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



H6

DATE: **AUG 07 2012** Office: MEXICO CITY, 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 AAO inappropriately applied the law in reaching its decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen in accordance with the instructions on Form I-290B, Notice of Appeal or Motion, with a fee of \$630. The specific requirements for filing such a motion can be found at 8 C.F.R. § 103.5. **Do not file any motion directly with the AAO.** Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires any motion to 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 Form I-601, Application for Waiver of Grounds of Inadmissibility was denied by the Field Office Director, Mexico City, 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 under 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 country for more than one year between March 2004 and December 2007, and seeking admission within ten years of her departure from the United States. The applicant is married to a U.S. citizen, and she is the beneficiary of an approved Form I-130, Petition for Alien Relative (Form I-130). 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 live in the United States with her spouse and family.

In a decision dated May 11, 2010, the director concluded the applicant had failed to establish that her husband would experience extreme hardship if she were denied admission into the United States. The waiver application was denied accordingly.

Through counsel, the applicant asserts on appeal that evidence establishes her husband will experience extreme emotional, financial and physical hardship if she is denied admission into the United States. The applicant submits new evidence of hardship to support these assertions.

The record includes letters from the applicant's husband, employment evidence, medical documentation, documents relating to their children, letters from friends and family attesting to the applicant's good character and her husband's hardship, financial documents, photographs, country-conditions evidence and untranslated Spanish-language documents.

8 C.F.R. § 103.2(b)(3) provides that:

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.

Because the Spanish-language documents are not accompanied by certified English translations, they cannot be considered in the applicant's case. The entire remaining record was reviewed and considered in rendering a decision on the appeal

Section 212(a)(9)(B) of the Act provides in pertinent part:

- (i) [A]ny 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.

Inadmissibility under section 212(a)(9)(B)(i)(II) of the Act, which is triggered upon departure from the United States, remains in force until the alien has been absent from the United States for ten years.

The applicant states on her Form I-485 adjustment of status application, filed July 2, 2006, that she entered the United States without admission in March 2004.<sup>1</sup> Accrual of unlawful presence stops on the date an adjustment of status application is properly filed, until the date the application is denied. See *Memorandum from Donald Neufeld, Act. Assoc. Dir., Dom. Ops., Lori Scialabba, Assoc. Dir., Refugee, Asylum and Int. Ops., Pearl Chang, Act. Chief, Off. of Pol. and Stra., U.S. Citizenship and Immigration Serv., to Field Leadership, "Consolidation of Guidance Concerning Unlawful Presence for Purposes of Sections 212(a)(9)(B)(i) and 212(a)(9)(C)(i)(I) of the Act,"* dated May 6, 2009. The applicant's Form I-485 was denied on October 13, 2006, and she was placed into removal proceedings. She complied with her voluntary-departure order, and departed in December 2007. The applicant was unlawfully present in the United States for over one year between March 2004 and July 2, 2006, and she has remained outside of the United States for less than ten years. Accordingly, she is inadmissible under section 212(a)(9)(B)(i)(II) of the Act. Counsel does not contest the applicant's inadmissibility under section 212(a)(9)(B)(i)(II) of the Act.

Section 212(a)(9)(B)(v) of the Act provides in pertinent part:

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.

Section 212(a)(9)(B)(v) of the Act provides that a waiver of the bar to admission is dependent first upon a showing that the bar imposes an extreme hardship on a qualifying family member. Once extreme hardship is established, it is but one favorable factor to be considered in the determination of whether the Secretary should exercise discretion. *Matter of Mendez*, 21 I&N Dec. 296 (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*,

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<sup>1</sup> It is noted that Form I-213, Record of Deportable/Inadmissible Alien and Form I-862, Notice to Appear, dated April 18, 2007, reflect the applicant entered the United States without inspection or admission in February 2002. The inconsistent dates are inconsequential in the present matter, as the applicant has over one year of unlawful presence in the United States in either case.

10 I&N Dec. 448, 451 (BIA 1964). In *Matter of Cervantes-Gonzalez*, 22 I&N Dec. 560, 565 (BIA 1999), the Board provided a list of factors it deemed relevant in determining whether an alien has established extreme hardship to a qualifying relative. 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).

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 U.S. citizen spouse is her qualifying relative under section 212(a)(9)(B)(v) of the Act. 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 under section 212(a)(9)(B)(v) of the Act. Accordingly, hardship to the children will be considered only to the extent that it causes the applicant's spouse to experience hardship.

The applicant's husband states in letters that he and the applicant have been married since 2004, they have two young children together, and the applicant and their children have lived in Mexico since December 2007. The applicant's husband is originally from Mexico. Aside from his wife and children, his entire immediate family lives in Pecos, Texas, where he also has a home. His work in the oil industry pays nearly \$70,000 a year, and he has trained extensively for his job. He works fourteen to sixteen hour days in remote areas in different parts of the United States, often without communication. He is allowed two weeks off every six weeks, and he visits his family in Mexico during that time. He indicates it takes about two days to travel to Mexico and get accustomed to being there, and due to time constraints and his family's remote location, he rarely visits his parents, siblings and elderly grandparents in Texas. In addition, supporting the applicant and their children in Mexico, maintaining his home in Texas, and traveling between the two countries causes him financial hardship. The applicant's husband states he would lose his job and source of income if he moved to Mexico, and he would be unable to find similar work in Mexico. Additionally, he has diabetes and high blood pressure, must take daily medication to control his conditions, and would not have health insurance coverage in Mexico. The applicant's husband also worries about his and his family's safety in the Chihuahua area of Mexico due to high crime and violence. He also is concerned that their children are emotionally affected by their separation from their extended family and that they will not receive a good education in Mexico.

Employment evidence confirms that the applicant's husband has worked for the same company since 2004 and provides details about his work schedule, earnings, medical coverage, and numerous work-related trainings. Medical evidence reflects the applicant's husband has been diagnosed with diabetes and dyslipidemia, he has been prescribed medication for his conditions, and doctors recommend he avoid stress and that the applicant attend to his diet and offer emotional support. The record additionally contains flight information showing the hours spent traveling between the applicant's job sites in the United States and Mexico, letters from friends and family attesting to the applicant's good character and noting the applicant's husband's and son's emotional struggles, and country-conditions information about Mexico.

Upon review, the AAO finds that the evidence in the record, when considered in the aggregate, fails to establish that the applicant's husband would experience hardship beyond that normally experienced upon removal or inadmissibility if he resides with the applicant in Mexico. The record reflects the applicant's husband has been able to continue his employment with a U.S. oil company, and although it takes about two days for the applicant's husband to travel to his family in Mexico, the evidence fails to demonstrate that it would take significantly less time to travel to be with his family if they lived in Texas, or that this causes emotional, financial, or physical

hardship beyond that normally experienced upon removal or inadmissibility. The record reflects further that the applicant's husband is originally from Mexico and that he is familiar with the language and culture of the country, and the evidence fails to establish the applicant would be unable to obtain work in Mexico if he chose to do so. In addition, the evidence demonstrates that the applicant's husband has received satisfactory medical care in Mexico, and evidence fails to establish he is experiencing financial hardship based on his medical expenses in Mexico. The record contains no evidence of household expenses that cause the applicant's husband financial hardship. Letters from the applicant's husband's parents and medical evidence reflect further that the applicant's mother receives medical treatment in Mexico about four times a year from the same doctor as the applicant's husband, and that the applicant's father travels to Chihuahua, Mexico every year for vacation, sometimes accompanied by his other children. The evidence thus also fails to establish that the applicant's husband would be unable to see the rest of his family if he resides with the applicant in Mexico. Furthermore, although country-conditions evidence confirms his concerns about Chihuahua, in particular in Ciudad Juarez, the reports do not specifically address conditions in the city of Chihuahua, where the applicant lives; the applicant does not mention or cite specific security concerns or incidents. The reports alone do not establish that the applicant's husband would experience extreme emotional or physical hardship related to his security concerns in Mexico. See [http://travel.state.gov/travel/cis\\_pa\\_tw/tw/tw\\_5665.html](http://travel.state.gov/travel/cis_pa_tw/tw/tw_5665.html).

The AAO finds that the cumulative evidence also fails to establish the applicant's husband would experience hardship that rises beyond the common results of removal or inadmissibility if the applicant is denied admission into the United States, and he resides in the United States. The applicant's husband's work schedule requires him to be away from home for six weeks at a time, followed by two weeks of vacation. The evidence fails to demonstrate that this hardship is a result of the applicant's inadmissibility or that his emotional, financial and physical hardship is hardship beyond that normally experienced upon removal or inadmissibility. The evidence also fails to establish the applicant's husband would be unable to receive satisfactory medical treatment in the United States, or that his health would suffer if the applicant were unable to cook for him.

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(i) 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.