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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals
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Washington, D.C. 20529-2090



U.S. Citizenship
and Immigration
Services

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DATE: NOV 23 2011

OFFICE: CIUDAD JUAREZ, MEXICO

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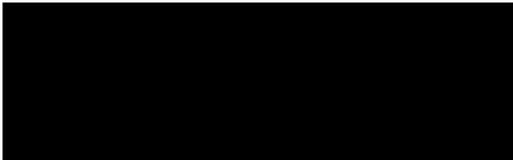
IN RE:

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,


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 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 admission within 10 years of his last departure from the United States. The applicant is the spouse of a U.S. Citizen and is the beneficiary of an approved Petition for Alien Relative (Form I-130). Through counsel, the applicant does not contest this finding of inadmissibility. Rather, he 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 his wife and their children in the United States.

The Field Office Director concluded that the applicant 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. *See Decision of Field Office Director, Ciudad Juarez, Mexico*, dated January 20, 2009.

On appeal, counsel asserts that the evidence shows that the applicant's U.S. citizen spouse will suffer extreme hardship because of the applicant's inadmissibility. *See Form I-290B, Notice of Appeal or Motion*, dated February 13, 2009.

The record includes, but is not limited to: a brief from counsel; letters of support from the applicant's spouse, children, in-laws, and pastor; a psychological evaluation; medical documents; financial documents and bills; residential documents; student records; and photographs.¹ The entire record, with the exception of the untranslated Spanish language documents, was reviewed and considered in rendering a decision on the appeal.

Section 212(a)(9) of the Act provides, in pertinent part:

(B) ALIENS UNLAWFULLY PRESENT:-

¹ The AAO notes that the record includes letters of support in the English and the Spanish languages. 8 C.F.R. § 103.2(b)(3) states:

(3) Translations. Any document containing foreign language submitted to USCIS shall 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.

The AAO also notes that the letters of support in the Spanish language do not contain a certified translation to the English language. Accordingly, the AAO will not consider these letters of support.

(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. No court shall have jurisdiction to review a decision or action by the Attorney General [Secretary] regarding a waiver under this clause.

The record establishes that the applicant entered the United States without inspection by U.S. immigration officials in or around 2001² and remained until in or around December 2007, when he voluntarily departed to Mexico. The applicant accrued unlawful presence from in or around 2001 until in or around December 2007, a period in excess of one year. As the applicant is seeking admission within 10 years of departure, he is inadmissible pursuant to section 212(a)(9)(B)(i)(II) of the Act.

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 children 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 USCIS then assesses whether a favorable exercise of discretion is warranted. See *Matter of Mendez-Moralez*, 21 I&N Dec. 296, 301 (BIA 1996).

² The AAO notes that the record also indicates that the applicant entered the United States without inspection by U.S. immigration officials in or around October 1999. See *Petition for Alien Relative* (Form I-130), approved April 2, 2004; see also *Application to Register Permanent Residence or Adjust Status* (Form I-485), denied June 6, 2005; *Supplement A to Form I-485 Adjustment of Status Under Section 245(i)* (Form I-485 Supplement A), denied June 6, 2005. Based on a review of the entire record, the AAO concludes that the applicant's date of entry in the United States is in or around 2001 and not in or around October 1999.

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 record contains references to hardship the applicant's children would experience if the waiver application were denied. It is noted that Congress did not include hardship to an alien's children as a factor to be considered in assessing extreme hardship. In the present case, the applicant's spouse is the only qualifying relative for the waiver under section 212(a)(9)(B)(v) of the Act, and hardship to the applicant's children will not be separately considered, except as it may affect the applicant's spouse.

Counsel contends that the applicant's spouse has suffered and will continue to suffer extreme emotional and financial hardship as a result of separation from the applicant. *See I-290B Brief in Support of Appeal*, dated February 13, 2009. Specifically, counsel indicates that the spouse has already endured extreme emotional hardship because she has been experiencing depression without the applicant by her side and that she has to raise their children without the applicant's emotional support. *Id.* Also, counsel submitted a statement from the spouse indicating, "... We had never been separated from each other until [the applicant] went to Ciudad Juarez for his immigration process. Ever since we have been separated[,] I've been feeling depressed and I want my husband back with me very much so. I saw a psychologist for this because the depression was too much to handle ... My children are very close to their father[,] [the applicant][,] and it pains me to see them suffering because their father was forced to go to Mexico. I am suffering extremely emotionally and I need my husband to support me through these times. Since I am pregnant ... it is of utmost importance that my husband be with me due to my increased stress. I am also struggling with anemia and I have a history of pulmonary embolism ... I fear that there will be severe consequences for my pregnancy ... It is extremely tough for me to see my son in pain and not be able to do anything about it. I know that if my husband were allowed to come back to his family that my son would get better and in turn I would not suffer ... This caused our son Jose to lose a year in school. Now he's struggling with school and it pains me to see my son with these troubles ..." *Letter of Support from [REDACTED]*, dated February 13, 2009

Additionally, counsel submitted a psychological evaluation in which the spouse has been diagnosed with Major Depression Disorder, Single Episode, Moderate as a result of the applicant's immigration proceedings as well as financial and personal stressors such as having to raise their current and *in utero* children without the applicant's presence and assistance. *See Confidential Report of Psychological Evaluation. Issued by Licensed Clinical Psychologist [REDACTED]*, dated February 16, 2009. The evaluation further discusses that the spouse would benefit from the applicant's presence or a single parent support group as well as psychological and psychiatric treatment to address her symptoms of crying spells, weight loss, lack of energy, lack of interest, and overall feeling of sadness. *Id.* And, counsel submitted a letter

from the spouse's obstetrician in which it is recommended that the applicant's presence is necessary to assist the spouse because she is struggling through her pregnancy with anemia and a history of pulmonary embolism. *See Letter of Support, Issued by [REDACTED] and [REDACTED] dated February 6, 2009.*

In support of the financial problems that the applicant's spouse has experienced, counsel contends, "When [the applicant] was in the United States[,] he was working and was the breadwinner of the family. He used to make around \$500.00 a week[,] which was substantial enough to support their family. Now that he is in Mexico[,] he has found it hard to find employment and is currently not working anywhere. Because [his] pay in the United States was enough to support the family, [the spouse] was a stay at home mom and raised her kids. Now that [he] is in Mexico and not earning any money[,] [his spouse] is suffering an extreme financial hardship with no income ... " *I-290B Brief in Support of Appeal, supra*. In support of his contention, counsel submitted documents indicating that the spouse and children are recipients of Food Stamps and Medicaid. *See Letter Issued by the Texas Health and Human Services Commission*, period of availability 01/01/2009 – 08/31/2009; *see also Letter Issued by the Texas STAR Program*, dated December 22, 2008. Also, counsel submitted medical bills with a past due amount of \$18,979.75 and \$46.00, and a total amount due of \$1238.00 and \$595.50. *See Memorial Hermann Bill*, dated September 12, 2007; *see also UT Physicians Bill*, dated September 16, 2007; *Memorial Pathology Consultants Bill*, dated August 17, 2007.

The evidence on the record is sufficient to establish that the applicant's spouse has suffered from depression, anemia, and pulmonary embolism and because of these conditions, has experienced some hardship in the applicant's absence from the United States. However, the record does not establish that the hardship that the spouse has experienced goes beyond what is normally experienced by qualified family members of inadmissible individuals. The record is unclear concerning the severity of the spouse's anemia and embolism, and whether these conditions are ongoing medical issues. Moreover, the record does not contain any evidence how the applicant's presence in the United States would assist the spouse in dealing with the hardships related to the spouse's depression, anemia, and pulmonary embolism. The record only contains general statements from the spouse's treating mental health professional and obstetrician that the applicant's presence is necessary to assist the spouse with her mental and physical conditions. And, the record indicates that the spouse has the support of her parents and siblings to deal with the emotional hardships resulting from the separation from the applicant. *Confidential Report of Psychological Evaluation, Issued by Licensed Clinical Psychologist [REDACTED] Ph.D., supra*. However, the AAO notes the concerns regarding the applicant's spouse's medical and mental health issues.

Further, the evidence in the record establishes that the applicant's spouse has experienced significant financial hardship upon the applicant's voluntary return to Mexico in or around 2007. The applicant was the sole financial provider for his family while the spouse stayed at home to raise their children, and the spouse and their children have been dependent on public assistance since the applicant's absence from the United States. Also, the financial debt that the spouse is

contending with is substantial, and the spouse lacks any means to pay off these debts given that she has never worked outside of her home and is receiving public assistance. Considering these hardships, as well as the hardships normally associated with separation from an inadmissible family member, the AAO concludes that the continued separation from the applicant would result in extreme hardship to the applicant's spouse.

However, the record does not contain sufficient evidence demonstrating how the applicant's spouse would experience extreme hardship if she were to relocate to Mexico. The AAO notes that counsel does not specifically address relocation, but the spouse's treating mental health professional does by relaying discussions with the spouse: "[The spouse] states that living in Mexico with [the applicant] is not an option for her or her children. She reports she has visited the village where [the applicant] is currently residing and knows this is not an adequate home for her family. [She] indicates [the applicant] is currently residing with his mother in a three bedroom, one bathroom home. She describes problems with her sister-in-law's son when they visited and states they are not welcome there. Thus, she reports they have no place to go to in Mexico ... With regard to the living conditions in [the applicant's] village[,] she states that although there is electricity, the water is available only by the scheduled time allotted. The bathroom does not have a standard flushing mechanism. Although there is a medical clinic, there is no mental health care [sic] available. Education until high school is available, but college is not. [She] states the nearest city of Morelia, Michoacan, Mexico is 2.5 hours by automobile. However, without a personal vehicle, the bus ride would take 4-5 hours." See *I-290B Brief in Support of Appeal, supra; Confidential Report of Psychological Evaluation, Issued by Licensed [REDACTED]* [REDACTED] The mental health professional then asserts that there are decreased quality medical care opportunities in Mexico; that the spouse will have to forego her aspirations of becoming a Medical Assistant; and the spouse's and her children's quality of life will change dramatically there. *Confidential Report of Psychological Evaluation, Issued by Licensed Clinical Psychologist [REDACTED] Ph.D., supra.*

There is no evidence in the record that the mental health professional is qualified to make assertions regarding employment opportunities or quality of life in Mexico. Moreover, there is no evidence in the record of country conditions information concerning economic, political, or social conditions in Mexico, specifically in the applicant's location in the state of [REDACTED]. Also, the record does not contain any country conditions information concerning employment opportunities or healthcare in Mexico and the state of [REDACTED]. Further, the record indicates that the spouse, although a native of the United States, is fluent in the Spanish language and therefore should not have difficulty with day-to-day communication or local assimilation in Mexico. The spouse's treating mental health professional states, "... The clinical interview was conducted in English and Spanish ... [The spouse] reported that she was more comfortable speaking Spanish, but switched back and forth between English and Spanish during the interview. Assessments were administered in Spanish." *Id.* Accordingly, the AAO cannot conclude that the spouse's relocation to Mexico would result in hardship to the spouse.

Although the applicant has demonstrated that the qualifying relative would experience extreme hardship if separated from the applicant, the AAO can find extreme hardship warranting a waiver

of inadmissibility only where an applicant has demonstrated extreme hardship to a qualifying relative in the scenario of separation and the scenario of relocation. 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 remain in the United States and thereby suffer extreme hardship as a consequence of separation can easily be made for purposes of the waiver even where there is no intention to separate in reality. *See Matter of Ige*, 20 I&N Dec. 880, 886 (BIA 1994). Furthermore, to separate and suffer extreme hardship, where relocating abroad with the applicant would not result in extreme hardship, is a matter of choice and not the result of inadmissibility. *Id.*; *see also Matter of Pilch*, 21 I&N Dec. 627, 632-33 (BIA 1996). As the applicant has not demonstrated extreme hardship from relocation, the AAO cannot find that refusal of admission would result in extreme hardship to the qualifying relative in this case.

In this case, the record does not contain sufficient evidence to show that the hardship faced by the qualifying relative, considered in the aggregate, rises beyond the common results of removal or inadmissibility to the level of extreme hardship. The AAO therefore finds that the applicant has failed to establish extreme hardship to his United States Citizen spouse as required under section 212(a)(9)(B)(v) of the Act. As the applicant has not established extreme hardship to a qualifying family member, no purpose would be served in determining whether the applicant 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. 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.