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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 14 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: 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 Field Office 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 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.

The Field Office 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 Field Office Director*, dated June 23, 2009.

On appeal, former counsel for the applicant asserts that extreme hardship to the applicant's spouse has been established. See *Form I-290, Notice of Appeal or Motion*.

It is noted that counsel states on the Form I-290B that a brief or additional evidence will be submitted within 30 days. *Form I-290B*, dated July 21, 2009. However, the record does not reflect receipt of additional evidence. Therefore, the record will be considered complete. It is also noted that by letter dated August 27, 2009, counsel withdrew her representation of the applicant. The record does not reflect a substitution of attorney. The applicant is, therefore, considered as self-represented and the decision in this matter will be furnished to her only.

The record includes, but is not limited to, statements from the applicant's spouse describing the hardship claimed; medical documentation pertaining to the applicant and her spouse; medical documentation pertaining to the applicant's spouse's mother; statements from the applicant's friends and relatives;<sup>1</sup> a statement from the applicant's pastor; a statement from the applicant's spouse's employer; an earnings statement for the applicant's spouse; and financial documentation, including a mortgage statement, tax returns, bank statements and bills. 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-

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<sup>1</sup> Six statements submitted in support of the Form I-601 are written in Spanish and are not accompanied by an English-language translation. Accordingly, they will not be considered in this proceeding. 8 C.F.R. § 103.2(b)(3).

(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 stated during her immigrant visa interview that she had entered the United States in February 1999, without inspection, and remained until April 2005 when she departed the United States for Mexico. Therefore, the applicant accrued unlawful presence from February 1999, when she entered without inspection, until April 2005, when she departed the United States. As the applicant is seeking admission to the United States within ten years of her April 2005 departure, she is inadmissible under section 212(a)(9)(B)(i)(II) of the Act for having been 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 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.

The applicant's spouse asserts that he is experiencing emotional hardship without the applicant. He states that he and the applicant were looking forward to building a good future and a family together but they deferred their dreams when the applicant departed to Mexico, including ending the applicant's fertility treatments because they did not want to have children while they were separated. The applicant's spouse also states that he and the applicant did everything together and that he now feels empty and psychologically stressed without her. He also contends that the applicant is experiencing psychological anxiety as a result of separation and her suffering is causing him additional hardship.

The applicant's spouse also states that the applicant played an important role in his mother's life because his mother suffers from diabetes, high blood pressure, severe arthritis, and gets dizzy spells. He also states that his mother has fainted on several occasions and needs supervision to ensure that she takes her medication properly. The applicant's spouse contends that his mother cannot care for herself and

previously depended on the applicant to give her medication, run errands, cook, and monitor her in case of emergency. He states that he has been extremely concerned about his mother because she is alone while he works and has no one to care for her.

The applicant's spouse further asserts that he is experiencing financial hardship without the applicant. He states that they have a lot of expenses, plus the added costs of bus tickets, food and hotel expenses since the applicant's departure, and that he has had to work extra hours to replace the income the applicant earned from a warehouse business; and that if the applicant remains in Mexico he would have to get a second job to earn extra money to send to her for rent, utilities, food and shelter.

The record includes medical records pertaining to the applicant's prior fertility treatment. Also included in the record are various medical documents pertaining to the applicant's spouse's mother. An August 8, 2005 clinic note from [REDACTED] indicates that the applicant's spouse's mother suffers from diabetes, hypertension, and hyperlipidemia; and a December 14, 2006 assessment from [REDACTED] reports that the applicant's spouse's mother is a noninsulin dependent diabetic whose diabetes is out of control. [REDACTED] also indicates that the applicant's mother cannot afford her medical care and should be on MediCal, she has been prescribed various medications, including medications for high blood pressure, diabetes and pain.

The medical documentation in the record indicates that the applicant's spouse's now 68-year old mother suffers from various ailments which require frequent monitoring, including the monitoring of her out-of-control diabetes, helping her take her medications, and contacting her doctor when her symptoms such as when her blood sugar levels require, and taking her to a hospital in case of emergency. Although the applicant's spouse states that he is concerned for his mother's care and well-being while he works to provide for the family because his mother has no one to care for her, the record indicates that the applicant's spouse's mother has a daughter here who has been involved in her care. It is noted that [REDACTED] indicates in the December 14, 2006 assessment that she reviewed with the applicant's spouse's mother, and her daughter, various medical symptoms which would require emergency treatment and the monitoring of her blood sugar levels. However, the record does not indicate whether the applicant's spouse's sister is available to assist with her mother's care in the applicant's absence.

To establish the applicant's spouse's financial situation, the record includes a September 12, 2007 letter from [REDACTED] confirming that the applicant's spouse has been employed full-time since July 12, 2005 and that he earns \$24.14 per hour; an October 27, 2006 earnings statement, showing \$1,867.53 gross earnings from his regular hours and overtime for the period; a 2006 Wage and Tax Statement – Form W-2 showing \$38,614.91; a 2006 Form 1099-G showing \$9,900 in unemployment compensation. The record also includes two 2006 Form 1098s totaling approximately \$15,780 mortgage interest and \$700 taxes paid. These documents, however, are addressed to both the applicant's spouse and to [REDACTED]. The applicant's spouse's share cannot be determined as the record does not include a breakdown of these mortgage-related expenses between the individuals. Further, the financial documents are all from 2006.

Further, the applicant's spouse also claims that he would experience and would have to take a second job if the applicant remains in Mexico because he would have to send her money for her rent, utilities,

food and shelter. However, he also states that the applicant is living with her parents, and it is not clear from the record that the applicant is in need of money for these expenses.

Having reviewed the record, the AAO finds it to offer insufficient evidence of the applicant's spouse's financial circumstances. We are, therefore, unable to determine the extent of financial hardship, if any, the applicant's spouse is experiencing in the applicant's absence.

In addition, the applicant claims that his is experiencing emotional hardship as a result of separation. However, the record does not include documentation, such as medical reports or mental health evaluations, to support the applicant's claim of emotional hardship. Without supporting documentation, the AAO is unable to determine the gravity of the applicant's spouse's emotional state and/or how it impacts him. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *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)).

The applicant's spouse may experience hardships as a result of separation. However, even when considered in the aggregate with the common results of separation, the hardships that the applicant's spouse experiences are not beyond the norm. The AAO finds, therefore, that the applicant has failed to establish extreme hardship to her United States citizen spouse as a result of separation.

With respect to relocation, the applicant's spouse states that he will not be able to find comparable employment in Mexico because of the high unemployment there and because he lacks the necessary permits; that he and the applicant do not have health insurance and that private hospitals are far from where he would be staying in Mexico. However, the applicant has submitted no evidence in support of these claims. The record does not include country conditions materials on the Mexican economy, Mexican employment and unemployment, or the Mexican government requirements for obtaining employment.

The AAO finds, therefore, that the applicant has failed to establish that her spouse would suffer extreme hardship if he relocates to Mexico.

Having found the applicant statutorily ineligible for relief, no purpose would be served in discussing whether she 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.