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



H6

DATE: **OCT 04 2011** OFFICE: CIUDAD JUAREZ, MEXICO

File

IN RE: Applicant:

APPLICATION: Application for Waiver of Grounds of Inadmissibility under § 212(a)(9)(B) of the Immigration and Nationality Act, 8 U.S.C. § 1182(a)(9)(B)

ON BEHALF OF APPLICANT:

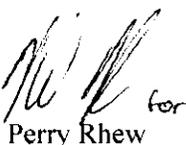


**INSTRUCTIONS:**

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,

  
for  
Perry Rhew

Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Field Office Director (FOD), 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 readmission within 10 years of his last departure from the United States. The applicant seeks a waiver of inadmissibility in order to reside in the United States with his U.S. citizen spouse and children.

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. *Decision of the Field Office Director*, dated December 23, 2008.

On appeal, Counsel asserts that new evidence is available in support of establishing that the applicant's qualifying "relatives" would undergo extreme hardship through his continued inadmissibility. See *Appellate Brief*, dated February 13, 2009.

The record contains the following evidence submitted on appeal: *Form I-290B*, Notice of Appeal or Motion; the applicant's marriage certificate and birth certificates for four children; the applicant's wife's naturalization certificate; and a "report of progress/completion" for [REDACTED]. The record also contains previously submitted evidence which includes but is not limited to *Form I-601*; the applicant's wife's hardship letter; employment letter; character reference letters; billing statements; *Form I-130*; *Form I-817* and supporting documents; *Form I-817 Denial*; and denial of Service Motion to Reopen/Reconsider N-400. The entire record was reviewed and considered in rendering this decision on the appeal.

Section 212(a)(9) of the Act provides:

(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.

...

(v) Waiver.-The Attorney General 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 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 regarding a waiver under this clause.

The record reflects that the applicant entered the United States without inspection in or about 1985 and remained until November 2007, when he voluntarily departed. The applicant accrued unlawful presence from April 1, 1997, the date of enactment of unlawful presence provisions under the Act, until 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, 8 USC § 1182(a)(9)(B)(i)(II).<sup>1</sup> The applicant does not contest this finding on appeal.

A waiver of inadmissibility under section 212(9)(B)(v) of the Act is dependent on a showing that the bar to admission would impose 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 the 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

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<sup>1</sup> The record shows that the applicant has been convicted on separate occasions of reckless driving; petty theft; driving on a suspended/revoked license; driving under the influence of alcohol; and driving under the influence of alcohol with prior convictions. See *Criminal Conviction Documents*, various dates; and *Decision of Director Denying Form I-817*, dated August 17, 1999. The Field Office Director did not address whether these convictions constitute a crime involving moral turpitude rendering the applicant inadmissible under section 212(a)(2)(A)(i)(I) of the Act. Nevertheless, because the applicant is inadmissible under section 212(a)(6)(C)(i) of the Act and demonstrating eligibility for a waiver under section 212(i) also satisfies the requirements for a waiver of criminal grounds of inadmissibility under section 212(h), the AAO will not determine whether the applicant is inadmissible under section 212(a)(2)(A)(i)(I).

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 record reflects that the applicant's spouse is a 39-year-old native of Mexico and naturalized citizen of the United States. With regard to separation, she asserts hardship of an emotional and financial nature, stating that it has been an emotional and physical struggle for her since the applicant was denied re-entry into the US. *See Hardship Letter*, dated December 3, 2007.

The applicant's wife states that her husband has provided financial and moral support, and that in addition to their three children together, he has also "been there" for her three elder children from a previous common law marriage. *Id.* With regard to economic hardship, the applicant's wife states that she works as a housecleaner and is trying to make ends meet. See *Hardship Letter*, dated December 3, 2007. A letter from [REDACTED] dated December 1, 2007, asserts that the applicant's wife is "working extra jobs to meet the family needs." A letter from [REDACTED] dated December 3, 2007, asserts that the applicant's wife does custodial work at the Fallbrook Seventh-day Adventist Church. No earnings statements, tax returns, or W-2s were submitted that show the applicant's wife's employers or her income before and/or after separation from the applicant. With regard to the applicant, a letter from [REDACTED], undated, asserts that he has been employed with the [REDACTED] for five years. No reference is made to the applicant's salary, and no evidence (such as earnings statements, tax returns, or W-2s), was submitted to show the applicant's income prior to his departure to Mexico. The AAO notes that although 1992 to 1996 income evidence is contained in the record, there is no evidence from which recent income can be determined.

The applicant's wife states that they owe about \$30,000. See *Hardship Letter*, dated December 3, 2007. The record shows that the majority of this is owed to [REDACTED] (approximately \$14,300) for an auto loan opened on September 9, 2007, and CitiFinancial (approximately \$8,600). See *Billing Statements*. The record shows that these accounts are current with no amount past due. The remaining billing statements in the record are for credit cards and utilities, all with much smaller balances though several are past due. See *Billing Statements*. No evidence was submitted that shows the family's regular comprehensive expenses, including rent. Nor was evidence submitted that shows whether the applicant is employed in Mexico and/or helping to support his family in the U.S., or whether the applicant's wife is receiving assistance from family members or other sources. The AAO acknowledges the challenges inherent in providing for a family in the absence of one's spouse. However, economic disadvantage is the type of hardship ordinarily associated with removal of a family member. In the absence of evidence to the contrary, the difficulties described do not take the present case beyond those hardships ordinarily associated with removal of a family member.

Though the applicant's wife states that she and her husband have three children together, Counsel asserts that the "applicant has four United States citizen children," and "submits four birth certificates as new evidence in support of his application." *Appellate Brief*, dated February 13, 2009. The birth certificate for [REDACTED] (born October 8, 1992), shows that his father is [REDACTED]. See *Birth Certificate*, date issued April 21, 1993. No evidence has been submitted that shows whether the applicant legally adopted Angel or was appointed his legal guardian while the latter was still a minor. While not disputing his fatherly relationship with Angel, the AAO notes that the applicant has three U.S. citizen children according to the record.

Counsel asserts on appeal that "Applicant's eldest son is receiving rehabilitation treatment due to his drug addiction." *Appellate Brief*, dated February 13, 2009. Counsel asserts that [REDACTED] "treatment program relies heavily on the support of both parents and the entire family to help him recover successfully," and that if the applicant's wife "were left to be the sole provider in the household, this would certainly detract from her active participation their son's recovery and cause

extreme hardship to the Applicant's U.S. Citizen spouse and children." *Id.* With regard to the latter, Congress did not include hardship to the applicant's children as a factor to be considered in assessing extreme hardship under section 212(a)(9)(B)(v) of the Act, except as it may affect the qualifying relative – here the applicant's spouse. A North Inland Regional Recovery Center *Report of Progress/Completion*, dated February 12, 2009 was submitted on appeal. The single-page report shows that [REDACTED] was "admitted to program" on January 28, 2009, and addresses the period from January 28 to February 12, 2009. *Id.* Checked boxes show [REDACTED] status as "current and ongoing," and his attendance, participation, random drug test results, and overall progress in treatment as satisfactory. *Id.* It is recommended that he "continue with treatment program," and that the "anticipated completion of program" is "TBA." *Id.* The AAO notes that the signature beside "Counselor" is illegible, and that the document does not include the signer's printed name or qualifications. The report does not include a diagnosis of "drug addiction" as asserted by Counsel, nor does it provide any details concerning the circumstances of [REDACTED] admission or the nature of his condition or treatment. No evidence was submitted that shows that the treatment program relies on the applicant's support and/or that the applicant is unable to support his wife and her son emotionally or otherwise though in Mexico. Nor was evidence submitted to show that the applicant's wife is unable to participate in her son's recovery simply because she is working to provide for her family. In these proceedings, the burden of establishing eligibility for the waiver of inadmissibility rests entirely with the applicant.

The AAO acknowledges that separation from the applicant may have caused various difficulties for the applicant's spouse. However, it finds the evidence in the record insufficient to demonstrate that the challenges encountered by a qualifying relative, when considered cumulatively, meet the extreme hardship standard.

With regard to relocation, no assertions have been made concerning hardship to the applicant's qualifying relative spouse. The AAO will not, therefore, speculate regarding any challenges she would face upon relocation to Mexico. The applicant has, therefore, failed to demonstrate that the challenges his spouse faces are unusual or beyond the common results of removal or inadmissibility to the level of extreme hardship. Accordingly, the AAO finds that the applicant has failed to demonstrate extreme hardship to a qualifying relative.

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. 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. Accordingly, the appeal will be dismissed.

**ORDER:** The appeal is **dismissed**.