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



U.S. Citizenship
and Immigration
Services



H6

DATE: APR 26 2012

OFFICE: MONTERREY, MEXICO

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,

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Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Field Office Director, Monterrey, 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 entered the United States without admission or parole in July 2002 and departed the United States in September 2010. 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 her last departure from the United States. The applicant seeks a waiver of inadmissibility in order to reside in the United States with her U.S. citizen spouse and lawful permanent resident father.

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 8, 2011.

On appeal, counsel for the applicant asserts that hardship suffered by the applicant's lawful permanent resident father was not considered. Counsel further asserts that the applicant's spouse and father will suffer financial, educational, and personal hardship.

In support of the waiver application and appeal, the applicant submitted identity documents, a declaration from her spouse, a declaration from her father, financial documentation, educational transcripts, letters of support, and family photographs. 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.

....

(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.

In the present case, the record reflects that the applicant is a twenty-six year-old native and citizen of Mexico. The applicant's spouse is a thirty year-old native of El Salvador and citizen of the United States. The applicant's father is a fifty-four year-old native of Mexico and lawful permanent resident of the United States.

The applicant's qualifying relatives in this case are her U.S. citizen spouse and lawful permanent resident father. The record contains references to hardship the applicant or other relatives would experience if the waiver application were denied. It is noted that Congress did not include hardship to an applicant or other, non-qualifying relatives as factors to be considered in assessing extreme hardship. In the present case, the applicant's spouse and father are the only qualifying relatives for the waiver under section 212(a)(9)(B)(v) of the Act, and hardship to any other individual will not be separately considered, except as it may affect the applicant's spouse or father.

The applicant's spouse asserts in a declaration dated October 22, 2010 that he is unemployed and receiving unemployment insurance. The applicant's spouse also asserts that he attends school while unemployed and is unable to pay his monthly expenses without his spouse. The record does not indicate that the applicant's spouse has any past due payments or has been otherwise unable to meet their financial obligations since the applicant's departure. The applicant's spouse also contends that he is responsible for the costs associated with his grandmother's cancer treatment and cannot contribute money without the applicant's income. The record does not contain any information concerning the applicant's spouse's grandmother's medical condition or evidence of responsibility for her medical costs. There is no information concerning how his grandmother is currently handling her medical bills without his financial assistance.

The record contains letters of support from the applicant's relatives asserting that the applicant and her spouse have a good relationship and that he would suffer without her. The applicant's spouse also contends that he worries about the safety of the applicant in Mexico. It is noted that the record contains no information concerning country conditions in Mexico or where in Mexico the applicant is currently residing. It is acknowledged that separation from a spouse nearly always creates a level of hardship for both parties, but there is no indication that the emotional hardship suffered by the applicant's spouse is so serious that he has been unable to continue in his education or daily life functions.

The evidence on the record is insufficient to establish that the applicant's spouse is experiencing a level of emotional and financial hardship that, when considered in the aggregate, is beyond the common results of inadmissibility or removal and would amount to extreme hardship if he remains in the United States without the applicant.

The applicant's spouse asserts that he has resided in the United States since September 2000 and that he cannot relocate to Mexico because his family lives in the United States. The applicant's spouse also states that there is crime in Mexico and he is afraid to move there. Counsel for the applicant contends that the applicant's spouse would be unable to continue his education in Mexico because he would be forced to seek employment. The applicant's spouse's family members submitted letters of support attesting to the love between the applicant and her spouse. However, the only letter that considered the hardship the applicant's spouse would suffer upon relocation to Mexico notes only that Mexico is the applicant's country and not his. The applicant's spouse is a native of El Salvador that shares the same official language as the country of Mexico. Further, there is no information in the record concerning country conditions in Mexico, including the area where the applicant currently resides. There is also no information concerning the extent to which the applicant's relatives would be able to assist in the applicant's spouse's relocation. The record contains insufficient evidence to find that the applicant's spouse would suffer hardship beyond the common consequences of inadmissibility or removal if he relocated to Mexico.

The applicant's father asserts in a declaration dated July 19, 2010 that he purchased a home in California, with the help of the applicant, and that he cannot pay his monthly expenses without the applicant's financial contribution. It is initially noted that the applicant's Form I-290B appeal was dated April 8, 2011. The record reflects that the applicant departed from the United States in September 2010. The record does not contain any updated evidence concerning the financial situation of her father. The applicant's father states that he resides with two of his children and there is no information concerning the extent to which his relatives provide him with financial assistance. Further, 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).

The applicant's father asserts that he had a son who passed away on October 6, 2006 and the applicant helped him through his resulting depression. The applicant's father states that the applicant came to visit him almost every two weeks. It is acknowledged that separation from a child nearly always creates a level of hardship for both parties, but there is no indication that the emotional hardship suffered by the applicant's father is so serious that he has been unable to continue in his employment or daily life functions.

The evidence on the record is insufficient to establish that the applicant's father is experiencing a level of emotional and financial hardship that, when considered in the aggregate, is beyond the common results of inadmissibility or removal and would amount to extreme hardship if he remains in the United States without the applicant.

The applicant's father asserts that he takes medicine for pain in his back and that he would not have the same medical insurance in Mexico as in the United States. The record does not contain any information concerning the applicant's father's medical condition or the availability of treatment in Mexico. 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 noted that the applicant's father is a native of Mexico and there is no information concerning any relatives he currently has in Mexico or the extent of his relationship with any such relatives. The record contains insufficient evidence to find that the applicant's father would suffer hardship beyond the common consequences of inadmissibility or removal if he 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 relatives, 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 her U.S. citizen spouse or lawful permanent resident father 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.