



U.S. Citizenship  
and Immigration  
Services



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DATE: DEC 17 2012

OFFICE: MEXICO CITY, MEXICO

File: 

IN RE: 

APPLICATION: Application for Waiver of Grounds of Inadmissibility under § 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 with the field office or service center that originally decided your case by filing a 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 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 under 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 her last departure from the United States. The applicant seeks a waiver of inadmissibility in order to reside in the United States with her lawful permanent resident mother and sister and her three U.S. citizen siblings.

The District Director concluded that the applicant failed to establish that extreme hardship would be imposed on a qualifying relative and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) accordingly. *See Decision of the District Director*, dated July 20, 2010.

On appeal counsel contends that the applicant submitted sufficient evidence that her lawful permanent resident mother will suffer extreme hardship if a waiver is not granted. *See Form I-290B, Notice of Appeal or Motion*, received August 19, 2010.

The record contains, but is not limited to: Form I-290B, counsel's statement thereon and counsel's brief in support of a waiver; various immigration applications and petitions; two hardship letters; letters from two of the applicant's sisters; medical records; birth, marriage and death certificates; Mexican utility bills; and the applicant's criminal-related records. The entire record was reviewed and considered in rendering this decision on the appeal.

Section 212(a)(9) of the Act 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.

The record reflects that the applicant entered the United States without inspection in or about October 1999 and remained until about April 2006 when she departed voluntarily. The applicant accrued unlawful presence during this entire time, a period in excess of one year. As the applicant is seeking admission within 10 years of her departure, she was found to be inadmissible pursuant to section 212(a)(9)(B)(i)(II) of the Act, 8 U.S.C. § 1182(a)(9)(B)(i)(II). The record supports this finding, the applicant does not contest inadmissibility, and the AAO concurs that the applicant is inadmissible under section 212(a)(9)(B)(i)(II) of the Act.

A waiver of inadmissibility under section 212(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 child can be considered only insofar as it results in hardship to a qualifying relative. In the present case, the applicant's mother is the only 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).

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 record reflects that the applicant's mother is a 76-year-old native of Mexico and lawful permanent resident of the United States. She states that four of her six children reside lawfully in the United States and that having the applicant with her would be a great joy. The applicant's mother explains that continued separation would be very difficult because she would feel as if she abandoned her daughter in Mexico while the rest of the family is in the United States. She writes that she suffers from high blood pressure for which she takes medication and that concern for her family causes her blood pressure to rise. Corroborating documentary evidence showing a link between the two has not been submitted. Medical evidence in the record confirms that the applicant's mother has a history of hypertension and pain and was prescribed a number of medications between September 2008 and September 2009. These documents do not indicate the conditions for which each medication was prescribed. The applicant's mother maintains that she also becomes nauseous very easily and that her kidneys are not functioning properly. A radiology report dated April 19, 2010 indicates that her kidneys show no evidence of hydronephrosis, cysts or masses and her renal ultrasound examination was within normal limits.

The applicant's mother writes that her concern for the applicant is significant particularly after losing her first husband to murder in 1962 and her second husband to a heart attack in 1986. She explains that her other daughter cannot look after her because she works all the time and cannot take time off from her job. The applicant's sister, [REDACTED] writes that she works 16 hour days and does not have time to take care of her mother herself, cannot afford to hire a caregiver to look after her, and desperately needs the applicant to return to the United States in order to care for their mother. The record contains no documentary evidence showing that the applicant was her mother's primary caregiver when she was in the United States or would be in the event of her return. And while the applicant's mother states that she has been unable to find a job and would like the applicant to help take care of her, the record contains no documentary evidence that the applicant supported her mother financially when she resided in the United States or would be able to do so in the future.

The applicant's sister, ██████ asserts that their mother is sick and in need of the applicant's care. She states that their mother cannot travel to see the applicant in Mexico due to her illness. No corroborating documentary evidence has been submitted. ██████ expresses concern that the applicant and the applicant's daughter are "alone in a tough place," and adds that her niece would benefit from studying in the United States. The applicant's mother also expresses concern that the applicant's daughter is not receiving an adequate education in Mexico. The record contains no documentary evidence addressing country conditions of any kind in Mexico. Going on record without supporting documentation is not sufficient to meet the applicant's burden of proof in this proceeding. *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 AAO has considered cumulatively all assertions of separation-related hardship to the applicant's mother including her advanced age, medical conditions, concerns about her daughter and granddaughter living in Mexico apart from the rest of their family, and that the applicant's presence in the United States would bring her great relief and joy. While not insignificant, the AAO finds that considered in the aggregate, the evidence is insufficient to demonstrate that the applicant's lawful permanent resident mother would suffer extreme hardship as a result of continued separation from the applicant during the remainder of her temporary period of inadmissibility.

The possibility of the applicant's mother relocating to Mexico has not been addressed in the record and thus, the AAO is unable to speculate in this regard. Accordingly, the AAO finds the evidence in the record insufficient to demonstrate that the applicant's lawful permanent resident mother would suffer extreme hardship were she to relocate to Mexico to be with the applicant.

The applicant has, therefore, failed to demonstrate that the challenges his spouse faces are unusual or beyond the common results of removal or inadmissibility to the level of extreme hardship. Accordingly, the AAO finds that the applicant has failed to demonstrate extreme hardship to a qualifying relative. As the applicant has not established extreme hardship to a qualifying family member 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. 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.