



U.S. Citizenship
and Immigration
Services



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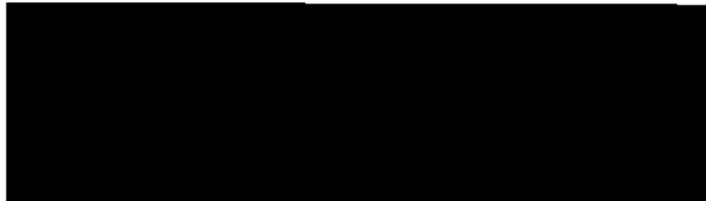
Office: SAN DIEGO, CA

FILE: 

IN RE: 

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

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,

Ron Rosenberg
Acting Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Field Office Director, San Diego, California. The matter 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)(6)(E)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(6)(E)(i), for aiding and abetting aliens to enter the United States at a time and place other than as designated by an immigration officer. The applicant was also 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 more than one year and seeking readmission within ten years of her last departure from the United States. The applicant is the daughter of a U.S. citizen and has a U.S. citizen child. She seeks a waiver of inadmissibility in order to reside in the United States.

In a decision, dated June 15, 2011, the field office director found that the applicant was eligible to apply for a section 212(d)(11) waiver of her inadmissibility under section 212(a)(6)(E)(i) of the Act because the people she smuggled into the United States were her children. The field office director also found that the applicant was eligible to apply for a section 212(a)(9)(B)(v) waiver of her inadmissibility under section 212(a)(9)(B)(i)(II) of the Act. However, the applicant failed to establish extreme hardship to her mother as a result of her inadmissibility and both waiver applications were denied accordingly.

In a brief on appeal, counsel states that the applicant's mother will suffer extreme hardship if the applicant is unable to immigrate to the United States and that the favorable factors in the applicant's case outweigh the unfavorable factors.

Section 212(a)(9)(B) of the Act provides, 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.

The record indicates that during the applicant's immigrant visa interview on October 6, 2010, she testified under oath that in 1984 she smuggled her children into the United States through the San Ysidro Port of Entry. The applicant departed the United States in 1987, reentering without

inspection in August 2000. The applicant did not depart the United States again until October 2010. Therefore, the applicant accrued unlawful presence from 2000 to 2010. In applying for an immigrant visa, the applicant is seeking admission within ten years of her 2010 departure from the United States. Therefore, the applicant is inadmissible to the United States under section 212(a)(9)(B)(II) of the Act for being unlawfully present for a period of more than one year.

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 her child can be considered only insofar as it results in hardship to a qualifying relative. The applicant's mother 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 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 v. I.N.S.*, 138 F.3d 1292 (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.

The record of hardship includes: counsel’s brief, statements from the applicant’s family, medical documentation, a psychological evaluation, financial documentation, and country conditions information.

Counsel claims that the applicant’s mother will suffer extreme emotional and physical hardship as a result of relocation and emotional, physical, and financial hardship as a result of separation. Counsel asserts that the applicant is her mother’s only caretaker and has been her caretaker since 2000. The record indicates that the applicant’s mother has been diagnosed with major depressive disorder, sleep disorder, anxiety, and suffers from many other health problems that affect her functioning and mobility. Statements from three of the applicant’s siblings state that the applicant is the only sibling who can care for their mother’s financial, physical, and emotional needs. We note that the record states that the applicant has seven siblings, but the record only

includes letters from three siblings stating that they cannot help with their mother's needs. The record does not include any statements from the other three siblings. The applicant's siblings also assert that the applicant helps their mother financially and although the record includes the applicant's mother's social security statement, it does not show that the applicant was helping her financially when she was in the United States. The record fails to establish that the applicant is the only child that can help with her mother's care and thus, that her mother would suffer extreme hardship as a result of separation.

In regards to relocation, the counsel claims that, but for the applicant, all of the applicant's mother's children and grandchildren reside in the United States; the applicant's mother has established relationships with her doctors in the United States; she would not be able to obtain the appropriate medical care for her conditions in Mexico; and she is fearful of being kidnapped for ransom in Mazatlan, Sinaloa, Mexico, where the applicant is from in Mexico. We note that despite the assertions regarding the applicant's mother's fear concerning medical care and safety in Mexico, medical documentation, dated June 14, 2011, indicates that the applicant's mother had x-rays taken in January of 2011 in Mexico. Doubt cast on any aspect of the applicant's proof may lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the application. *Matter of Ho*, 19 I&N Dec. 582, 591 (BIA 1988). It is incumbent upon the applicant to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the applicant submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988).

The AAO recognizes that Mexico is experiencing an increased level of violence due to narco-trafficking in the country and that articles submitted as part of the record detail some of this violence. However, the current U.S. State Department Travel Warning for Mexico does not indicate that travel to the city of Mazatlan, where the applicant's mother states the applicant will be residing, should be deferred. Therefore, the current record does not support a finding that the applicant's mother would suffer extreme hardship as a result of relocating to Mexico.

The assertions of the applicant's mother are relevant evidence and have been considered. However, absent supporting documentation, these assertions cannot be given great weight. *See Matter of Kwan*, 14 I&N Dec. 175, 177 (BIA 1972) ("Information contained 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 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'r 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg'l Comm'r 1972)). The applicant must submit documentation to support any claims of hardship.

In this case, the record does not contain sufficient evidence to show that the hardships faced by the qualifying relative, considered in the aggregate, rise beyond the common results of removal or inadmissibility to the level of extreme hardship. The AAO therefore finds that the applicant has failed to establish extreme hardship to her U.S. citizen mother as required under section

212(a)(9)(B)(v) of the Act. We also find that no purpose would be served in discussing the applicant's inadmissibility under section 212(a)(6)(E)(i) of the Act and her eligibility to apply for a waiver under section 212(d)(11) of the Act because she continues to be inadmissible under section 212(a)(9)(B)(II) of the Act. 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.