

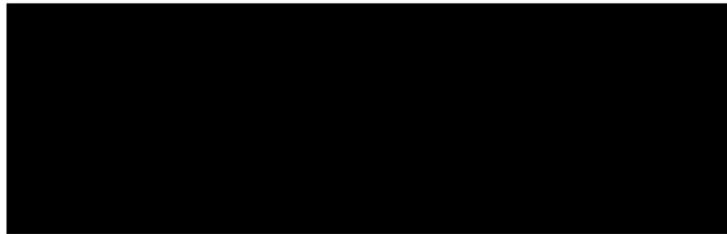
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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090



**U.S. Citizenship
and Immigration
Services**



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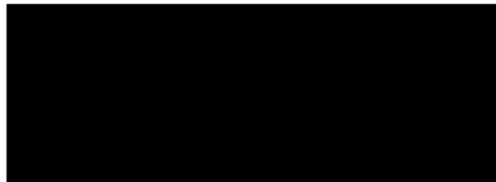
DATE: **AUG 16 2012** Office: MEXICO CITY
(CIUDAD JUAREZ)

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 (the Act), 8 U.S.C. section 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 waiver application was denied by the District Director, Mexico City, Mexico. The denial was appealed to the Administrative Appeals Office (AAO). The appeal was dismissed. The applicant filed a motion to reopen and reconsider the AAO decision, which is now before the AAO. The motion will be granted and previous decisions of the district director and AAO will be affirmed.

The applicant is a native and citizen of Mexico. She was found to be inadmissible to the United States pursuant to section 212(a)(9)(B)(i)(II) of 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 seeking admission within ten years of her last departure. She is married to a naturalized United States citizen and has two U.S. citizen children. 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).

The District Director concluded that the applicant had failed to establish that the bar to her admission would impose extreme hardship on a qualifying relative, her U.S. citizen spouse, and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) on January 12, 2007. The AAO found that the applicant's spouse would experience extreme hardship due to separation, but concluded that the applicant had failed to establish her spouse would experience extreme hardship upon relocation. *AAO Decision*, dated March 22, 2010. The AAO dismissed the appeal accordingly.

On motion, counsel for the applicant asserts that there is new evidence supporting that the applicant's spouse will experience extreme hardship as a result of the applicant's inadmissibility. *Form I-290B*, received April 21, 2010.

The record includes evidence submitted with the applicant's original application for a waiver and evidence submitted with the applicant's appeal. On motion, the applicant has submitted: a brief from counsel; a letter from the applicant; a statement from the applicant's spouse; statements from friends, family members and associates of the applicant's spouse; previously submitted photographs of the applicant; documents in Spanish; a copy of an International Average Salary Income Comparison for Mexico; copies of money transfer receipts; copies of financial expenses in the name of the applicant's spouse; tax returns and pay stubs for the applicant's spouse; and copies of employment-related development certificates and letters for the applicant's spouse. The entire record was reviewed and all relevant evidence considered in rendering this decision.

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.

The record indicates that the applicant entered the United States without inspection in January 2000 and remained until she departed in January 2006. As the applicant has resided unlawfully in the United States for over a year and is now seeking admission within ten years of her last departure from the United States, she is inadmissible under section 212(a)(9)(B)(i)(II) of the Act.

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 the applicant or her children 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 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 Chief, AAO, previously found the record to establish that the applicant’s spouse would experience extreme hardship due to separation. The AAO will not disturb that finding. On motion, counsel for the applicant asserts that the applicant’s spouse will experience extreme financial and emotional hardship upon relocation. *Brief in Support of Motion to Reconsider in Response to Denial*, received April 21, 2010. Counsel asserts that the applicant’s spouse owns a residential property in the United States and would lose substantial money if it had to be sold for relocation, and that he would be unable to find a job in Mexico with sufficient compensation to maintain his house in the United States or pay off the debt he has accrued while residing in the U.S. He further asserts that the applicant’s spouse would have to separate from his three children from a prior marriage. Counsel also asserts that the applicant’s spouse has resided in the United States for a substantial period of time, and that his children should be able to attend public schools in the the U.S. because

they are U.S. citizens and are not fluent in Spanish. Counsel states that the applicant is anemic and has depression, and is unable to work while residing in Mexico because of her condition, and also states that the applicant's spouse has hypertension and is pre-diabetic.

The record contains a salary comparison for Mexico, contrasting wages in the United States and Mexico. The AAO does not find this document sufficiently probative to establish that the applicant's spouse would be unable to find employment in Michoacan, Mexico or in other locations where he might reside. While it may indicate that wages are lower in Mexico, it does not establish that he would be unable to support his family in Mexico, or that the difference in wages for available employment would rise above the common impacts associated with relocating due to inadmissibility. Further, there is no evidence that the applicant's spouse would incur any financial loss upon the sale of his residential property, and as such that applicant has not shown that such a loss would exacerbate the financial impact of relocation to Mexico. The AAO does not find the evidence submitted on motion to significantly alter the determination of financial hardship upon relocation.

The record contains a number of documents which are in Spanish. The regulations at 8 C.F.R. § 103.2(b)(3) require that any document in a foreign language submitted to United States Citizenship and Immigration Services (USCIS) be accompanied by a full English-language translation which the translator has certified that it is complete and accurate and that he or she is competent to translate from the foreign language into English. Without evidence corroborating counsel's assertion that the applicant is anemic or has been diagnosed with depression, the AAO cannot give any weight to the emotional or financial impact this would have on the applicant's spouse upon relocation.

The AAO notes that, as discussed above, children are not qualifying relatives in this proceeding. As such, any hardship on them is only relevant to the extent that it impacts the qualifying relative, in this case the applicant's spouse. While it is true the applicant's children would not be attending school in the United States, this is a common consequence of relocation, and the AAO does not find that this factor would constitute an uncommon hardship on the applicant's spouse.

The AAO acknowledges that the applicant's spouse has resided in the United States for a significant period and has three grown children from a prior marriage who reside here. However, the AAO does not find any basis to consider separation from them to constitute an uncommon hardship factor. Severing family and community ties upon relocation is a common impact for the relatives of inadmissible aliens who relocate abroad. The AAO also notes that the applicant's spouse has brothers and sisters in Mexico, constituting family ties that would be available to help mitigate the impacts of relocation.

Additionally, the applicant has not submitted sufficient evidence to establish her spouse has medical conditions which would result in hardship from having to disrupt the continuity of care he receives in the United States. There is no evidence that he would not have access to medical care in Mexico.

The record, reviewed in its entirety and in light of the *Cervantes-Gonzalez* factors, cited above, does not support a finding that the applicant's spouse faces extreme hardship if the applicant is refused

admission. The AAO recognizes that the applicant's spouse would prefer to reside in the United States and maintain the lifestyle he has achieved here and to allow his children to attend school in the United States. These assertions, however, are common hardships associated with removal, and do not rise to the level of "extreme" as informed by relevant precedent. U.S. court decisions have repeatedly held that the common results of removal or inadmissibility are insufficient to prove extreme hardship. *See Hassan v. INS*, 927 F.2d 465, 468 (9th Cir. 1991). In addition, *Perez v. INS*, 96 F.3d 390 (9th Cir. 1996), held that the common results of deportation are insufficient to prove extreme hardship and defined extreme hardship as hardship that was unusual or beyond that which would normally be expected upon deportation. 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.

Section 291 of the Act, 8 U.S.C. § 1361, provides that the burden of proof is upon the applicant to establish that he is eligible for the benefit sought. *See* section 291 of the Act, 8 U.S.C. § 1361. Here, the applicant has not met that burden. Accordingly, the motion will be dismissed.

ORDER: The motion is dismissed.