case.

As discussed above, a review of the documentation in the record, when considered in its totality, reflects that the applicant has failed to establish that his United States citizen spouse would suffer extreme hardship as required for a waiver under section 212(a)(9)(B)(v) of the Act. Having found

the applicant statutorily ineligible for relief, 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.