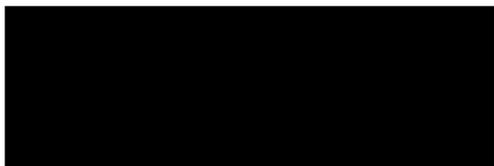


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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090
**U.S. Citizenship
and Immigration
Services**

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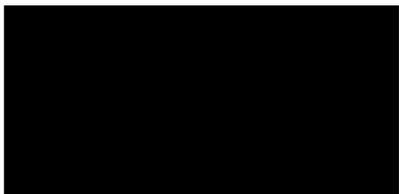
H6

Date: **NOV 16 2011** Office: MEXICO CITY FILE:

IN RE: Applicant:

APPLICATION: Application for Waiver of Grounds of Inadmissibility pursuant to section 212(a)(9)(B)(v) of the Immigration and Nationality Act (the 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,

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Field Office Director, Mexico City. The matter 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 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. The applicant is married to a U.S. citizen and is the daughter of a U.S. citizen and 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 with her husband and children in the United States.

The field office director found that the applicant failed to establish extreme hardship to a qualifying relative and denied the application accordingly. *Decision of the Field Office Director*, dated May 27, 2009.

On appeal, counsel contends the applicant established extreme hardship, particularly considering the applicant's husband has lived in the United States since the age of eleven, his entire family resides in the United States, and the couple's daughter suffers from epilepsy. In addition, counsel contends conditions in Mexico are dangerous and the family would suffer extreme financial hardship.

The record contains, *inter alia*: a copy of the marriage certificate of the applicant and her husband, [REDACTED], indicating they were married on July 12, 2006; copies of the birth certificates of the couple's two U.S. citizen children; letters and an affidavit from [REDACTED] a letter from a social worker; copies of the couple's daughter's medical records; a copy of [REDACTED] medical record and a copy of his prescription; letters from [REDACTED] employer; two letters from the applicant's father; a letter from the applicant's brother; several copies of permanent resident cards; copies of bank account statements and other financial documents; a copy of the U.S. Department of State's Country Specific Information for Mexico; copies of photographs of the applicant and her family; letters of support; and an approved Petition for Alien Relative (Form I-130). The entire record was reviewed and considered in rendering this decision on the appeal.

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.

....

(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 Attorney General [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 this case, the record shows, and counsel concedes, that the applicant entered the United States in October 1999 without inspection and remained until January 2008. *Letter from* [REDACTED] at 3, dated June 25, 2009. The applicant accrued unlawful presence of over seven years. She now seeks admission within ten years of her 2008 departure. Accordingly, she is 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 one year or more and seeking admission to the United States within ten years of her last departure.

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.

In this case, the applicant’s husband, [REDACTED] states that he has lived in the United States since he was eleven years old. He states that his parents, his four siblings, and his two daughters all live in the United States as U.S. citizens or permanent residents. He contends he is very close with his family, particularly one of his brothers whom he sees every day. According to [REDACTED] since his wife departed the United States, he has been emotionally destroyed, depressed, unable to focus, and lonely. [REDACTED] contends it would be an extreme hardship for him and his daughters to relocate to Mexico. He states he is the sole breadwinner, that he works two jobs, and that he has learned a trade as a roofer, earning approximately \$600 per week. [REDACTED] contends he cannot continue in the roofing business in Mexico because the houses are made differently there. He contends that even if he were able to work in roofing in Mexico, he could earn a maximum of \$80 per week, which would not be enough to support his wife and daughters to the standard of living in which they have become accustomed. In addition, [REDACTED] states that he had a small accident and fell on the roof, hurting his back. Moreover, according to [REDACTED], his daughters have been sick constantly in Mexico and one of his daughters has an unknown ailment which causes high fevers and seizures. He contends her seizures occur twice as often in Mexico as compared to when she is in the United States. [REDACTED] states that doctors have said that if her condition is not treated properly, his daughter could ultimately suffer from memory loss. *Affidavit of [REDACTED]*, dated June 24, 2009; *Letter from [REDACTED]* dated February 10, 2008; *Letters from [REDACTED]* undated.

Copies of the couple's daughter [REDACTED] medical records indicate that on September 20, 2007, she was admitted to the hospital for a fever, flu like symptoms, and possible febrile seizure.¹ A worker's compensation form in the record shows that [REDACTED] experienced a work-related lumbar strain on March 4, 2008, and was anticipated to be out of work for three weeks. *Florida Workers' Compensation Uniform Medical Treatment/Status Reporting Form*, dated March 5, 2008. In addition, a copy of [REDACTED] medical record indicates that he has been anxious, nervous, and suffering from insomnia for the past two weeks because his wife and children went to Mexico. *Progress Notes*, dated February 6, 2008. A copy of a prescription for an anti-anxiety medication is contained in the record.

A letter from a social worker states that [REDACTED] is anxious and feeling hopeless because his wife and their two daughters have been living in Mexico since January of 2008. [REDACTED] reported feeling depressed, not sleeping well, and feeling confused, lonely, and guilty for not being able to solve the family's problems. In addition, [REDACTED] reported that his depressive symptoms have continued to worsen. The social worker concluded that [REDACTED] "appear[s] to be demonstrating signs of a Major Depressive Episode." *Letter from [REDACTED]*, dated June 23, 2009.

A letter from the applicant's father, [REDACTED], states that he is depressed that his daughter is living in Mexico. He states that she is his only daughter and that he would like for her to live in the United States so that he can visit more frequently. He also states that his son-in-law, [REDACTED], is very depressed, cannot concentrate at work, and is worried about safety for his wife and daughters. *Letters from [REDACTED]* dated June 16, 2009, and undated; *see also Letter from [REDACTED]*, undated (letter from the applicant's brother stating that the applicant and her husband are very depressed); *Letter from [REDACTED]* dated March 17, 2008 (letter from [REDACTED] employer stating that [REDACTED] is melancholy, withdrawn, and sad most of the time); *Letter from [REDACTED]* dated March 17, 2008 (letter from [REDACTED] employer stating that his job performance has been falling below his usual high standard); *Letter from [REDACTED] and [REDACTED]*, undated (letter from [REDACTED] employer stating that he is concerned about [REDACTED] ability to perform his duties because of his inability to focus and possible depression).

As an initial matter, the AAO notes that the applicant's father, [REDACTED], a U.S. citizen, appears to be a qualifying relative; however, there is no claim that he has suffered or will suffer extreme hardship should his daughter's waiver application be denied. With respect to the applicant's husband, [REDACTED] the AAO finds that if [REDACTED] had to move back to Mexico to be with his wife, he would experience extreme hardship. [REDACTED] contends he has lived in the United States since he was eleven years old and that his entire family lives in the United States. Therefore, he has lived all of

¹ The record also contains other medical documentation that is written in Spanish and has not been translated into English. The regulation at 8 C.F.R. § 103.2(b)(3) requires that any document containing foreign language submitted to United States Citizenship and Immigration Services 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. Consequently, these documents cannot be considered.

his formative years in the United States. In addition, [REDACTED] would need to leave his job where he earns approximately \$600 per week and that provides benefits. *Letter from [REDACTED] and [REDACTED]* dated June 16, 2009 (stating [REDACTED] has been employed since August 7, 2007). The AAO recognizes the poor economic conditions in Mexico and finds that [REDACTED] reasonably fears being able to financially support his family in Mexico in his trade as a roofer. Moreover, as counsel contends, Mexico can be dangerous and the record contains evidence of country conditions in Mexico. The AAO takes administrative notice that the U.S. Department of State has urged U.S. citizens to defer non-essential travel to parts of Mexico due to ongoing violence and persistent security concerns. *U.S. Department of State, Travel Warning, Mexico*, dated April 22, 2011. Considering these unique circumstances cumulatively, particularly given [REDACTED] long residency in the United States since childhood, the AAO finds that the hardship [REDACTED] would experience if he had to move back to Mexico is extreme, going beyond those hardships ordinarily associated with inadmissibility.

Nonetheless, [REDACTED] has the option of staying in the United States and the record does not show that he would suffer extreme hardship if he were to remain in the United States without his wife. Regarding the letter from the social worker and other letters addressing [REDACTED] sadness and depression, the record does not show that [REDACTED] depression is any more extreme, or that it is unique or atypical, compared to others in similar circumstances. *See Perez v. INS*, 96 F.3d 390 (9th Cir. 1996) (holding that the common results of deportation are insufficient to prove extreme hardship and defining extreme hardship as hardship that was unusual or beyond that which would normally be expected upon deportation). Regarding the couple's U.S. citizen children and their purported medical issues, hardship to the applicant's children can be considered only insofar as it results in hardship to [REDACTED]. With respect to [REDACTED] contentions that his daughters have been sick constantly in Mexico and that [REDACTED] suffers from seizures twice as often in Mexico, there is insufficient evidence in the record to support these claims. There is no evidence in the record to support the claim that the children have been constantly sick in Mexico. Although the record contains documentation that [REDACTED] suffered from a possible febrile seizure on September 20, 2007, there is no evidence in the record corroborating [REDACTED] contention that she has suffered from more seizures in Mexico, and there is no letter in plain language from any health care professional addressing the diagnosis, prognosis, treatment, or severity of her possible seizures. To the extent counsel claims [REDACTED] has epilepsy, *Letter from [REDACTED]* at 5, 7, *supra*, the unsupported assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980). There is no evidence in the record that [REDACTED] has ever been diagnosed with epilepsy. Without more detailed information, the AAO is not in the position to reach conclusions regarding the severity of any medical condition or the treatment and assistance needed.

With respect to the financial hardship claim, the record indicates [REDACTED] earns approximately \$600 per week at [REDACTED]. *Letter from [REDACTED] and [REDACTED]*, *supra*. [REDACTED] contends he works two jobs, but there is no indication of his wages from his other job. In addition, although the record shows that the couple's mortgage is \$2,296 and \$653 per month, there is no additional evidence, such as copies of bills, of other monthly expenses. Although the AAO does not doubt that [REDACTED] has suffered, and will continue to suffer, from some financial hardship,

without more detailed information addressing the couple's total wages and monthly expenses, there is insufficient evidence in the record to determine the extent of his financial hardship.

Although the applicant has demonstrated that the qualifying relative, her husband, would experience extreme hardship if he 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.

A review of the documentation in the record fails to establish the existence of extreme hardship to the applicant's husband caused by the applicant's inadmissibility to the United States. 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, 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.