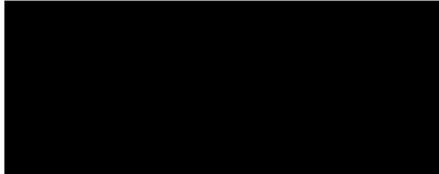


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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090
**U.S. Citizenship
and Immigration
Services**



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Date: **NOV 10 2011** Office: CIUDAD JUAREZ, 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:

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,


for
Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Field Office Director, Ciudad Juarez, 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 his last departure from the United States. The applicant is married to a United States citizen and the father of three United States citizen stepchildren. He 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 his spouse and children.

The Field Office Director found that the applicant had failed to establish that extreme hardship would be imposed on the applicant's qualifying relative and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) accordingly. *Decision of the Field Office Director*, dated March 5, 2009.

The applicant's spouse states she would like for them to "become a family again," and it is "difficult to be a functional family when [they] are so far apart." *Form I-290B*, filed April 7, 2009.

The record includes, but is not limited to, statements from the applicant's wife and stepsons, medical documents for the applicant's wife, worker's compensation documents for the applicant's wife, employment verification documents for the applicant and his wife, travel documents, a pay stub for the applicant's wife, business documents, and court documents. The entire record was reviewed and considered 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-

....

- (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 [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 October 1996, the applicant entered the United States without inspection. In November 2007, the applicant departed the United States.

The applicant accrued unlawful presence from April 1, 1997, the effective date of the unlawful presence provisions under the Act, until November 2007, when he departed the United States. The applicant is attempting to seek admission into the United States within ten years of his November 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 and seeking admission within 10 years of his departure from the United States.

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 stepchildren can be considered only insofar as it results in hardship to a qualifying relative. The applicant's wife 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 (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 of Immigration Appeals (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 dated March 25, 2009, the applicant’s wife states “[m]oving to Mexico is not an option [for] [her] children and [her].” She states that she has a stable job in the United States with benefits. The record reflects that the applicant’s spouse has been employed with the same company since 1999. The applicant’s wife claims that “[b]y moving to Mexico [she] would be forsaking [her] security and [their] children[’s] security, stable home, [her] secure employment and future career opportunities.” She states that when she was five (5) years old, her mother moved her and her sister to Mexico. The applicant’s wife states she has “first hand [sic] knowledge of living in the poverty that consumes so many parts of Mexico. [She] cannot put [her] own children through that. [She] refuse[s] to take away from them and [herself] the opportunity of the American dream.” She claims that she returned to the United States when she was eighteen (18) years old. The applicant’s wife states she wants her children to attend university in the United States, “to have the opportunity to own a house, to have access to health services, to have food on the table every day, a cozy bed at night, clean water, and a bathroom inside the house.” Additionally, the applicant’s wife states her children do not read or write in Spanish, and it would be difficult for them to move to Mexico, “because of the language barrier and a culture that their [sic] not accustomed too [sic].” The applicant’s wife states that on February 26, 2008, she suffered a work related injury to her left hand; however, she claims that after a year, her hand functions properly now. The AAO notes the

applicant's wife's concerns regarding the difficulties she and her children would face in relocating to Mexico.

The AAO acknowledges that the applicant's wife is a citizen of the United States and that she may experience some hardship in joining the applicant in Mexico. The AAO also recognizes that, in relocating to Mexico, the applicant's spouse would be required to give up her long-term employment. 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 wife would be unable to obtain employment upon relocation that would allow her to use the skills she has acquired in the United States. Further, the AAO acknowledges that the applicant's wife's children may suffer some hardship in Mexico; however, the AAO finds that the applicant has not shown that hardship to his stepchildren will elevate his wife's challenges to an extreme level. Therefore, based on the record before it, the AAO finds that, even considering the potential hardships in the aggregate, the applicant has failed to establish that his wife would suffer extreme hardship if she relocated to Mexico.

In addition, the record also fails to establish extreme hardship to the applicant's wife if she remains in the United States. In a statement dated December 11, 2007, the applicant's wife states the separation from the applicant "is causing a lot of anxiety and emotional distress to [her] and the kids." She states the applicant is a father figure to her children, since their biological father abandoned them. She claims that her children now feel abandoned by the applicant, and they "are not resting enough," are frustrated, and "they are misbehaving." The AAO acknowledges that the applicant's stepchildren may be suffering some hardship in being separated from the applicant; however, the AAO notes that the applicant's stepchildren are not qualifying relatives, and the applicant has not shown that hardship to his stepchildren has elevated his wife's challenges to an extreme level. However, the AAO notes the concerns for the applicant's stepchildren. The applicant's wife states her "family is slowly crumbling with each day that passes." In a statement dated March 25, 2009, the applicant's stepson, Alfredo, states his "family is sad without [the applicant]." The applicant's wife states she feels she will have a nervous breakdown, and she feels "sad" and "impotent of not been able to solve this dilemma that the family is living." The AAO notes the emotional concerns of the applicant's wife and stepchildren.

As noted above, the applicant's wife states that on February 26, 2008, she suffered a work related injury to her left hand. The AAO notes that medical documents in the record establish that on February 26, 2008, the applicant's wife suffered an injury on her left hand which required surgery. *See operative report*, dated March 5, 2008. Additionally, the record establishes that the applicant's wife filed for worker's compensation for her injury. *See letter from* [REDACTED] dated November 12, 2008. The applicant's wife states "[i]t took a surgery, almost a year of therapy, pain medication and antibiotics in case of infection before [her] left hand was able to function properly." She states her family "is physically healthy now." The record does not contain any evidence indicating that the applicant's spouse's injury has continued to cause her difficulties.

The applicant's wife states her income "is not enough to cover all the necessities." The applicant's spouse claims that the applicant was the main provider in their household. Additionally, she states he takes care of the children when she is at work. The record contains a letter from the applicant's spouse's

employer as well as an earnings statement for the applicant's spouse. There are also letters and other documents relating to the applicant's employment in the United States. However, there is no evidence of the applicant's income while in the United States. Nor is there any documentation in the record regarding the applicant's spouse's expenses or financial obligations.

The AAO acknowledges that the applicant's wife may be suffering some emotional problems in being separated from the applicant. However, the AAO notes that while it is understood that the separation of spouses often results in significant psychological challenges, the applicant has not distinguished his wife's emotional hardship upon separation from that which is typically faced by the spouses of those deemed inadmissible. With respect to the applicant's spouse's medical hardship, although the record establishes that the applicant's spouse suffered a serious work-related injury, the record also indicates that this injury has healed and there is no evidence indicating that the injury continues to create difficulties for the applicant's spouse. The AAO finds the record to include some documentation of the applicant's wife's income; however, there is no evidence in the record regarding the applicant's wife's expenses or financial obligations. Therefore, the material submitted offers insufficient proof that the applicant's wife is unable to support herself in the applicant's absence. Additionally, the applicant has not distinguished his wife's financial challenges from those commonly experienced when a family member remains in the United States alone. Further, the AAO notes that the applicant has submitted no evidence to establish that he would be unable to obtain employment in Mexico and, thereby, financially assist his wife from outside the United States. Based on the record before it, the AAO finds that the applicant has failed to establish that his wife would suffer extreme hardship if his waiver application is denied and she remains in the United States.

A review of the documentation in the record fails to establish the existence of extreme hardship to the applicant's wife caused by the applicant's inadmissibility to the United States. Having found the applicant statutorily ineligible for relief, the AAO finds 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.