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



H6

DATE: **APR 20 2012** OFFICE: CIUDAD JUAREZ, 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:

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, Ciudad Juarez, 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) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(9)(B)(i), for having been unlawfully present in the United States for more than one year and seeking admission within 10 years of her last departure from the United States. The applicant is the spouse of a U.S. Citizen and is the beneficiary of an approved Petition for Alien Relative (Form I-130). The applicant, through her spouse, does not contest this finding of inadmissibility. Rather, she 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 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. *See Decision of Field Office Director*, dated September 23, 2009.

On appeal, the applicant's spouse asserts that the applicant is in need of immediate asylum due to death threats made against her by her mentally ill ex-husband; their children are suffering health problems and fear for their personal safety in the applicant's absence; the applicant is a productive member of the Pittsburg community; and Mexico is a violent place in which he does not want to raise his children. *See Notice of Appeal or Motion (Form I-290B)*, dated October 7, 2009.

The record includes, but is not limited to: letters of support; identity and employment documents; a bank statement; and school records. The entire record was reviewed and considered in rendering a decision on the appeal.

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.

...

(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. No court shall have jurisdiction to review a decision or action by the Attorney General [Secretary] regarding a waiver under this clause.

The record establishes that the applicant entered the United States without inspection by U.S. immigration officials in or around March 1995 and remained until in or around June 2008, when she voluntarily departed to Mexico. The applicant accrued unlawful presence from April 1, 1997, the effective date of the unlawful presence provisions in the Act, until June 2008, a period in excess of one year. As the applicant is seeking admission within 10 years of departure, she is inadmissible pursuant to section 212(a)(9)(B)(i)(II) of the Act.

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 the applicant or the applicant's children can be considered only insofar as it results in hardship to a qualifying relative. The applicant's husband 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-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 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 spouse is the only qualifying relative for the waiver under section 212(a)(9)(B)(v) of the Act, and hardship to the applicant's son and daughter will not be separately considered, except as it may affect the applicant's spouse.

The applicant's spouse contends that he and his children have suffered extreme emotional hardship as a result of separation from the applicant because he has to watch his children grow-up without their mother; it has been difficult managing a fulltime work schedule and to care for the children by himself and ensuring they get to their dentist appointments and school; and the children have increased health problems as evidenced by their weight gain and fear for their safety because of a break-in and theft at their home, which remains empty much of the day. The spouse's employer indicates that the spouse has been concerned with the children's increasing distress and the difficulties in raising them without the applicant's assistance. And, the employer also states that the spouse's ability to perform his work-related duties has been compromised because the spouse frequently takes unscheduled time off and is absent from the job to ensure the safety and wellbeing of the children. Additionally, the spouse's daughter indicates that she does not want to be without the applicant because she means the world to her, and she would not have anyone to take her to and from school or to take care of her when she is sick. The daughter also indicates that she has been so worried that she has been unable to eat or sleep. And, the daughter's school administrators indicate that the daughter has been emotionally distraught, unable to function in classes, cries continuously, and requires constant counseling and attention since the applicant's absence.

The applicant's spouse may experience some emotional hardship because of separation from the applicant. However, the record does not establish that the hardship that the spouse may experience goes beyond what is normally experienced by qualified family members of inadmissible individuals. The AAO notes that the record does not include sufficient evidence of the spouse's or children's mental health or any physical conditions that require the applicant's presence. The AAO also notes that the record does not include any evidence of the spouse's financial obligations or that the spouse would be unable to meet those financial obligations or to support himself in the applicant's absence. And, the record does not include any evidence of the applicant's employment opportunities in Mexico and her inability to contribute to the maintenance of the households.

The AAO recognizes the challenges in raising children without the daily support of the other parent and the pain that the spouse's children have been experiencing since the applicant's separation. However, even when this hardship is considered in the aggregate, the difficulties described do not take the present case beyond those hardships ordinarily associated with the inadmissibility of a family member. Thereby, the evidence is insufficient to support a finding of extreme hardship as a result of separation from the applicant.

The applicant's spouse also contends that he and the children would suffer extreme hardship if they were to relocate to Mexico because he wants to keep his family safe and does not want to raise his children in Mexico, where there is criminal activity, corrupt politicians, gang warfare, and no police protection. And because of these conditions, Mexico is not the same as when he was there. The spouse further contends that his children are U.S. citizens and belong in the United States because they do not read or write in Spanish, would receive a better education in the United States, and are unfamiliar with Mexico.

The record is sufficient to establish that the applicant's spouse would suffer hardship if he were to relocate to Mexico with the applicant. Although it is unclear whether the spouse would relocate to Jalisco or to Michoacan, the AAO notes that the U.S. Department of State issued a Travel Warning for Jalisco, indicating that the security situation along its borders with Michoacan and Zacatecas remains unstable and that gun battles between authorities and criminal groups occur. The warning also indicates that there are concerns because roadblocks have been placed by individuals posing to be police or military personnel and that there have been recent gun battles between rival Transnational Criminal Organizations (TCOs). And, the Travel Warning indicates that in Michoacan, attacks have occurred on government officials, law enforcement, and military personnel, and TCO-related violence has occurred throughout Michoacan. The AAO further notes that the applicant has been steadily employed at [REDACTED] since July 1986, and currently serves in the supervisory capacity of a Foreman. And, the applicant receives healthcare and life insurance through his employer. In the aggregate, the AAO finds that the applicant's spouse would suffer extreme hardship if he were to relocate to Mexico because of social conditions there as well as his length of residence and ties to the United States.

Although the applicant has demonstrated that the qualifying relative would experience extreme hardship if he relocated to be with the applicant, the AAO can find extreme hardship warranting a waiver of inadmissibility only where an applicant has demonstrated extreme hardship to a qualifying relative in the scenario of separation and the scenario of relocation. 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 remain in the United States and thereby suffer extreme hardship as a consequence of separation can easily be made for purposes of the waiver even where there is no intention to separate in reality. *See Matter of Ige*, 20 I&N Dec. 880, 886 (BIA 1994). Furthermore, to separate and suffer extreme hardship, where relocating abroad with the applicant would not result in extreme hardship, is a matter of choice and not the result of inadmissibility. *Id.*; *see also Matter of Pilch*, 21 I&N Dec. 627, 632-33 (BIA 1996). As the applicant has not demonstrated extreme hardship from separation, the AAO cannot find that refusal of admission would result in extreme hardship to the qualifying relative in this case.

In this case, the record does not contain sufficient evidence to show that the hardship faced by the qualifying relative, considered in the aggregate, rises 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 her United States Citizen spouse 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.



Page 7

ORDER: The appeal is dismissed.