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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**



H6

DATE: **AUG 09 2012** Office: MEXICO CITY (CIUDAD JUAREZ) FILE:

IN RE: Applicant:

APPLICATION: Application for Waiver of Grounds of Inadmissibility under Sections 212(a)(9)(B)(v) and 212(i) of the Immigration and Nationality Act, 8 U.S.C. §§ 1182(a)(9)(B)(v) and (i)

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.

Thank you,

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the District Director, Ciudad Juarez, Mexico, and a subsequent appeal was dismissed by the Administrative Appeals Office (AAO). A motion to reopen is now before the AAO. The motion will be granted. The previous decision will be affirmed and the waiver application denied.

The applicant is a native and citizen of Mexico who was found 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 one year or more and section 212(a)(6)(C)(i) of the Act, 8 U.S.C. § 1182(a)(6)(C)(i), for misrepresenting a material fact to gain entry into the country. As the beneficiary of an approved Petition for Alien Relative (Form I-130), the applicant seeks a waiver of inadmissibility pursuant to sections 212(a)(9)(B)(v) and 212(i) of the Act, 8 U.S.C. § 1182(a)(9)(B)(v) and (i), in order to reside in the United States with her U.S. citizen father and lawful permanent resident mother.

The district director found that the applicant failed to establish that extreme hardship would be imposed on the applicant's parents by her inadmissibility and denied the Application for Waiver of Ground of Excludability (Form I-601), accordingly. The director noted that the applicant did not submit any statement or documentation of extreme hardship to a qualifying family member. *Decision of the District Director*, October 15, 2007. The AAO reached this same conclusion and dismissed the appeal. *Decision of the AAO*, July 20, 2010.

On motion, counsel offers new facts to show that the AAO erred in finding that the applicant's parents would suffer no extreme hardship if the applicant were prevented from returning to the United States. New information consists of a psychological evaluation of the applicant's child and country condition information on Mexico. This documentation along with the entire record was reviewed and considered in rendering this decision.

The record reflects that the applicant gained entry into the United States in January 2000 by using a border-crossing card belonging to another person, and remained in an unlawful status until December 2002, when she voluntarily departed. The district director therefore found, and the AAO agreed, that she was inadmissible under the following provisions.

Section 212(a)(6)(C)(i) of the Act provides, in pertinent part:

Any alien who, by fraud or willfully misrepresenting a material fact, seeks to procure (or has sought to procure or has procured) a visa, other documentation, or admission into the United States or other benefit provided under this Act is inadmissible.

Section 212(i)(1) of the Act provides:

The [Secretary] may, in the discretion of the [Secretary], waive the application of clause (i) of subsection (a)(6)(C) in the case of an alien who is the spouse, 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 [Secretary] that the refusal of admission to the United States of such immigrant alien would result in extreme hardship to the citizen or lawfully resident spouse or parent of such an alien [...].

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

(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...

As the AAO noted in our prior decision, a waiver of inadmissibility under sections 212(i) and 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 her child can be considered only insofar as it results in hardship to a qualifying relative. The applicant's parents are the only qualifying relatives 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-Moralez*, 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 applicant's parents contend they are suffering emotionally and financially to raise their grandchild due to absence of the applicant, the child's mother, who resides abroad due to her inadmissibilities. To support this claim, counsel provides a psychological evaluation diagnosing the grandchild as suffering from emotional issues including adjustment disorder, anxiety, and depression. There is no information on record regarding the qualifying relatives' emotional state, particularly the impact on them of their grandchild's emotional state. As hardship to the grandchild is only relevant to the extent it imposes hardship on the qualifying relatives, we have no basis to evaluate the hardship imposed on them by their daughter's absence as caregiver to her child. Similarly lacking is any evidence of the financial impact on the qualifying relatives of raising their grandchild. Therefore, the evidence on the record, when considered in the aggregate, fails to establish that any emotional and financial hardship the applicant's parents are experiencing due to her inability to enter the United States rises to the level of extreme.

In support of the claim that relocating to Mexico to reside with the applicant would impose hardship on the applicant's parents by exposing them to drug-related violence, counsel offers a magazine article about conditions in their home state of Michoacán where the applicant lives. U.S. government sources confirm that crime and violence are serious problems throughout the country and cite this state as one to which non-essential travel should be avoided. *See Travel*

Warning—Mexico, U.S. Department of State, February 8, 2012. Besides lacking any information about the applicant's living situation in the area of Michoacán, the record contains no evidence of her parents' U.S. ties, living situation, employment here versus job prospects there, financial considerations, and health or medical issues. Therefore, despite the new information provided, the record still lacks sufficient evidence showing the applicant's living conditions in Mexico and the conditions the qualifying relatives will likely experience if they move there. And, while sensitive to the safety issue raised by counsel, we note that there is no requirement either that the applicant's parents move to any particular region or that they relocate at all. The AAO finds that the applicant has not established that her parents would suffer extreme hardship if they joined her in Mexico.

The AAO also observes that there is nothing in the record showing that the applicant's child cannot reunite with her mother in Mexico without the applicant's parents. If they are unwilling to relocate, yet need to make alternative arrangements for their grandchild to lessen the burden she represents, the record does not establish that their grandchild would be prevented from living with her mother in Mexico.

The record, when reviewed in its entirety and in light of the *Cervantes-Gonzalez* factors cited above, does not support a finding that the applicant's parents would face extreme hardship if the applicant were prevented from returning to the United States. While the AAO acknowledges that her parents would experience hardship as a result of the applicant's inadmissibility, the record does not distinguish that hardship from the distress and upheaval routinely created by absence of an adult child. Accordingly, the applicant has not established that her parents would suffer extreme hardship if they remained in the United States while she resides abroad.

Documentation in the record, whether considered separately or in the aggregate, fails to establish the existence of extreme hardship to the applicant's parents caused by the denial of the applicant's waiver application. Having found the applicant statutorily ineligible for relief, no purpose would be served in discussing whether she merits a waiver as a matter of discretion.

In proceedings for application for waiver of grounds of inadmissibility, the burden of proving eligibility remains entirely with the applicant. Section 291 of the Act, 8 U.S.C. § 1361. The applicant has still not met that burden. Accordingly, the prior decision of the AAO will be affirmed.

ORDER: The motion is granted. The prior decision of the AAO is affirmed.