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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
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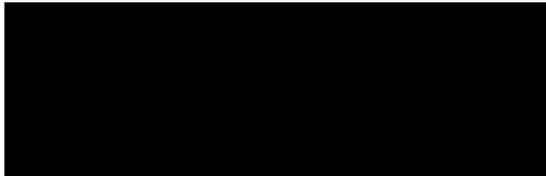
DATE: NOV 23 2011 OFFICE: CIUDAD JUAREZ, MEXICO

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:



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 has a U.S. Citizen parent and is the beneficiary of an approved Petition for Alien Relative. 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 father, mother, and siblings 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 December 23, 2008.

On appeal, counsel asserts that the applicant's U.S. citizen parent will suffer extreme hardship because of the applicant's inadmissibility. *See Form I-290B, Notice of Appeal or Motion*, dated January 20, 2009. Specifically, counsel asserts that the applicant's father relies heavily on the applicant to assist with raising the applicant's three younger siblings. *Id.*

The record includes, but is not limited to: Notice of Entry of Appearance as Attorney or Representative (Form G-28); Notice of Appeal or Motion (Form I-290B); Application for Waiver of Grounds of Inadmissibility (Form I-601); Petition for Alien Relative (Form I-130); a brief from counsel; letters of support from the applicant's father and siblings; a letter of support from a mental health professional; residential mortgage statements; personal income tax returns and W-2s; automobile titles; 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:

¹ The AAO notes that the record includes letters of support in the English and 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 some of 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.

(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.

...

(iii) Exceptions.-

(I) Minors.-No period of time in which an alien is under 18 years of age shall be taken into account in determining the period of unlawful presence in the United States under clause (i).

...

(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 July 2002 and remained until in or around August 2007, when he voluntarily departed to Mexico. The AAO notes that the Field Office Director incorrectly determined that the applicant accrued unlawful presence "from July 2002, when [he] entered the United States without inspection ... " *Decision of Field Office Director, Ciudad Juarez, Mexico, supra.* At the time of the applicant's entry into the United States in or around July 2002, the applicant was approximately 14 years of age. Section 212(a)(9)(B)(iii) of the Act provides, in pertinent part, that an individual does not accrue unlawful presence while under 18 years of age. The applicant did not turn 18 years of age until March 3, 2005. Accordingly, the applicant did not accrue unlawful presence from July 2002 until August 2007, but from March 3, 2005 until in or around August 2007. The AAO finds that the Field Office Director's incorrect calculation of

unlawful presence is harmless error given that the applicant still accrued unlawful presence for 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 can be considered only insofar as it results in hardship to a qualifying relative. The applicant's father 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.

Counsel contends that the applicant’s parent would suffer extreme financial and emotional hardship as a result of separation from the applicant because the parent would not be able to support two households – one in the United States and one in Mexico; and the parent suffers from adjustment disorder with depression and anxiety. *See I-290B Brief in Support of Appeal*, dated February 18, 2009. Counsel further contends that the applicant’s siblings also would suffer emotional hardship and a loss of educational opportunities because of separation from the applicant and his parent. *Id.* In support of the financial problems that the applicant’s parent would experience, counsel submitted a statement from the parent indicating, “.. I have been employed by [REDACTED] for eight years. My job classification is Sheet Metal Foreman. My job offers good pay and good health benefits for myself [sic] and my family. The denial of Immigrant Visas for three members of my family[,] [including the applicant][,] will surely result in extreme financial hardship for me and my children who are residing with me in Memphis. I cannot afford to maintain two households where my wife and my twins[,] [including the applicant][,] be required [sic] to live outside of the United States and attempt to complete their college level education that will be extremely costly [sic] while at the same time I have the expense of maintaining a household for my four children living with me and standard of living commissary [sic] with my job status.” *Letter of Support from [REDACTED]* unsigned and dated October 24, 2007. Counsel also submitted evidence of the parent’s financial expenditures and income. *See [REDACTED]* dated May 5 and December 4, 2008; *see also Wage and Tax Statements 2005, 2007, and 2008* (Form W-2); *Certificates of Title for the State of Tennessee*, issued October 9, 2006 and April 23, 2007.

In support of the emotional hardship that the applicant’s parent and siblings would experience because of separation from the applicant, counsel submitted a statement from the applicant’s

parent indicating, "My family places great hope on higher education. My younger children will follow the example set by the other children[,] [including the applicant and his twin] ... The twins in college and three others in [h]igh school raises expectations and ensures the continuance of education beyond high school for the youngest members of the family. They will be first generation college educated children in my family. We need the twins to set the example for the others to follow ..." *Letter of Support from* [REDACTED] *supra*. And, counsel submitted a statement from the parent's treating mental health professional indicating, "[The parent] identified anxiety, decreased concentration, child care [sic] issues, decision making problems, separation, loss of appetite, emptiness, failure, fatigue, loss, health problems, legal problems, loneliness, nervousness, sleep problems, and stress ... The results of this assessment indicate an Adjustment Disorder with Depression and Anxiety, DSM IV, 309.28. His symptoms are directly related to the stress of the current situation with his wife and children." *Confidential Psychological Report Issued by Clinical Psychologist* [REDACTED] dated January 31, 2009. Counsel also submitted a letter from the applicant's sister indicating, "... I think we have the right to have our family together ... We never had been with out [sic] my mom and sister and brother we always been together [sic]. Now that we are separated for this problem[,] it have been hard [sic] for us to keep up with our life[] without my mother and my brothers. I can't be happy. I know that is hard for my dad to see us feel bad because we are not with our mom [sic] ... We need our brother to take care of us when my dad have to work [sic] I think the one that is affecting more this is my little brother because he need his brother to show him the right way to be in life some body [sic] to help him out with his problem when my Dad is not in home for work reasons [sic]. My older brother is like a father when my Dad is not in home he take care of us so we can be safe from some body [sic] that want to hurt us or make us feel bad he can be in the to make us feel better [sic]. I need my family together with every single person on it a family is special and we only have one in life I hope I can have my family together forever [sic] ..." *Letter of Support from* [REDACTED] undated. And, counsel submitted a statement from the applicant's brother indicating, "I would like to have my family together again[] because if we are not together[,] we are not a family ... And [the applicant] because he is the one who takes care of us when my dad goes to work out of town to another state, he is the one who stay with us [sic]. He is the one who tells me what I need to do to be a better person in this life." *Letter of Support from* [REDACTED] undated.

The record is insufficient to establish that the financial hardship that the applicant's parent would experience upon separation from the applicant goes beyond what is normally experienced by qualified family members of inadmissible individuals. The record does not include any evidence of the financial expenditures to maintain two households such as remittances or the cost of traveling back and forth between the United States and Mexico. Additionally, the record does not include any evidence of the applicant's educational costs or of conditions in Mexico that preclude the applicant from obtaining gainful employment there so that he can contribute to the necessary financial expenditures to maintain his and his parent's households. Moreover, the evidence that has been submitted indicates that the qualifying parent remains current on the residential mortgage payments and owns two automobiles. Accordingly, the financial difficulties described do not take the present case beyond those hardships ordinarily associated with the inadmissibility of a family member, and the evidence is insufficient to support a finding of extreme hardship.

Further, the record is sufficient to establish that the applicant's parent has been diagnosed with a mental health condition and that his symptoms are related to separation from the applicant, his mother, and his sibling. However, the record is insufficient to establish that the emotional hardship that the applicant's parent would experience upon separation from the applicant goes beyond what is normally experienced by qualified family members of inadmissible individuals. Also, the record does not show how the emotional harm that the applicant's siblings would experience has a direct effect on the parent. Accordingly, the AAO cannot conclude that separation from the applicant would result in extreme hardship to the applicant's parent due to the parent's emotional state.

The AAO recognizes that the applicant's parent may experience some hardship as a result of separation from the applicant. However, the AAO finds that even when this hardship is considered in the aggregate, the record fails to establish that the applicant's parent will suffer extreme hardship as a result of separation from the applicant.

Additionally, the AAO notes that counsel does not specifically address how the applicant's parent would endure extreme hardship if the parent were to relocate to Mexico to be with the applicant. See *I-290B Brief in Support of Appeal, supra*. However, the parent does address the effect of relocating with the applicant, "... The possibility of me finding suitable employment in Mexico where [sic] I to move there with my entire family is very unlikely ..." *Letter of Support from [redacted] supra*.

The record is insufficient to establish that the applicant's parent would endure extreme hardship if he were to relocate to Mexico because of the applicant's inadmissibility. The record does not include any country conditions information concerning economic, political, or social conditions in Mexico, specifically in the area to which the parent would relocate. Also, the record does not contain any country conditions information concerning employment opportunities in Mexico or the transferability of the parent's skills and abilities acquired in the United States as a Sheet Metal Foreman. Moreover, the record indicates that the parent is originally from Mexico, but there is no evidence concerning whether he maintains family ties or property ownership there. See *Petition for Alien Relative* (Form I-130), approved February 13, 2006. Accordingly, the AAO cannot conclude that the parent's relocation to Mexico would result in extreme hardship to the parent.

The AAO recognizes that the applicant's parent may endure some hardship as a result of separation from the applicant. However, his situation if he remains in the United States, is typical to individuals separated as a result of removal or inadmissibility and does not rise to the level of extreme hardship based on the record. In regards to establishing extreme hardship in the event the qualifying relative relocates abroad based on the denial of the applicant's waiver request, the AAO notes that this criterion has not been established.

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 parent 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.