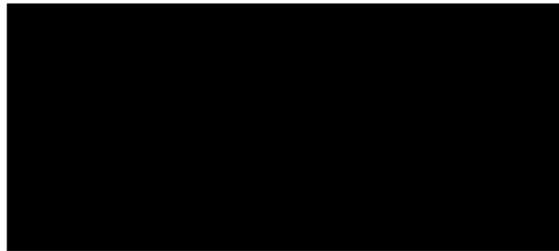


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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090
**U.S. Citizenship
and Immigration
Services**



H6

Date: **AUG 30 2012**

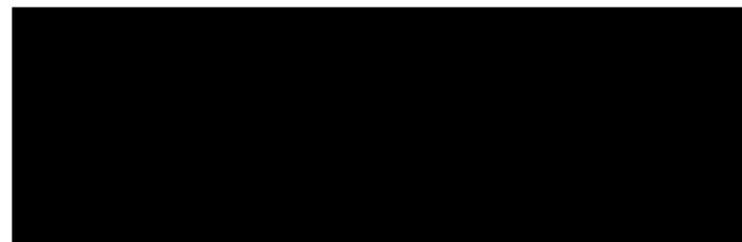
Office: MONTERREY, MEXICO

FILE: 

IN RE: Applicant: 

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

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 Field Office Director, Monterrey, Mexico. The matter 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 was found to be inadmissible to the United States pursuant to section 212(a)(9)(B)(i)(II) of the Act for having been unlawfully present in the United States for more than one year, section 212(a)(6)(C)(i) of the Act for willful misrepresentation of a material fact in order to procure an immigration benefit, and section 212(a)(9)(A)(ii) of the Act as an alien who was ordered removed. The applicant is married to a U.S. citizen and seeks a waiver of inadmissibility pursuant to section 212(a)(9)(B)(v) of the Act and section 212(i) of the Act in order to reside with his wife and child in the United States.

The field office director found that the applicant failed to establish extreme hardship to a qualifying relative and that the applicant's disregard and disobedience to the laws of the United States outweigh any positive factors in the case. The field office director denied the waiver application accordingly. *Decision of the Field Office Director*, dated April 23, 2010.

On appeal, counsel contends that the applicant has only been the subject of one expedited removal and, therefore, should only be subject to the five-year bar pursuant to section 212(a)(9)(A)(i) of the Act. In addition, counsel contends the applicant's wife has suffered extreme hardship, particularly considering she takes care of her grandmother who regularly undergoes dialysis.

The record contains, *inter alia*: a copy of the marriage certificate of the applicant and his wife, [REDACTED], indicating they were married on February 18, 2006; a copy of the birth certificate of the couple's U.S. citizen son; letters from [REDACTED]; a letter from the couple's child; letters of support, including from the couple's church; copies of bills; two psychological evaluations; a letter from the applicant's former employer; a letter from [REDACTED] employer; photographs of the applicant and his family; and an approved *Petition for Alien Relative* (Form I-130). The entire record was reviewed and considered in rendering this decision on the appeal.

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.

Section 212(a)(6)(C)(i) of the Act provides:

In general.—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) provides:

(1) The Attorney General [now Secretary of Homeland Security] may, in the discretion of the Attorney General [Secretary], waive the application of clause (i) of subsection (a)(6)(C) in the case of an immigrant 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 permanent resident spouse or parent of such an alien. . . .

Section 212(a)(9)(A) of the Act states, in pertinent part:

Aliens previously removed.-

(A) Certain aliens previously removed.-

(i) Arriving aliens. - Any alien who has been ordered removed under section 235(b)(1) or at the end of proceedings under section 240 initiated upon the alien's arrival in the United States and who again seeks admission within 5 years of the date of such removal (or within 20 years in the case of a second or subsequent removal or at any time in the case of an alien convicted of an aggravated felony) is inadmissible.

* * *

(iii) Exception.- Clauses (i) and (ii) shall not apply to an alien seeking admission within a period if, prior to the date of the aliens' reembarkation at a place outside the United States or attempt to be admitted from foreign continuous territory, the Attorney General [now, Secretary, Department of Homeland Security] has consented to the aliens' reapplying for admission.

In this case, the record shows, and the applicant does not contest, that on January 20, 2002, the applicant attempted to enter the United States using his cousin's Permanent Resident Card. The applicant was placed in expedited removal proceedings, ordered removed, and was removed from the United States the same day. *Notice and Order of Expedited Removal (Form I-860)*, dated January 20, 2002; *Verification of Removal (Form I-296)*, dated January 20, 2002. The record further shows that two years later, in 2004, the applicant entered the United States using his brother's Permanent Resident Card. The applicant remained in the United States until his departure in October 2008. Therefore, the applicant is inadmissible under section 212(a)(6)(C)(i) of the Act for willful misrepresentation of a material fact in order to obtain an immigration benefit, section 212(a)(9)(B)(i)(II) of the Act for being unlawfully present in the United States for a period of more than one year and seeking admission to the United States within ten years of his last departure, and section 212(a)(9)(A)(i) of the Act as an alien previously removed from the United States. To the extent counsel contends that the five-year bar should apply to the applicant's case because he has not had a subsequent removal and has not been convicted of an aggravated felony, the AAO notes that the applicant did not remain outside the United States for five years as required by 8 C.F.R. §212.2(a). As such, the applicant remains inadmissible under section 212(a)(9)(A).

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-I-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 this case, the applicant's wife, [REDACTED], states that she met her husband when she was only fifteen years old. She states that they have a son, [REDACTED], and that it is difficult to raise him alone without her husband. According to [REDACTED] has had trouble sleeping and eating, and has become depressed since the applicant's departure from the United States. In addition, [REDACTED] contends she has lost eleven pounds, has constant stomach pain, and is depressed. She contends that before her husband departed the country, they lived in a five bedroom house in Oceanside, but now, she and her son had to move to San Clemente and live in a two bedroom apartment that is in bad condition. She states she works twenty hours per week in an elementary school and teaches preschool, earning approximately [REDACTED] per month. [REDACTED] states she pays [REDACTED] per month for rent and \$30 per week for a babysitter. She contends her parents moved out of California and that she has no one to help her. In addition, [REDACTED] contends she may be at genetic risk of developing migraine headaches and has a family history of high blood pressure. Furthermore, [REDACTED] claims that she cannot move to Mexico to be with her husband because she is the only person who takes her grandmother to dialysis three days a week. According to [REDACTED], her grandmother depends on her and would

die without dialysis. [REDACTED] states she would be separated from her family and would lose her job if she relocated to Mexico. In addition, she states that her son has to constantly get treated for his dental caries and that she would not be able to afford dental care for him in Mexico. She also contends she would not move to Mexico due to the serious problems with drugs, gangs, violence, and kidnappings. According to [REDACTED], during her last visit to Mexico in May 2010, a young man took her purse and ran away as fast as he could. She states she was terrified by the incident and did not go outside for the next two days.

After a careful review of the record, the AAO finds that there is insufficient evidence to show that the applicant's wife, [REDACTED], will suffer extreme hardship if her husband's waiver application were denied. If [REDACTED] decides to stay in the United States, their situation is typical of individuals separated as a result of inadmissibility or exclusion and does not rise to the level of extreme hardship based on the record. Regarding the emotional hardship claim, although the record contains a psychological report as well as an update, and the AAO acknowledges that the input of any health care professional is respected and valuable, the reports do not show that [REDACTED] situation, or the symptoms she is experiencing, are extreme, unique, or atypical compared to other individuals in similar circumstances. *See Perez v. INS*, 96 F.3d 390 (9th Cir. 1996) (holding that the common results of deportation are insufficient to prove extreme hardship and defining extreme hardship as hardship that was unusual or beyond that which would normally be expected). The AAO also notes that the psychological report dated February 24, 2009, which states that [REDACTED] was seen in September 2008 as well as in February 2009, inexplicably discusses [REDACTED] mental state as if her husband had not yet left the United States, even though he departed the United States in October of 2008. *Psychological Report*, dated February 24, 2009 (stating that [REDACTED] lives with her husband, that they reside in San Clemente, California, that she is concerned "she would have to interrupt her studies if her husband is not in the country," that she "cannot stop thinking about what might happen" if she is separated from her husband, and that she could not pay the bills "if her husband left them"). Similarly, although the letter from her physician confirms that [REDACTED] is experiencing psychological and physical stress following her husband's departure from the United States, again, the record does not show that her hardship is unusual or beyond that which would normally be expected after a spouse's removal. Regarding the financial hardship claim, there is insufficient information in the record to evaluate the extent of [REDACTED] hardship. According to [REDACTED] she works twenty hours per week and earns approximately [REDACTED] per month; however, aside from copies of three bills, the record does not contain evidence documenting her regular, monthly expenses, such as rent or mortgage. There are no tax documents in the record and although the record contains a letter from the applicant's previous employer, there is no indication in the record showing how much the applicant earned in wages when he lived in the United States. Although the AAO does not doubt that [REDACTED] has suffered, and will continue to suffer, some financial hardship, there is insufficient documentation in the record to evaluate the extent of her hardship. To the extent the couple's son is having trouble eating or sleeping and misses his father, the AAO is sympathetic to the family's circumstances. Nonetheless, the only qualifying relative in the case is [REDACTED] and the record does not show that the couple's son's difficulties cause [REDACTED] hardship that is extreme, unique, or atypical compared to others in similar circumstances. Even considering all of these factors

cumulatively, there is insufficient evidence showing that the hardship [REDACTED] has experienced or will experience amounts to extreme hardship.

Furthermore, the record does not show that [REDACTED] would suffer extreme hardship if she returned to Mexico, where she was born, to be with her husband. With respect to [REDACTED] contention that she would be separated from her family and must take her grandmother to dialysis, there is no evidence in the record, such as a letter from her grandmother or any other family member, to corroborate this claim. To the extent the couple's son has severe dental caries that require regular dental care, there is no evidence in the record addressing the extent to which he requires dental treatment and no evidence he cannot be adequately treated in Mexico. The AAO recognizes [REDACTED] fear of relocating to Mexico, particularly considering her purse was stolen from her during one of her recent visits to see her husband, and acknowledges that the U.S. Department of State has issued a Travel Warning for parts of Mexico. However, according to the applicant's Biographic Information form (Form G-325A), the applicant, his wife, and his parents were all born in Guanajuato, Mexico, where there is no travel advisory in effect, and his parents continue to live there. *U.S. Department of State, Travel Warning, Mexico*, dated February 08, 2012. The record does not show that [REDACTED] readjustment to living in Mexico would be any more difficult than would normally be expected under the circumstances. In sum, the record does not show that [REDACTED] hardship would be extreme or that her situation is unique or atypical compared to others in similar circumstances. *Perez v. INS, supra*.

A review of the documentation in the record fails to establish the existence of extreme hardship to the applicant's wife caused by the applicant's inadmissibility to the United States. Having found the applicant statutorily ineligible for relief, no purpose would be served in discussing whether he 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) and section 212(i) 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.