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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: Office: MEXICO CITY, MEXICO File: 
NOV 14 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 (the Act), 8 U.S.C. section 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 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. She 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 her last departure. She is married to a Lawful Permanent Resident (LPR) and has two U.S. citizen children. 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 her admission would impose extreme hardship on a qualifying relative, her U.S. citizen spouse, and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) on June 17, 2009.

On appeal, counsel for the applicant asserts that the hardship to the applicant's spouse rises above mere inconvenience and that the Field Office Director abused his discretion in denying the waiver application. *Form I-290B*, received on July 24, 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 February 1999 and remained until she departed voluntarily in January 2008. The applicant accrued unlawful presence from July 1, 2000, the date she turned 18, until the date she departed the United States in January, 2008. As the applicant resided unlawfully in the United States for over a year and is now seeking admission within ten years of her last departure from the United States, she is inadmissible under section 212(a)(9)(B)(i)(II) of the Act.

The record includes, but is not limited to, counsel's brief; a letter written by the applicant's spouse requesting to modify the mortgage on their residential property; hand written letters in Spanish¹; documents related to a fine received by the applicant's spouse for posting a "for rent" sign; a late payment notice addressed to the applicant's spouse from [REDACTED]; a statement from [REDACTED], dated February 23, 2008, asserting the applicant's spouse is under treatment for lower back pain, anxiety and depression; a statement from "[REDACTED]", dated February 20, 2008; an employment verification letter for the applicant's spouse dated January 27, 2008; three separate statements from [REDACTED] dated January 26, 2008, asserting the applicant and her children have been treated at the [REDACTED]; school enrollment verification for the applicant's older daughter; pay stubs and tax returns for the applicant's spouse; and copies of the birth certificates for 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 her 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-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

¹ The regulations at 8 C.F.R. § 103.2(b)(3) require that any document containing foreign language submitted to USCIS be accompanied by a full English language translation which the translator has certified as complete and accurate, and by the translator's certification that he or she is competent to translate from the foreign language into English. As such, these documents may not be considered for the purpose of evaluating the applicant's assertions in this proceeding.

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.

Counsel for the applicant asserts on appeal that the applicant's spouse will experience physical, emotional and financial hardship due to separation from the applicant. *Statement in Support of Appeal*, received July 24, 2009. Counsel explains that the applicant's spouse is struggling to cover the financial obligations without the applicant present to provide income, and that he is having to provide income for two separate households, including the cost of food, health insurance and living necessities. Counsel asserts that the applicant's spouse is suffering from depression due to separation from the applicant. Counsel asserts that the applicant's older daughter is severely impacted by separation from the applicant, and that applicant has been unable to find employment in Mexico and will suffer discrimination because she is a female and because she is a "separated spouse."

The record also includes a letter which is signed by [REDACTED] which asserts that the applicant's spouse suffers from hearing and vision problems and needs the applicant's support. *Statement*, dated February 20, 2008. The AAO notes that these assertions are not corroborated by counsel, the applicant's spouse or discussed in the medical statement submitted by [REDACTED] MD. The AAO finds no basis of support for the assertions and cannot accord them any weight.

The record includes a statement from [REDACTED] asserting the applicant's spouse is suffering from lower back pain, depression and anxiety. The brief statement from [REDACTED] does not discuss the basis of her assertion, does not detail the origin, extent or severity of his condition or what his prognosis for any such conditions may be. There are no medical records to support the assertions and no other documentation to corroborate the assertions or clarify any impact any such conditions may be having on the applicant's spouse. The letter from [REDACTED] is insufficient to establish that the applicant's spouse is experiencing any significant medical condition or uncommon emotional hardship due to separation from the applicant.

As noted above, the applicant's children are not qualifying relative and the AAO will only consider hardship to the applicant's children insofar as it results in hardship to the applicant's spouse, the only qualifying relative in this case. While the record contains additional statements from [REDACTED] asserting that the applicant and her children have been treated at the clinic for minor illnesses, there is nothing in the record which indicates they are suffering from any significant medical conditions or emotional hardships to such a degree that it creates an indirect hardship factor on the applicant's spouse.

With regard to financial hardship, the record contains pay stubs, tax returns and correspondence by the applicant's spouse related to modifying his residential mortgage. In a statement requesting to modify his mortgage the applicant's spouse details his monthly financial obligations and asserts that, without the applicant's income, he is unable to meet cover all of his bills. The record does not contain any evidence that the applicant's spouse has fallen behind on the mortgage payments or that his property is at risk of foreclosure. The AAO notes that there is no evidence which indicates that the applicant was working while she resided in the United States and to what degree, if any, she provided any financial support for her family, so it is unclear how the applicant's absence results in any change of circumstance with regard to financial impact. While this evidence may be sufficient

to establish that the applicant's spouse is struggling financially, it does not establish that he is experiencing hardship which rises above that commonly experienced by the relatives of inadmissible aliens who remain in the United States.

With regard to employment and gender discrimination experienced by the applicant in Mexico, the AAO notes that counsel for the applicant has not submitted any evidence to support these assertions. Further, as noted above, hardship to an applicant can only be considered insofar as it results in hardship to the applicant's spouse.

Even when the impacts asserted upon separation are examined in the aggregate, the record does not contain sufficiently probative evidence to establish that the applicant's spouse will experience uncommon hardship impacts rising to the level of extreme hardship upon separation.

The record does not articulate what, if any, impacts the applicant's spouse would experience if he were to relocate to Mexico with the applicant. As such, the AAO does not find the record to establish that a qualifying relative would experience extreme hardship upon relocation to Mexico.

The record, reviewed in its entirety and in light of the *Cervantes-Gonzalez* factors cited above, does not support a finding that the applicant's husband faces extreme hardship if his wife is refused admission. The AAO recognizes that the applicant's husband will have to make financial adjustments and assume additional parenting duties. These assertions, however, are common hardships associated with removal and separation, and do not rise to the level of "extreme" as informed by relevant precedent. 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. The AAO therefore finds that the applicant has failed to establish extreme hardship to his U.S. citizen spouse as required 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 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 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.