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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 28 2011**

Office: MEXICO CITY, MEXICO

FILE: 

IN RE: Applicant: 

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:

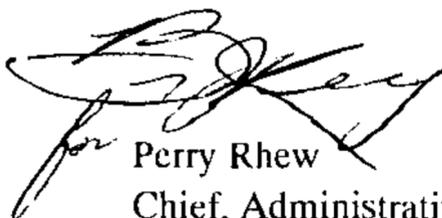


INSTRUCTIONS:

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 District 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 his last departure from the United States. The applicant is married to a United States citizen and is the beneficiary of an approved Petition for Alien Relative (Form I-130). 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 District Director found that the applicant had 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 District Director*, dated December 24, 2008.

On appeal, the applicant's spouse requests reconsideration and submits a statement. *See Form I-290 and attachment.*

It is noted that counsel indicates on the Notice of Appeal or Motion (Form I-290B), dated January 18, 2009, that a brief and/or additional evidence will be submitted within 30 days. On July 18, 2011, the AAO notified the applicant's counsel that the record did not reflect receipt of any further evidence or brief, and counsel was requested to respond within five (5) business days. The record does not reflect receipt of additional evidence. Therefore, the record will be considered complete.

The record includes, but is not limited to, statements from the applicant's spouse describing the hardship claim; statements from the applicant's spouse's grandfather and a friend; medical records pertaining to the applicant's spouse and daughter; copies of household bills, including utility and telephone bills; car and insurance payments; letters from the applicant's daughter and mother-in-law; and, counsel's brief submitted with the Form I-601 waiver application. The entire record was reviewed and considered in arriving at a decision on the appeal.

Section 212(a)(9)(B) 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.

In the present application, the record indicates that the applicant entered the United States in August 2001, without inspection. On April 4, 2004, the applicant married his United States citizen spouse. On

July 21, 2005, the applicant's spouse filed a Petition for Alien Relative (Form I-130) on behalf of the applicant. The Form I-130 was approved on January 16, 2006. In September 2007, the applicant departed the United States for Mexico. On November 5, 2007, the applicant filed a Form I-601. On December 24, 2008, the District Director denied the Form I-601.

The applicant accrued unlawful presence from November 10, 2011, the day after his 18th birthday, until September 2007 when he departed the United States. The applicant is seeking admission to the United States within ten years of his September 2007 departure from the United States. The applicant is, therefore, inadmissible to the United States under section 212(a)(9)(B)(i)(II) of the Act for having been unlawfully present in the United States for a period of more than one year.

Section 212(a)(9)(B)(v) of the Act provides for a waiver of section 212(a)(9)(B)(i) 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 (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 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 spouse states that she needs her husband here for emotional and financial support. She states that she is emotionally attached to her husband, having known him since she was 15 years old, and she describes having a loving relationship since they met. She states that their marriage "has been the best experience of her life ... [Her] husband is [her] life and [her] world. He is the one [who] holds [her] together through good times and hard times." The applicant's spouse states that without the applicant here she will not be able to accomplish her desire to have more children. She states that she is under treatment for anxiety, high blood pressure, asthma and irregular menses. She also states that she has been under medical treatment in the United States and in Mexico "for stress and depression." Counsel states that the applicant's spouse and the applicant need to be together to nurture their marital relationship and grow their family.

The applicant has submitted medical reports from [REDACTED] dated October 2, 2008, and November 3, 2008; and medical evaluations from [REDACTED] dated

August 6, 2007, and August 27, 2007. While these reports do not establish that the applicant's spouse is under treatment for high blood pressure, they do demonstrate that she has chronic asthma and irregular menstrual periods. They further indicate that the applicant's spouse was prescribed hormone medications in Mexico. However, the medical reports and evaluations do not establish how the applicant's spouse is affected by her medical condition(s). They offer no indication that the applicant's spouse's health limits her ability to meet her daily responsibilities, including her ability to obtain employment or care for her child.

The applicant's spouse states that she has had to seek medical attention because she constantly worries about the applicant's situation. The applicant's mother states that "lately [the applicant's spouse] has been very depressed and [has not been] herself [and] she has [had] thoughts of suicide more than once." A Clinic Visit Note, dated January 6, 2009, from [REDACTED] states that the applicant's spouse reported being nervous, having difficulty sleeping, and crying frequently; and that the applicant had "multiple stressors, including the hardship of her husband being out of country and family separation." The Clinic Visit Note, which references a Patient Health Questionnaire Nine-Symptom Checklist (PHQ-9), states that the applicant's spouse is suffering from major depression and has been prescribed the medication Paxil.

Although the input of any health professional is respected and valuable, the AAO does not find the Clinic Visit Note to provide the type of detailed analysis necessary to establish the applicant's spouse's mental health status. While [REDACTED] relies on the PHQ-9 symptom checklist score of 23 indicating a Major Depression, the AAO finds nothing in the record to indicate the circumstances under which the PHQ-9 was administered or the scale against which the applicant's score was measured. We also note that [REDACTED] fails to indicate whether the applicant's spouse's depression has affected her ability to meet her daily responsibilities. It is also noted that although [REDACTED] is identified as an Advanced Registered Nurse Practitioner (ARNP) nothing has been submitted to establish that she has the appropriate educational background to make a mental health diagnosis. As such, the documentation submitted to establish the applicant's spouse's mental health condition is of limited value to a determination of extreme hardship.

In an undated statement, the applicant's spouse's grandfather states that he is disabled and that the applicant has helped him put up a fence, has mowed his lawn, and has done other jobs that he could not do by himself. However, the applicant's spouse's grandfather is not a qualifying relative, and no evidence has been submitted to establish how the applicant's spouse would be impacted if her grandfather does not have the applicant's assistance.

The applicant's spouse states that she depends on the applicant to provide for the family and she will not be able to pay the household expenses without his financial contributions. The record of evidence includes three paystubs indicating that the applicant's spouse worked about 18 hours per week at \$10.00 per hour in August 2007; two car payment receipts from August 2006, and August 2007; a cellular telephone bill from June 5, 2007; and a checking account bank statement for the month ending August 22, 2007, which shows several banking transactions. A 2008 statement from the applicant's spouse's mother indicates that her daughter is unemployed, is living with her in Florida and depending on her for financial support. However, the AAO notes that the Form I-290B, dated January 18, 2009, indicates that

the applicant's spouse is no longer living in Florida with her mother but has moved to Georgia¹ and no documentation has been submitted to establish her financial situation following her move. Without documentation to establish the applicant's spouse's financial circumstances, the AAO is unable to assess the nature and extent of financial hardship she will face if the waiver application is denied.

The AAO acknowledges that the applicant's spouse will experience hardships as a result of her separation from the applicant. We find, however, that the record contains insufficient evidence to establish that these hardships, even when considered in the aggregate, are beyond those normally experienced as a result of separation. Therefore, the applicant has failed to establish that his spouse would suffer extreme hardship as a result of separation.

Regarding hardship in Mexico, counsel states that the applicant's spouse's family resides in the United States and she does not have family in Mexico. The applicant's spouse states that she wants to have more children and she needs to be in the United States because she would not have adequate medical care in Mexico. She also states that she fears living in Mexico because of crime and that she and her husband were robbed at gunpoint and their car was broken into. The applicant's spouse also asserts that she does not speak Spanish and due to the economic conditions in Mexico it will be difficult for her and the applicant to find employment there. It is noted that there is no documentation to support the applicant's spouse's claim that moving to Mexico would harm her chances of having more children.

The record indicates that the applicant has been residing in [REDACTED] since his removal, and that his father resides in the State of San Luis Potosi and his mother resides in the State of Coahuila, and these appear to be locations where the applicant's spouse would potentially reside if she relocates to Mexico. It is noted that recently the United States Department of State, *Bureau of Consular Affairs*, warned against traveling along the U.S.-Mexico border and also to parts of San Luis Potosi and Coahuila based on the rapid rise in drug violence and crime. See United States Department of State, *Bureau of Consular Affairs*, Washington, DC, *Travel Warning*, April 22, 2011.

The record reflects that the applicant's spouse is not literate in Spanish and she would have difficulty securing employment and adjusting to the culture and society in Mexico. The applicant's spouse would also be concerned about her and her family's safety. The AAO finds, that when these specific hardship factors and the normal hardships are considered in the aggregate, the applicant's spouse would suffer extreme hardship were she to relocate to Mexico to reside with the applicant due to his inadmissibility.

Although the applicant has demonstrated that his spouse, the qualifying relative, would experience extreme hardship if she relocated abroad to reside with the applicant, we can find extreme hardship warranting a waiver of inadmissibility only where an applicant has shown extreme hardship to a qualifying relative in the scenario of relocation *and* the scenario of separation. The AAO has long interpreted the waiver provisions of the Act to require a showing of extreme hardship in both possible scenarios, as a claim that a qualifying relative will relocate and thereby suffer extreme hardship can easily be made for purposes of the waiver even where there is no actual intention to relocate. *Cf. Matter of Ige*, 20 I&N Dec. 880, 886 (BIA 1994). Furthermore, to relocate and suffer extreme hardship, where

¹ It is also noted that the applicant filed a change of address form in 2010 that indicates his spouse now resides in El Paso, Texas.

remaining in the United States and being separated from the applicant would not result in extreme hardship, is a matter of choice and not the result of inadmissibility. *Id.*, also *cf. Matter of Pilch*, 21 I&N Dec. 627, 632-33 (BIA 1996). As the applicant has not demonstrated extreme hardship from separation, we cannot find that refusal of admission would result in extreme hardship to the qualifying relative in this case.

As discussed above, the record fails to demonstrate extreme hardship to the applicant's spouse as a result of separation. Therefore, the applicant has not demonstrated that a qualifying relative would experience extreme hardship 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 he 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.