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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, DC 20529-2090



U.S. Citizenship
and Immigration
Services



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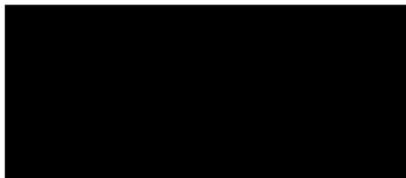
DATE: OCT 17 2011 OFFICE: CIUDAD JUAREZ

FILE:

IN RE:

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 entered the United States without admission or parole in March 2002 and departed the United States in September 2007. The applicant 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 ten years of his last departure from the United States. The applicant is a beneficiary of an approved Petition for Alien Relative, as a child of a lawful permanent resident, who seeks a waiver of inadmissibility in order to reside in the United States with his lawful permanent resident parents.

The Field Office Director concluded that the record failed to establish the existence of extreme hardship for a qualifying relative and denied the application accordingly. *See Decision of the Field Office Director*, dated March 4, 2009.

On appeal, the applicant submitted a psychological report stating that his lawful permanent resident parents are suffering from depression due to his departure and that it is affecting his father's employment status. The report states that the applicant's separation from his parents will affect their ability to see him, especially as they continue to age, and that it is impossible for them to relocate to Mexico.

In support of the waiver application and appeal, the applicant submitted his criminal record, a psychological evaluation for his parents, family photographs, identity documents, and letters of support. The entire record was reviewed and considered in rendering a decision on the appeal.

Section 212(a)(9)(B) of the Act, in pertinent part, 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.

....

- (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.

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 applicant’s qualifying relatives in this case are his lawful permanent resident parents. The record contains references to hardship the applicant’s children would experience if the waiver application were denied. It is noted that Congress did not include hardship to an alien’s children as a factor to be considered in assessing extreme hardship. In the present case, the applicant’s parents are the only qualifying relatives for the waiver under section 212(i) of the Act, and hardship to the applicant’s children will not be separately considered, except as they may affect the applicant’s parents.

In the present case, the record reflects that the applicant is a twenty-five year-old native and citizen of Mexico who resided in the United States from March 2002, after entering without admission or parole, to September 2007, when he returned to Mexico. The applicant turned 18 on August 22, 2004 and was therefore unlawfully present in the United States from August 22, 2004 to September 2007. The applicant’s father is a fifty-six year-old native of Mexico and lawful permanent resident of the United States. The applicant’s mother is a fifty-five year-old native of Mexico and lawful permanent resident of the United States. The applicant is currently residing in Mexico and the applicant’s parents are residing in Austin, Minnesota. The applicant’s two U.S. citizen children reside in Texas with their maternal grandmother.

On appeal, counsel for the applicant submitted a criminal record for the applicant and a psychological evaluation of the applicant's parents. According to his criminal record, the applicant was convicted on July 27, 2006, of 171.22.1(3) of the Minnesota Penal Law, Display or Represent as One's Own Any Driver's License or Minnesota ID Issued to Another. See *Register of Actions*, dated March 31, 2009.¹

According to their psychological evaluation, the applicant's parents are suffering from depression due to separation from the applicant; the applicant's father was diagnosed with Depressive Disorder NOS vs. Major Depressive Disorder and his mother was diagnosed with Major Depression. See *Forensic Psychological Evaluations of* [REDACTED] dated March 19, 2009. The applicant's mother claims that she suffered from depression previously, but it has worsened since separation from her son. The applicant's father claims that his depression has affected his employment, as he missed many days of work and eventually gave up his position. *Id.* The applicant's mother was encouraged to see her health care provider for an antidepressant trial, but told the psychologist that she does not have a physician. *Id.* There is no indication in the record that either of the applicant's parents are undergoing any therapy or have been prescribed medication for their depression. It is noted that the record does not contain any evidence that the applicant's mother has been previously diagnosed with depression and the applicant's mother continues to serve as a babysitter for her grandchildren; there is no indication that the applicant's mother is unable to carry out her daily activities. It is further noted that the record does not contain any supporting evidence that the applicant's father had problems with his previous employer of two years regarding his work performance or attendance. Going on record without supporting documentary evidence generally is not sufficient for purposes of meeting the burden of proof in these proceedings. 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)). It is acknowledged that separation from a child nearly always creates a level of hardship for both parties, but there is insufficient evidence to find that the applicant's parents are suffering a level of emotional hardship beyond the common results of inadmissibility of removal.

It is also asserted that the applicant's parents will eventually be unable to see and speak to their son, due to their aging and finances. See *Forensic Psychological Evaluations of* [REDACTED] [REDACTED] dated March 19, 2009. There is no indication in the record that the applicant's parents are suffering from any physical maladies that impede their ability to travel. Further, there is no indication that the applicant's parents will be unable to afford phone calls and travel to Mexico to stay in contact with their son.

The applicant's father previously worked in the meat packing and packaging industries, but he is not currently employed. The applicant's mother takes care of her grandchildren while their

¹ The field office director did not address whether or not this conviction is 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)(9)(B)(i)(II) of the Act and demonstrating eligibility for a waiver under section 212(a)(9)(B)(v) 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).

parents work, but there is no indication as to whether she receives financial remuneration for her services. *Id.* The applicant's parents also state that they own their home in Austin, Minnesota, but there has been no financial documentation submitted concerning the applicant's parents' home. *Id.* Thus, there is no evidence on the record concerning the applicant's parents' financial obligations. Further, there is no indication that the applicant's parents have any difficulty in meeting their financial obligations and the records are unclear concerning the source of any income. Though the applicant's father states that they depend on the applicant, there is no evidence on the record that the applicant provided for them financially in the past. In addition, the applicant's father claimed that he and his wife would be financially responsible for the care of the applicant's children and the mother of the children in the applicant's absence, but the children are currently living with their maternal grandparents. *Id.* There is not sufficient evidence to find that the applicant's parents are suffering from financial hardship due to separation from the applicant. Further, the courts considering the impact of financial detriment on a finding of extreme hardship have repeatedly held that, while it must be considered in the overall determination, it is not enough by itself to justify an extreme hardship determination. *See INS v. Jong Ha Wang*, 450 U.S. 139 (1981) (upholding BIA finding that economic detriment alone is insufficient to establish extreme hardship).

It is asserted that the applicant's parents cannot relocate to Mexico to be with their son because they have family members living in the United States and his mother babysits for several of her grandchildren. *See Forensic Psychological Evaluations of [REDACTED]*, dated March 19, 2009. Further, it is claimed that the applicant's parents cannot move to Mexico because of the poor health care system and lack of employment opportunities. *Id.* It is acknowledged that the applicant's parents have stated that they own their home in the United States. *Id.* Also, the applicant's parents indicated that they have grandchildren and siblings residing in the United States. *Id.* However, the applicant's parents did not indicate whether any of their six children reside in the United States. In fact, there is no evidence concerning which of the applicant's parents' relatives remain in Mexico and the nature of their relationships with any such relatives. The applicant's parents are not currently employed in the United States and there have been no letters submitted indicating the extent of their ties to the United States. There has been no documentation submitted concerning health care, employment, or economic conditions in Mexico, including the area where the applicant resides. There is further no evidence as to whether the applicant has secured employment in Mexico. It is noted that the applicant's parents are both natives of Mexico. The record contains insufficient evidence to find that the applicant's parents would suffer hardship beyond the common consequences of inadmissibility or removal if they relocated to Mexico.

Although the depth of concern and anxiety over the applicant's immigration status is neither doubted nor minimized, the fact remains that Congress provided for a waiver of inadmissibility only under limited circumstances. While the prospect of separation or involuntary relocation nearly always results in considerable hardship to individuals and families, in specifically limiting the availability of a waiver of inadmissibility to cases of "extreme hardship," Congress did not intend that a waiver be granted in every case where a qualifying relationship exists. U.S. court decisions have repeatedly held that the common results of removal are insufficient to prove

extreme hardship. See *Hassan v. INS*, 927 F.2d 465, 468 (9th Cir. 1991), *Perez v. INS*, 96 F.3d 390 (9th Cir. 1996); *Matter of Pilch*, 21 I&N Dec. 627 (BIA 1996) (holding that emotional hardship caused by severing family and community ties is a common result of deportation and does not constitute extreme hardship); *Matter of Shaughnessy*, 12 I&N Dec. 810 (BIA 1968) (holding that separation of family members and financial difficulties alone do not establish extreme hardship). “[O]nly in cases of great actual or prospective injury . . . will the bar be removed.” *Matter of Ngai*, 19 I&N Dec. 245, 246 (BIA 1984).

In this case, the record does not contain sufficient evidence to show that the hardships faced by the qualifying relative, considered in the aggregate, rise 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 lawful permanent resident parents 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.