



H6

DATE: **DEC 06 2012**

Office: 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. § 1182(a)(9)(B)(v)

ON BEHALF OF APPLICANT:

SELF-REPRESENTED

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



Ron Rosenberg
Acting Chief, Administrative Appeals Office

DISCUSSION: The Field Office Director, Ciudad Juarez, Mexico, denied the waiver application, and it 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 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. Her husband is a U.S. citizen, and she is seeking a waiver of inadmissibility in order to reside in the United States as the beneficiary of an approved Petition for Alien Relative (Form I-130).

The field office director concluded the applicant had failed to establish that extreme hardship would be imposed on a qualifying relative and, accordingly, denied the Application for Waiver of Ground of Inadmissibility (Form I-601). *Decision of the Field Office Director, April 8, 2011.*

On appeal, the applicant submits a statement from the applicant's husband. The entire record was reviewed and 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.

.....

(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....

The applicant entered the United States without admission or parole as a seven year old child in the custody of her parents in July 1996. She remained in the United States until April 2010, when she departed to apply for an immigrant visa. She accrued unlawful presence from April 24, 2007, when she turned 18, until her departure in 2010, and she is therefore inadmissible for accruing one year or more of unlawful presence and requires a waiver in order to immigrate before April 2020.

A waiver of inadmissibility under section 212(a)(9)(B)(v) 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 husband 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 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 v. INS.*, 138 F.3d 1292, 1293 (9th Cir. 1998) (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.

Regarding hardship from separation, there is no documentary evidence that the applicant's husband has incurred emotional hardship from his wife's absence beyond the normal and typical impact of separation from a loved one. The qualifying relative claims that their son needs his mother because he is about to start school, but offers no evidence to substantiate this claim. Although the record reflects the child had a moderate language delay as a three year old, there is no evidence linking this situation to his mother's absence or showing that it is causing hardship to his father. The applicant's husband claims to fear for his wife's safety. While noting the Travel Warning issued by the U.S. Department of State on February 8, 2012, as well as a reference to street violence in the applicant's statement, the record fails to show the applicant lives in an area covered by the travel warning. The applicant does not claim directly that her absence imposed a financial burden on her husband. Rather, the evidence contains an undated employment letter indicating she has had sufficient income since at least November 2010 to support herself in Mexico, while failing to show she contributed earnings to the household while in the United States.

Documentation in the record, when considered in its totality, does not show that the applicant's husband is suffering, or will suffer, extreme hardship if the applicant is unable to reside in the United States. The AAO recognizes that her husband will endure hardship as a result of separation from the applicant. However, their situation is typical of individuals separated as a result of removal or inadmissibility, and the AAO therefore finds that the applicant has failed to establish extreme hardship to a qualifying relative as required under the Act.

Regarding relocation, the evidence fails to establish that moving to Mexico would impose extreme hardship on the qualifying relative. The record contains the qualifying relative's claim that he cannot visit his wife in Mexico, and he appears to reject the possibility of moving abroad to live with her. While the applicant contends that it would be too difficult for her husband to adapt to the dangers of living in Mexico, there is no contention on record that he fears for his own safety, only that he has no desire to move there. While noting that the applicant's son had health issues when living with his mother in Mexico, there is no indication he requires any treatment unavailable there or that his condition would result in hardship to his father, were he to relocate. Beyond the inconvenience of moving, the appeal contains no evidence indicating that the qualifying relative is unable to live in Mexico.

The record reflects that the qualifying relative has lived here his entire life here, but indicates that he is fluent in Spanish and that his father is from Mexico. Other than showing that his mother and

brother live here and his son was born here, the qualifying relative demonstrates few ties to the United States. While the applicant states her husband has never lived in Mexico, there is nothing on record to show that he would have difficulty adapting. The AAO thus concludes that, were the applicant unable to reside in the United States due to her inadmissibility, the record does not establish that a qualifying relative would suffer extreme hardship were he to relocate abroad.

The documentation on record, when considered in its totality, reflects that the applicant has not established her husband will suffer extreme hardship if she is unable to live in the United States as a permanent resident. The AAO recognizes that the applicant's spouse will endure hardship as a result of separation from the applicant. However, his situation is typical of individuals separated as a result of removal or inadmissibility, and the AAO therefore finds that the applicant has failed to establish extreme hardship to her husband as required under the Act.

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. Here, the applicant has not met that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.