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



U.S. Citizenship
and Immigration
Services



H6

DATE: **AUG 23 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 Knew
Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Field Office Director, Mexico City, Mexico and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native and a citizen of Mexico who 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 admission within 10 years of his last departure. The applicant is a spouse of a U.S. citizen and the beneficiary of an approved Petition for Alien Relative. He seeks a waiver under section 212(a)(9)(B)(v) of the Act, 8 U.S.C. § 1182(a)(9)(B)(v), in order to reside in the United States with his spouse.

The director concluded that the applicant had failed to establish that the bar to his admission would impose extreme hardship on a qualifying relative and denied the Form I-601, Application for Waiver of Grounds of Inadmissibility, accordingly. *See Field Office Director's Decision*, dated July 2, 2010.

On appeal, counsel asserts that the applicant's spouse would suffer extreme hardship if the applicant's waiver application is denied and submits additional hardship evidence for consideration. *See Counsel's Letter*, dated July 30, 2010.

The evidence of record includes, but is not limited to: counsel's letter, statements from the applicant and his spouse, letters from family and friends, financial evidence, and medical evidence for the applicant's spouse. The entire record was reviewed and considered in rendering a decision on the appeal.

Section 212(a)(9) states 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.

(ii) Construction of unlawful presence.- For purposes of this paragraph, an alien is deemed to be unlawfully present in the United States if the alien is present in the United States after the expiration of the period of stay

authorized by the Attorney General or is present in the United States without being admitted or paroled.

The record reflects that the applicant entered the United States in April 1994 without inspection and remained in the United States until July 2009, when he voluntarily departed the United States.¹ Based on the applicant's history, the AAO finds that the applicant accrued unlawful presence from April 1, 1997 until his departure in July 2009.² As the applicant accrued unlawful presence of more than one year and is seeking admission within 10 years of his 2009 departure, he is inadmissible to the United States pursuant to section 212(a)(9)(B)(i)(II) of the Act. Counsel does not contest the applicant's inadmissibility.

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 other family members can be considered only insofar as it results in hardship to a qualifying relative. 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). In the instant case, the applicant's U.S. citizen spouse is the qualifying relative.

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

¹ The record contains inconsistent dates for the applicant's entry into the United States; however, in the instant case, the inconsistency in the entry date is inconsequential to the finding of inadmissibility.

² No period of unlawful presence prior to the effective date of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA), Pub. L. No. 104-208, is counted when determining inadmissibility under section 212(a)(9)(B) of the Act.

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, 631-32 (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, "[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., In re 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 AAO now turns to the question of whether the applicant in the present case has established that his qualifying relative would experience extreme hardship as a result of his inadmissibility.

On appeal, counsel states that since the applicant's departure, the applicant's spouse has experienced an emotional downward spiral. He also states that the applicant's spouse has moved in with her parents because she is unable to pay the rent for her apartment. The applicant's spouse is the sole income earner and financially supports the applicant, who is unemployed. He also states that the applicant lives in constant fear of being subjected to violence or crime in Mexico and feels like a prisoner in his own home, which is located in a notoriously dangerous area.

The applicant states that he is unemployed in Mexico and if his spouse joins him, they would be "homeless and penniless, unemployed and unable to receive suitable medical care." His spouse is being medically treated for depression and anxiety; he is concerned that his spouse would not receive the medical care she needs. His spouse's family is a great support for them and it would be difficult for his spouse to separate from her family. He is also concerned about his and his spouse's safety in Mexico. He was assaulted and robbed at gunpoint by gang members; he fears leaving his home after dark and does not wish to subject his spouse "to such poor living conditions."

The applicant's spouse states that she is experiencing both emotional and financial hardship. She states not having the applicant with her is "overwhelming" for her; she depends on him and would be "lost without him." She works as a cashier at a grocery store, earning \$2000 a month. According to her psychologist, the applicant's spouse was promoted and now earns a higher salary. She states that she cannot pay her bills without the applicant's income. The record contains copies of phone, auto insurance, and credit-card bills with unpaid balances. The applicant's spouse has a close relationship with her parents and siblings and being away from them would be devastating; she has no family in Mexico. The cost of travel from Mexico would make it difficult for her to visit her family. She is also concerned about their safety in Mexico.

Evidence in the record indicates that in 2009, the applicant's spouse was prescribed medications for depression and anxiety. A July 2010 psychological evaluation by Dr. [REDACTED] indicates that the applicant's spouse's "stressful life circumstances" triggered her depression, and she "requires at least one year of treatment and ongoing therapy." Dr. [REDACTED] states that the applicant's spouse's symptoms are at risk of worsening unless she receives the proper support and treatment.

Letters from family and friends attest to the loving and supportive relationship between the applicant and his spouse. They indicate that the applicant's spouse seems depressed and not as outgoing as she was prior to the applicant's departure. They also refer to the applicant's good character.

Having reviewed the preceding evidence, the AAO finds that the applicant's spouse would experience extreme hardship if the waiver application is denied and she relocates to Mexico. In reaching this conclusion, we note that the applicant's spouse was born and raised in the United States. She has no family ties to Mexico, other than the applicant. The applicant's spouse has strong family ties in the United States and cannot benefit from their support in Mexico. She also is gainfully employed. Moreover, the applicant's spouse is concerned for her safety should she relocate. The applicant has been assaulted and robbed by armed gang members and he also fears for his spouse's safety if she relocates. Furthermore, the U.S. Department of State has issued a travel warning for Mexico, updated on February 8, 2012, reporting an increase in incidents of roadblocks by transnational criminal organizations (TCO) in various parts of Mexico in which both local and expatriate communities have been victimized. Accordingly, the AAO concludes, considering the evidence in the aggregate, the applicant's spouse would experience extreme hardship should she relocate to Mexico.

The record, however, does not establish that the applicant's spouse would experience extreme hardship if she remains in the United States. The AAO acknowledges that the applicant and his spouse have a loving relationship, and nothing in this decision should be interpreted as suggesting otherwise. However, the record does not demonstrate that the applicant's spouse is experiencing extreme hardship resulting from their separation. The record indicates that the applicant's spouse was prescribed medications for her depression and anxiety; however, the record lacks details concerning the effects of her medical treatment. With respect to financial hardship, the record lacks documentary evidence of the applicant's spouse's income after her promotion. The record also lacks documentary evidence corroborating statements that the applicant's spouse financially assists the applicant. Furthermore, though the record indicates that the applicant's spouse has moved in with her parents since the applicant's departure, the record does not show the family's total household expenses in the United States and Mexico. Without such evidence, the AAO cannot conclude that the applicant's spouse is experiencing financial hardship as a result of her separation. The assertions of the applicant and his spouse are relevant evidence and have been considered. However, absent supporting documentation, these assertions are insufficient proof of hardship. See *Matter of Kwan*, 14 I&N Dec. 175 (BIA 1972) ("Information in an affidavit should not be disregarded simply because it appears to be hearsay; in administrative proceedings, that fact merely affects the weight to be afforded it."). 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)). Therefore, the AAO concludes, considering the evidence in the aggregate, the hardship experienced by the applicant's spouse resulting from their separation does not rise to the level of extreme.

We 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. A claim that a qualifying relative will relocate and thereby suffer extreme hardship can easily be made for purposes of the waiver even where there is no actual intention to relocate. Cf. *Matter of Ige*, 20 I&N Dec. 880, 886 (BIA 1994). Furthermore, to relocate and

suffer extreme hardship, where remaining the United States and being separated from the applicant would not result in extreme hardship, is a matter of choice and not the result of inadmissibility. *Id.*, also cf. *Matter of Pilch*, 21 I&N Dec. 627, 632-33 (BIA 1996). As the applicant has not demonstrated extreme hardship from separation, we cannot find that refusal of admission would result in extreme hardship to the qualifying relative in this case.

The applicant has not established statutory eligibility for a waiver of his inadmissibility under section 212(a)(9)(B)(v) of the Act. As the applicant has not established extreme hardship to his qualifying family member if she lived in the United States, 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. See 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.