



U.S. Citizenship
and Immigration
Services

[REDACTED]

H6

DATE: **DEC 08 2012** OFFICE: MEXICO CITY [REDACTED]

IN RE: [REDACTED]

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:

[REDACTED]

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 and 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 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 readmission within 10 years of his last departure. The applicant is a beneficiary of an approved Petition for Alien Relative, as the son of a U.S. citizen father and lawful permanent resident mother, who seeks a waiver of inadmissibility under section 212(a)(9)(B)(v) of the Act, 8 U.S.C. § 1182(a)(9)(B)(v).

The District Director concluded that the record failed to establish the existence of extreme hardship for a qualifying relative and denied the application accordingly. *See Decision of the District Director*, dated April 5, 2010.

On appeal, counsel for the applicant asserts that the applicant has demonstrated that his parents have been suffering extreme hardship since the denial of his waiver application. Counsel contends that the applicant's parents are suffering from emotional and financial hardship upon separation from the applicant and would suffer from conditions in Mexico if they relocated to reside with the applicant.

In support of the waiver application and appeal, the applicant submitted identity documents, medical documentation concerning his father, background information concerning conditions in Mexico, financial documents, employer letters, family photographs, letters of support, and school records for the applicant. The applicant provided a document in a foreign language. Because the applicant failed to submit a certified translation of the document, the AAO cannot determine whether the evidence supports the applicant's claims. *See* 8 C.F.R. § 103.2(b)(3). Accordingly, the evidence is not probative and will not be accorded any weight in this proceeding. With the exception of the untranslated document, the entire record was reviewed and considered in rendering a decision on the appeal.

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

(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.

....

(v) Waiver.-The Attorney General 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 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. No court shall have jurisdiction to review a decision or action by the Attorney General regarding a waiver under this clause.

The applicant entered the United States without admission or parole in June 2004 and remained in the United States until his departure in February 2009. The applicant accumulated unlawful presence in the United States during his entire stay. The applicant does not contest his inadmissibility pursuant to section 212(a)(9)(B)(i)(II) of the Act.

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 his stepbrother can be considered only insofar as it results in hardship to a qualifying relative. The applicant's U.S. citizen father and lawful permanent resident mother 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-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.

The record reflects that the applicant is a 27 year-old native and citizen of Mexico. The applicant’s father is a 51 year-old native of Mexico and citizen of the United States. The applicant’s mother is a 50 year-old native of Mexico and lawful permanent resident of the United States. The applicant is currently residing in Mexico and the applicant’s parents are residing in Waukegan, Illinois.

Counsel for the applicant asserts that the applicant’s parents are suffering financial hardship due to separation from the applicant. Counsel contends that the applicant was dedicated to working and helping his parents out financially and his parents’ financial situation has deteriorated since his departure. Counsel asserts that the applicant’s parents are sending the applicant money in Mexico while they have filed for bankruptcy in the United States and are in foreclosure

proceedings. The record contains documentation evidencing money transfers from the applicant's father to the applicant in Mexico. However, the record contains a letter from the applicant's father indicating that he has provided 250 dollars per month to his family members in Mexico, including the applicant and the applicant's father's parents, for over a decade. There is no indication that the applicant's father would discontinue his transfers of money to Mexico if the applicant resided in the United States. The record contains financial documentation supporting counsel's assertions that the applicant's parents are facing bankruptcy and foreclosure. However, the record also contains tax records for the applicant's parents from 2009, 2007, 2006, 2005, 2004, and 2003. The applicant's parents' tax returns, for each of these years, list the applicant as a dependent. As such, the evidence indicates that the applicant's parents provided the applicant with financial support during his residence in the United States. There is no supporting evidence indicating the applicant's financial contribution to his parents during this same period. 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)). The record demonstrates that the applicant's parents are suffering financial hardship, but is insufficient to demonstrate that this hardship results from separation from the applicant.

The applicant's mother asserts that she misses the applicant every moment and is sad due to his absence. The applicant's father asserts that the applicant is a model son and is missed very much. Counsel for the applicant contends that the applicant's father is depressed, extremely stressed, and has been diagnosed with depression, GE reflux, dyslipidemia, and insomnia. The letter does contain a letter from the applicant's father's physician confirming these diagnoses, but the letter also states that the applicant's father has been treated for these conditions since 2004. It is noted that the applicant was residing in the United States in 2004. There is no indication as to the effect of the applicant's departure on the applicant's father's diagnoses. In the aggregate, there is insufficient evidence in the record to find that the applicant's U.S. citizen father or lawful permanent resident mother are suffering a level of hardship beyond the common results of inadmissibility or removal because of separation from the applicant.

Although the depth of concern and anxiety over the applicant's immigration status is neither doubted nor minimized, the fact remains that Congress provided for a waiver of inadmissibility only under limited circumstances. While the prospect of separation or involuntary relocation nearly always results in considerable hardship to individuals and families, in specifically limiting the availability of a waiver of inadmissibility to cases of "*extreme hardship*," Congress did not intend that a waiver be granted in every case where a qualifying relationship exists.

Counsel for the applicant asserts that the applicant's parents cannot relocate to Mexico because they do not have the financial resources to move. Counsel further asserts that the applicant's parents do not have any property or assets in Mexico. Counsel contends that the applicant has been unable to find employment in Mexico since his return and the applicant's parents would be similarly unable to find employment upon relocation. It is noted that the record contains money transfers from the applicant's father to Mexico indicating that the applicant's father has been

supporting his relatives in Mexico for over a decade. It is also noted that the record indicates that the applicant's parents are not currently employed and are facing bankruptcy and foreclosure proceedings. The record contains evidence that the applicant's parents have been receiving unemployment benefits in the United States.

Counsel asserts that the applicant's parents would face crime in Mexico after having acclimated to their lives in the United States. It is noted that the applicant's mother has been residing in the United States since 1990. The applicant's father married the applicant's mother in the United States in 1995 and has been a naturalized citizen since 1996. It is also noted that the applicant's parents are both natives of Puebla, Mexico. The Department of State travel advisory for Mexico, dated February 8, 2012, indicates that there is no travel advisory in effect that specifically identifies risks in Puebla.

Counsel for the applicant asserts that the applicant's parents would be unable to afford medical treatment in Mexico, which would affect both them and their U.S. citizen child. The record contains information that the applicant's father is being treated for ailments including depression, GE reflux, dyslipidemia, and insomnia. The record also reflects that the applicant's father has been receiving care for these conditions from the same provider since 2004. Based upon the length of the applicant's parents' residence in the United States, their receipt of unemployment benefits in the United States, the applicant's apparent inability to find employment in Mexico, and the continuity of the applicant's father's medical care, the record reflects, in the aggregate, that the applicant's parents would face extreme hardship if they were to relocate to Mexico.

The record, however, does not contain sufficient evidence to show that the hardships faced by the qualifying relatives upon separation, considered in the aggregate, rise beyond the common results of removal or inadmissibility to the level of extreme hardship. U.S. court decisions have repeatedly held that the common results of removal are insufficient to prove extreme hardship. *See Hassan v. INS*, 927 F.2d 465, 468 (9th Cir. 1991), *Perez v. INS*, 96 F.3d 390 (9th Cir. 1996); *Matter of Pilch*, 21 I&N Dec. 627 (BIA 1996) (holding that emotional hardship caused by severing family and community ties is a common result of deportation and does not constitute extreme hardship); *Matter of Shaughnessy*, 12 I&N Dec. 810 (BIA 1968) (holding that separation of family members and financial difficulties alone do not establish extreme hardship). "[O]nly in cases of great actual or prospective injury . . . will the bar be removed." *Matter of Ngai*, 19 I&N Dec. 245, 246 (BIA 1984).

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 in 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 AAO therefore finds that the applicant has failed to establish extreme hardship to his parents as required under section 212(a)(9)(B)(v) of the Act. As the applicant has not established extreme hardship to a qualifying family member, no purpose would be served in balancing positive and negative factors to determine whether the applicant merits this 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. 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.