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U.S. Department of Homeland Security
Citizenship and Immigration Services
Administrative Appeals Office (AAO)
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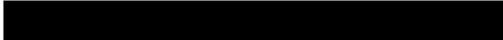
**U.S. Citizenship
and Immigration
Services**



H6

DATE **OCT 05 2011** Office: MEXICO CITY, MEXICO

FILE: 

IN RE: 

APPLICATION: Application for Waiver of Ground 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: SELF-REPRESENTED

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, Mexico, and 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 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 ten years of her last departure. The applicant is married to a United States citizen and is the beneficiary of an approved Form I-130, Petition for Alien Relative. The applicant 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 in the United States.

The Field Office Director found that the applicant had failed to establish extreme hardship to a qualifying relative and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601), accordingly. *Decision of the Field Office Director*, dated June 10, 2009.

On appeal, the applicant's spouse asserts that he is experiencing hardship as a result of separation from the applicant and the denial of the applicant's waiver application. *Form I-290B, Notice of Appeal*, dated July 7, 2009.

The record includes, but is not limited to, a statement from the applicant's spouse; statements from the mothers of the applicant's spouse's two older children; copies of earnings statements for the applicant's spouse; the first page of a Form 1040 for 2007; information on child support law; copies of receipts for loan payments; credit union statements; documentation relating to the applicant's spouse's child support obligations; copies of bills; and receipts for money orders. The record also includes a Spanish-language statement from the applicant, and medical documentation from Mexico relating to the applicant's son. The entire record was reviewed and all relevant evidence in English considered in reaching a decision on appeal.

The applicant's Spanish-language statement and the medical documentation from Mexico were not considered by the AAO as they were not accompanied by English-language translations. 8 CFR § 103.2(b)(3) provides that any document in a foreign language submitted to United States Citizenship and Immigration Services (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.

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

(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.

The record reflects that, on March 7, 2008, the applicant stated to a Department of State consular officer in [REDACTED] Mexico, that she had entered the United States without inspection in March 2005 and had remained until she voluntarily departed to Mexico in February 2008. Based on this history, the AAO finds that the applicant accrued unlawful presence from the date of her entry without inspection in March 2005 until she departed the United States in February 2008. As the applicant is seeking admission within ten years of her 2008 departure, she is inadmissible pursuant to section 212(a)(9)(B)(i)(II) of the Act for having accrued more than one year of unlawful presence in the United States.

Section 212(a)(9)(B)(v) of the Act provides for a waiver of section 212(a)(9)(B)(i)(II) 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 an applicant or other family members 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 United States Citizenship and Immigration Services 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.

The AAO now turns to the question of whether the applicant in the present case has established that her U.S. citizen spouse would experience extreme hardship as a result of her inadmissibility.

In a July 7, 2009 statement, the applicant's spouse asserts that it will be a hardship for him to relocate to Mexico to live with the applicant. He states that he has two children from prior

relationships, whom he would have to leave behind in the United States because their mothers do not want them to relocate with him. He also states that he cares about his children and their mothers, and that it breaks his heart to think of leaving them. The applicant's spouse indicates that he pays child support for his children from prior relationships, that their mothers are unemployed, and that if he relocates to Mexico, he will be unable to support them because wages in Mexico are low. The applicant's spouse contends that if he defaults on his child support payments, he would suffer serious consequences including but not limited to fines, the suspension of his driving privileges, arrest by the police and possible imprisonment. The applicant's spouse asserts that his immediate and extended family members reside in the United States and that he does not want to be separated from them. He also states that he does not want to give up his job in the United States. The applicant's spouse states that he does not want his children to live in Mexico because it does not offer them medical insurance or educational benefits.

the mother of the applicant's spouse's son, states that she does not want the applicant's spouse to relocate to Mexico because he has been paying child support, which helps support their son as well as her four other children. asserts that without the payments from the applicant's spouse, she would not be able to support her children. Ms. also asserts that if did move to Mexico, life would be difficult for him because he does not speak Spanish, would have no medical coverage and would miss his siblings and his life in the United States. the mother of the applicant's spouse's daughter, states that the applicant's spouse pays child support every month to help her with her bills. Ms. states that she does not have a job and that without the support she receives from the applicant's spouse, her family would be homeless. also states that if the applicant's spouse relocates to Mexico, he would not be able to pay child support. She states that she does not want to think about her daughter moving to Mexico and that if she and the applicant's spouse have to go to court over custody of their daughter, everyone would lose.

While the AAO notes the preceding claims regarding the impacts of relocation on the applicant's spouse, we do not find the record to support them. The AAO also notes that the record documents that the applicant's spouse pays child support for his two children from prior relationships. However, the record does not contain documentary evidence, e.g., published materials on Mexico's economy or employment situation that establishes the applicant's spouse would not be able to obtain employment in Mexico that would allow him to meet his child support obligations. The AAO acknowledges the strong emotional bond between a parent and child and the hardship created when a parent and child are separated. However, in his case, the record lacks evidence to establish that such bond exists between the applicant's spouse and his two older children. The court documents in the record seem to indicate that the mothers of the applicant's spouse's older children had to take him to court for child support for and and that had to take him to court to establish that he is father. Accordingly, the record establishes only the applicant's spouse's financial role in his older children's lives not a parental role. The AAO observes that the record does not contain any evidence of the nature of the applicant's spouse's employment in the United States. Thus, the applicant has failed to establish that her spouse would not be able to earn enough income in Mexico to make his child support payments. Going on record without supporting documentation is not sufficient to meet the applicant's burden of proof in this

proceeding. *See Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)).

The AAO acknowledges the claims made by the applicant's spouse regarding the impact of relocation on his two older children. However, we note that children are not qualifying relatives under section 212(a)(9)(B)(v) of the Act. Any hardship to them must, therefore, be evaluated in terms of its impact on the applicant's spouse, the only qualifying relative in this case. However, other than the statements from the applicant's spouse and the mothers of his older children, the record lacks any documentation to demonstrate the hardships that the applicant's older children will suffer upon relocation to Mexico or that these hardships will result in hardship to the applicant's spouse.

Based on our review of the evidence of record, the AAO finds insufficient proof to demonstrate that the applicant's spouse would experience extreme hardship if he relocates to Mexico.

The applicant's spouse asserts that he is experiencing and will continue to experience hardship as a result of his separation from the applicant. He states that it has been very difficult for him without the applicant and their son, [REDACTED] and that he is concerned that [REDACTED] is growing up without a father-son relationship. The applicant's spouse states that while he has traveled several times to visit the applicant and [REDACTED] in Mexico, he feels sad when [REDACTED] cannot recognize him or cries whenever he tries to give him a hug. The applicant's spouse states that he is concerned about [REDACTED] health and overall wellbeing in Mexico. The applicant's spouse states that since [REDACTED] moved to Mexico, he has gotten sick several times and has been seen by several doctors, but that he has not fully regained his health. The applicant's spouse states that he wants [REDACTED] to return to the United States so that he can be properly treated by his pediatrician. The applicant's spouse states that he has considered bringing his son back to the United States, but that he works out of state during the week and would not have anyone to help him take care of him. The applicant's spouse asserts that he is concerned that some day, [REDACTED] will get sick and be without medical coverage, requiring him to make an emergency trip to Mexico, which will cause him to lose his job, his source of livelihood.

The AAO acknowledges the claims made by the applicant's spouse on the impact of his separation from the applicant, but finds the claims to be insufficiently supported by the record. The record does not contain medical records, detailed testimony, or other evidence that demonstrates the emotional impact of separation on the applicant's spouse. While the applicant's spouse claims that [REDACTED] has developed health problems in Mexico, the only medical records relating to [REDACTED] health are in the Spanish-language and, as previously discussed, will not be considered by the AAO. Although the applicant's spouse claims that he would not be able to care for [REDACTED] in the United States because he works out of state during the week, the record does not identify the applicant's spouse's employment or establish that it requires him to work out of state during the week.

Accordingly, the AAO finds that the hardship factors addressed in the record, even when considered in the aggregate, fail to demonstrate that the applicant's spouse would experience extreme hardship if the applicant's waiver application is denied and he remains in the United States without her.

As the record does not establish that a qualifying relative would suffer extreme hardship as a result of the applicant's inadmissibility, she has failed to establish eligibility for a waiver 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 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.