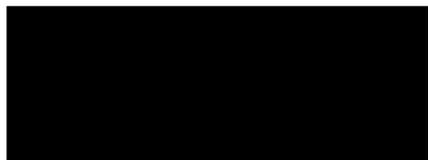


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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals
20 Massachusetts Ave. NW MS 2090
Washington, DC 20529-2090
**U.S. Citizenship
and Immigration
Services**



H6

DATE: **OCT 12 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:

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 (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 April 2, 2009.

On appeal, the applicant's spouse asserts that she would suffer extreme hardship of a medical, emotional, and economic nature if her husband is not permitted to return to the United States. *Form I-290B*, Notice of Appeal or Motion, received May 2, 2009.

The record contains but is not limited to: *Form I-290B*; applicant's wife's hardship letter; social worker's letter; daughter's medical record; group health plan certificate; benefit election confirmation; COBRA expiration notice; denial of benefits for "no-cost" [REDACTED] benefits; 2007 and 2008 tax returns and W-2s; bank account statements; partial hospital bill; collection notices for hospital bill; personal reference letters; *Form I-601*; *Form I-130*; previously submitted employment verification and wage information; billing statements; photographs; and the applicant's wife's earlier hardship affidavit. A number of Spanish language documents were submitted on appeal including a letter from the applicant, a letter from a clinical psychologist, and 13 other letters of unknown content. None of the Spanish language documents were accompanied by full English translations as required pursuant to 8 C.F.R. § 103.2(b)(3).¹ As the required translations have not been submitted, the AAO is unable to consider any of the Spanish-language documents. Accordingly, the entire record, with the exception of the Spanish language documents described, was reviewed and considered in rendering a decision on the appeal.

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

(B) ALIENS UNLAWFULLY PRESENT.-

¹ 8 C.F.R. § 103.2(b)(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.

(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 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 April 1998 and remained until about January 2008, when he voluntarily departed. The FOD erred in finding that the applicant accrued unlawful presence beginning in April 1998. Because the applicant was still a minor until September 14, 2000 (when he turned 18-years-old), it was from that date until January 2008 that he accrued unlawful presence. The error is determined to be harmless, however, as the applicant was still unlawfully present in the United States for more than one year. And because the applicant seeks readmission within 10 years of his January 2008 departure, he is inadmissible under section 212(a)(9)(B)(i)(II) of the Act, 8 USC § 1182(a)(9)(B)(i)(II). 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 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).

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, the record reflects that the applicant's wife is a 26-year-old native of Mexico and naturalized citizen of the United States. She states that the applicant has been a great husband, she has never had to worry about their family financially because of him, he has always been emotionally supportive, affectionate, and responsible, and they discuss all decisions together involving their family. *Hardship Letter*, dated April 25, 2009. The applicant's wife states that her husband took time off work to care for her after she gave birth to their daughters, and he taught their elder daughter her first words and steps. *Id.* She states that since the applicant has been in Mexico she has found it harder to sleep, worries about taking care of things on her own, has cried over her situation and feels depressed, and has found it harder to make day-to-day decisions without being able to consult him. *Id.* The applicant's wife states that since her husband has been in Mexico, he contracted pneumonia, high fevers, and kidney stones, and she felt hopeless not being able to care for him when he was ill. *Id.*

Supporting evidence was submitted in the form of a *Social Worker's Letter*, dated April 22, 2009 from [REDACTED] asserts that the applicant's wife "requested that I write a letter on her behalf explaining the emotional hardship she and her two daughters are experiencing." *Id.* She asserts that although the applicant's wife "tried to remain positive during our interview, she cried often, reporting feeling 'overwhelmed' with her duties as a single parent concurrently." *Id.* [REDACTED] asserts that the applicant's wife "presents with Major Depressive Disorder as manifested by her trouble concentrating at times, experiencing loneliness, frequent worrying, crying, difficulty making day to day decisions, trouble sleeping, financial problems and struggling with being tired." *Id.* [REDACTED] makes other assertions which she prefaces with the phrase "(per client)," before relaying narratives told her by the applicant's spouse about conversations between the latter and her daughters. *Id.* After stating that she did not observe the applicant's daughters, the social worker asserts: "It is my professional opinion that they are suffering emotionally, and being deprived of a positive influence a father often provides his children." *Id.* The AAO acknowledges [REDACTED] letter and professional opinion, and recognizes difficulties encountered by the applicant's spouse. The difficulties described, however, do not take this 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.

With regard to economic hardship, the applicant's wife refers to being unable to pay the balance of medical bills related to an outpatient procedure performed upon her daughter, [REDACTED], in January 2008. *Hardship Letter*, dated April 25, 2009. She states that though they had insurance through her husband's job, the procedure was not covered in full and the balance is now in collections because she has been unable to pay it on her own. *Id.* The applicant's wife states that her husband

owns two horses as well as goats, and chickens, and though she has considered selling them to help their financial situation, she simply cannot because her daughters enjoy caring for them on behalf of their father. *Id.* She states that to support the family on her own she has had to work extra hours, weekends, and night shifts to make ends meet. *Id.* The applicant's wife states that besides paying bills, she needs extra money to support the farm animals and give her daughters everything they need. *Id.* She states that her monthly expenses include about \$1,587 for bills and \$800 for groceries, house supplies, gas, animal supplies, and supplies for herself and her daughters, not including the unpaid balance of her daughter's medical bills. *Id.* She states that her monthly income is about \$2,500, which includes income for working extra hours. *Id.* The applicant's wife adds that her husband is working in Mexico but does not earn enough to contribute to the family's expenses in the U.S. *Id.* Tax returns show reduced income, but no evidence has been submitted that shows that the applicant is unable to support herself and her daughters. In these proceedings, the burden of proof is solely upon the waiver applicant. The AAO recognizes the challenges inherent in supporting a household in the absence of the family's primary breadwinner. However, the difficulties described, though not insignificant, 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.

Assertions were made on appeal concerning hardship to the applicant and his children. The applicant's wife states that her husband has never been in any legal trouble, is an asset to the community, has held the same job for five years, and that living in Mexico is not the same for him because his family and friends are in the U.S. where he has lived since he was 16-years-old. *Id.* She states that it was difficult for him to leave for Mexico only one week after their daughter, [REDACTED], underwent an outpatient procedure to remove navel lesions in January 2008, and for him to have been unable to care for his daughter as he would have liked. *Id.* Medical records confirm the procedure and show that [REDACTED] has a history of umbilical hernia. *Operative Report*, dated January 9, 2008. There is no evidence in the record that shows ongoing medical issues for [REDACTED] or the impact on the applicant's spouse. The applicant's wife states that her daughters were only 1 and 2 years old when their father went to Mexico. *Id.* Her eldest daughter has run outside looking for him, and her favorite thing to do is look through old pictures of them together. *Id.* She adds that her daughters are the ones most affected, because their mom and dad aren't around enough to enjoy the best years of their childhood. *Id.* Congress did not include hardship to the applicant or his children as factors 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. The applicant being unable to care for his children as he would like or share milestones in their lives, and the applicant's children missing their father, are the types of hardships ordinarily associated with removal of a family member. Although these difficulties have likely had some affect on the applicant's spouse, they do not take the present case to the level of extreme hardship.

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 the qualifying relative, when considered cumulatively, meet the extreme hardship standard.

With regard to relocation, the applicant's spouse states that moving to Mexico is not an option for her and her daughters because they have a home and family in the U.S., and she does not believe she can become accustomed to Mexico's way of life. *Hardship Letter*, dated April 25, 2009. No further explanation was provided, nor was any evidence submitted to show that the applicant's spouse would be unable to adapt to life in Mexico. The AAO will not, therefore, speculate regarding any challenges she would face. Leaving one's home and family in the U.S. are common challenges related to relocation and do not take the present case beyond those hardships ordinarily associated with the inadmissibility of a family member.

The applicant has, therefore, failed to demonstrate 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**.