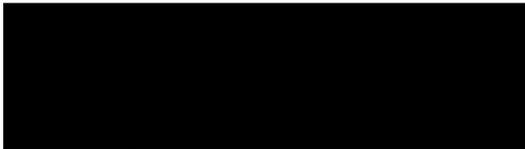


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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090
**U.S. Citizenship
and Immigration
Services**



H6

Date: **OCT 07 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:

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. 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 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 June 19, 2009.

On appeal, the applicant's husband contends he is suffering from extreme depression, anxiety, and hopelessness. In addition, he contends the couple's son has asthma. Therefore, the applicant's husband contends that extreme hardship has been established.

The record contains, *inter alia*: a letter and an affidavit from the applicant; a letter and an affidavit from the applicant's husband, [REDACTED] a psychological report; a letter from [REDACTED] employer; letters from the couple's children's physicians; letters from the children's school; money transfer receipts, copies of bills, and copies of checks; numerous letters of support; copies of photographs of the applicant and her family; a letter from [REDACTED] mother's physician; 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 the applicant concedes, that she entered the United States in April 2000 without inspection and remained until March 2008. *Letter from* [REDACTED] [REDACTED] undated. The applicant accrued unlawful presence of eight 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, a letter from the applicant contends that the couple’s children are suffering in Mexico without their father. The applicant also contends that she and her husband have never been separated before and that he misses her a lot. In addition, the applicant states that her husband has been the only economic support for their family and that he also financially assists his parents and pays child support for two children from a previous marriage. *Affidavit from* [REDACTED] dated February 29, 2008; *Letter from* [REDACTED] undated.

The applicant’s husband, [REDACTED] states that he is full of loneliness and depression and that he suffers every day without his wife and children. He states that this situation is slowly killing him inside and that he cannot sleep. [REDACTED] contends he cannot visit his family in Mexico because he has been working at a new company for only a few months. He states he is suffering financially paying for his own expenses, supporting his wife and children in Mexico, and paying child support for his two children from his first marriage. In addition, [REDACTED] contends his youngest son suffers from asthma, needs to be closely monitored, and is on medications almost all of the time. [REDACTED] also contends that his parents are ill – his father was hospitalized for two months for cancer, and his mother needs throat surgery. *Affidavit from* [REDACTED] dated February 29, 2008; *Letter from* [REDACTED] undated.

A psychological report for [REDACTED] states that since his wife and children departed the United States, he has been having significant problems with hopelessness, depression, and anxiety. [REDACTED] reported having problems focusing at work and with sleeping. The counselor states that [REDACTED] is

experiencing severe depression and recommended psychiatric evaluation and treatment to determine a formal psychiatric diagnosis. *Report of Psychological Testing and Recommendations*, undated.

A letter from the couple's child's physician in Mexico states that he has been treating the couple's son, [REDACTED], for the past year for anemia and depression. The physician states that [REDACTED] needs to continue treatment and needs to be with his family. *Letter from [REDACTED]* dated June 29, 2009. Another letter from the same physician states that the couple's other son, [REDACTED] has bronchial asthma, "has presented several asthmatic crises," and need to continue treatment. *Letter from [REDACTED]* dated June 29, 2009; *see also Letter from [REDACTED]* dated February 19, 2008 (stating that [REDACTED] has bronchial asthma and requires special care). The record shows that [REDACTED] was prescribed three medications and that Antonio was prescribed four medications.

A letter from the principal of [REDACTED] school states that Jose was performing satisfactorily, but that recently, his performance, attention, and behavior have been changing. According to the principal, [REDACTED] has become introverted, quiet, and apathetic to all activities and his academic performance has become poor. The principal contends [REDACTED] has "long total apathetic moments that could be considered depressive moments." *Letter from [REDACTED]* dated July 3, 2009.

A letter from [REDACTED] mother's physician states that she is sixty-nine years old and has had hoarseness for five years. According to the physician, [REDACTED] mother had an MRI and CT scan which shows a tumor in her neck. The physician states that "[e]xcision of this slow growing benign tumor may have severe side-effects and complications related to cranial nerve injury," and referred her for a second opinion. *Letter from [REDACTED]*, dated June 22, 2009.¹

The AAO recognizes that [REDACTED] has suffered hardship upon the applicant's departure from the United States and is sympathetic to the family's circumstances. However, if [REDACTED] decides to stay in the United States, their situation is typical of individuals separated as a result of inadmissibility or exclusion and does not rise to the level of extreme hardship based on the record. Regarding the psychological report, the report does not show that [REDACTED] situation is unique or atypical compared to others in similar circumstances who are separated as a result of inadmissibility or exclusion. *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). In addition, the psychological report concludes that [REDACTED] will continue to suffer extreme emotional hardship if he is unable to be reunited with his wife and children, but does not address whether [REDACTED] mental health would improve if he returned to Mexico to be with his family.

¹ The record also contains several letters that are written in Spanish and have 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 untranslated documents cannot be considered.

Regarding the couple's children's medical issues, hardship to the applicant's children can be considered only insofar as it results in hardship to [REDACTED] the only qualifying relative in this case. There is insufficient evidence in the record to show that caring for his children as a single parent in the United States would cause extreme hardship to [REDACTED]. Although the record contains letters from a physician corroborating the applicant's claim that two of the couple's children have medical issues, the letters do not address the prognosis, treatment, or severity of [REDACTED] anemia and depression or [REDACTED] asthma. 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. Similarly, although the principal of [REDACTED] school contends [REDACTED] "is very emotional[ly] unstable because of his father[']s situation," the letter does not address whether Jose's mental and emotional health might improve if his father relocated to Mexico. *Letter from [REDACTED], supra.*

Regarding the financial hardship claim, although the AAO does not doubt that [REDACTED] has experienced some financial hardship, there is insufficient evidence showing that his hardship is extreme. The record contains copies of bills and an estimate of monthly expenses from [REDACTED] *Acquaintance Letter, Bills*, dated February 17, 2008. According to this estimate of monthly expenses, [REDACTED] regular monthly expenses total approximately \$2,000 per month, including \$790 per month for mortgage and \$475 for child support payments. However, there is insufficient evidence in the record addressing [REDACTED] total income and assets. There are no tax documents in the record indicating [REDACTED] total income or wages for any year. The record contains a letter from his employer stating that [REDACTED] earns \$15.64 per hour and that his year to date gross salary was \$12,995. *Letter from [REDACTED]* dated July 7, 2009. If, for example, [REDACTED] works full-time earning \$15.64 per hour, the record does not show that he suffers extreme financial hardship assuming total monthly expenses of approximately \$2,000 per month. Without more detailed information addressing [REDACTED] total income, there is insufficient evidence in the record to determine the extent of [REDACTED] financial hardship.

Furthermore, the record does not show that [REDACTED] would suffer extreme hardship if he were to return to Mexico to be with his wife. The record shows that [REDACTED] is currently forty-one years old and was born in Mexico. [REDACTED] does not address whether he has any family members who remain in Mexico and, significantly, he does not contend he has significant family ties to the United States. Although he contends he pays monthly child support and the record contains a copy of a check for \$475 for child support, [REDACTED] does not address whether moving to Mexico would affect the relationship he has, if any, with his children from his first marriage. In addition, aside from his mental health, [REDACTED] does not claim that he suffers from any medical issue or physical condition that would make his readjustment to living in Mexico any more difficult than would normally be expected. To the extent the couple's children have medical issues, there is no contention that their medical problems have not been adequately monitored and treated in Mexico. Furthermore, although [REDACTED] contends he supports his parents, both of whom purportedly have health problems, there is no letter in the record from either of his parents corroborating this claim. Although the record contains a letter from [REDACTED] mother's physician corroborating that a tumor was found in her neck, *Letter from [REDACTED] supra*, there is no suggestion in the record that his mother requires his assistance due to her health condition.

With respect to [REDACTED]'s contention that the academic opportunities in Mexico are not as high as they are in the United States, the applicant's situation is not unique or atypical compared to others in similar circumstances. *Perez v. INS, supra*. Considering all of the evidence in the aggregate, the record does not show that [REDACTED] return to Mexico would be any more difficult than would normally be expected under the circumstances.

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.