



U.S. Citizenship
and Immigration
Services



Htg

DATE **DEC 19 2012** OFFICE: SAN DIEGO, CALIFORNIA

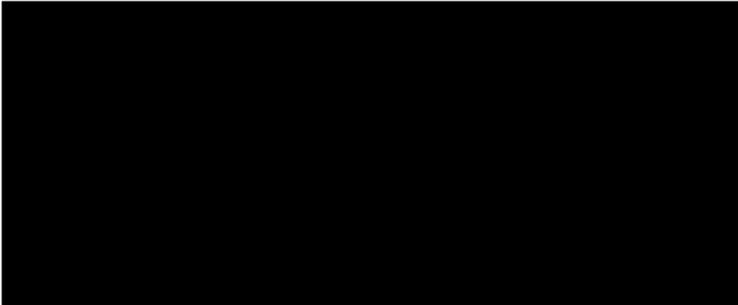
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IN RE:

Applicant: 

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:



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, and 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) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(9)(B)(i), for having been unlawfully present in the United States for one year or more and seeking admission within 10 years of her last departure from the United States. The applicant is the spouse of a U.S. citizen and the beneficiary of an approved Petition for Alien Relative (Form I-130). The applicant, through counsel, does not contest the finding of inadmissibility. Rather, she seeks a waiver of inadmissibility pursuant to section 212(a)(9)(B)(v) of the Act, 8 U.S.C. § 1182(9)(B)(v), in order to reside in the United States with her husband.

The Field Office Director concluded that the applicant failed to establish that extreme hardship would be imposed on a qualifying relative and denied the applicant's Application for Waiver of Grounds of Inadmissibility (Form I-601) accordingly. *See Decision of the Field Office Director*, dated July 11, 2011.

On appeal, counsel asserts that U.S. Citizenship and Immigration Services (USCIS) erred in denying the waiver application as USCIS applied a strict interpretation of "extreme" and failed to consider the facts in the aggregate. *See Brief in Support of Notice of Appeal or Motion* (Form I-290B), dated August 6, 2011.

The record includes, but is not limited to: a brief and correspondence from counsel; letters of support; identity, medical, employment, and financial documents; photographs; and documents on conditions in Mexico. The entire record was reviewed and considered in rendering a decision on the appeal.

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

...

(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. No court shall have jurisdiction to review a decision or action by the Attorney General [Secretary] regarding a waiver under this clause.

The record establishes that the applicant entered the United States without inspection by immigration officials around March 2007, and remained until she voluntarily departed around August 2008. The applicant accrued unlawful presence from March 2007, until August 2008; a period in excess of one year. As the applicant is seeking admission within 10 years of departure, she is inadmissible 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 can be considered only insofar as it results in hardship to a qualifying relative. The applicant's U.S. citizen spouse is the only demonstrated 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 of Immigration Appeals (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 U.S. 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; *In re 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., In re Bing Chih Kao and Mei Tsui Lin*, 23 I&N Dec. 45, 51 (BIA 2001) (distinguishing *In re 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, 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.

Counsel contends that the applicant’s spouse has suffered extreme emotional, psychological, and financial hardship in the applicant’s absence as: he has become depressed and stressed; he has been diagnosed with an eye condition, which requires surgery in both eyes; and he is the sole provider, and thereby, bears the burden of maintaining separate households. The applicant also indicates that being by the side of her spouse would make her life complete. And, her spouse indicates that: he has always wanted children; he is suffering from depression, anxiety, and insomnia; he has postponed the necessary eye surgery; he loses concentration because of the applicant’s immigration matters, which has affected his performance at work; and the applicant is unable to support herself in Mexico as she is unable to find employment because of its poor economy.

Although the applicant’s spouse may experience some hardship in the applicant’s absence, the AAO finds that the record does not establish that the hardship goes beyond what is normally experienced by qualifying relatives of inadmissible individuals. The record establishes that the applicant’s spouse has been diagnosed with pterygium in both eyes, and because of this condition, has been recommended for surgery. *See Medical Letter Issued by Dr. Howard Reinglass, M.D.*, dated December 7, 2010. However, the record does not contain any discussion concerning the severity of his physical condition or its impact on his daily routine and his employment. Also, it does not

contain any indication that the applicant's participation would be advantageous in the treatment of his medical condition. Moreover, the record does not include any evidence of the applicant's spouse's current mental health or his inability to function in the applicant's absence. Absent an explanation in plain language from the treating physician and mental health professional of the nature and severity of any condition and a description of any treatment or family assistance needed, the AAO is not in the position to reach conclusions concerning the severity of a medical or mental health condition or the treatment needed. Also, going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *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)). Without documentary evidence to support the claim, the assertions of counsel will not satisfy the applicant's burden of proof. The unsupported assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980).

Further, the record is sufficient to establish that the applicant's spouse is the sole breadwinner and has been employed in a fulltime capacity as a Cook at the Hilton Chicago's Pavilion Kitchen and as a Cook III at the Hilton Chicago & Towers since June 22, 2004. And, although the record includes evidence of some of his financial obligations, the AAO notes that the most recent documentation is dated almost eight months prior to the filing of the applicant's appeal. The AAO is thus unable to conclude that the applicant's spouse's economic hardship would go beyond that which is commonly expected.

The AAO notes the concerns regarding the hardship that the applicant's spouse may experience in the applicant's absence, but finds that even when this hardship is considered in the aggregate, the record fails to establish that the applicant's spouse would suffer extreme hardship as a result of separation from the applicant.

Counsel contends that the applicant's spouse would experience extreme hardship if he relocated to Mexico to be with the applicant as: he does not have any close family ties outside of the United States; he may be unable to obtain employment given Mexico's economy and his lack of special skills; and the emotional and financial hardship of being forced to relocate to another country in and of itself is extreme. The applicant's spouse also indicates that: he has resided in the United States since 1979 and has become accustomed to the American way of life; he does not have any family or ties to Mexico; and he fears for his and the applicant's personal safety in Mexico.

The record is sufficient to establish that the applicant's spouse would suffer hardship if he were to relocate to Mexico. The AAO notes that the record is unclear concerning the applicant's spouse's ties to Mexico. Counsel and the applicant's spouse indicate that the spouse does not have any close family in Mexico. Yet, the record includes evidence that the spouse's father lives in Mexico and that the spouse maintains a close relationship with him. Nevertheless, the record reflects that the applicant's spouse maintains strong ties to the United States as he has been a U.S. citizen for over 15 years, and he has maintained steady employment through which he receives his healthcare benefits. Moreover, the U.S. Department of State has issued a Travel Warning for Aguascalientes, Mexico, stating: "The security situation along the Zacatecas border continues to be unstable and gun

battles between criminal groups and authorities occur. Concerns include roadblocks placed by individuals posing as police or military personnel and recent gun battles between rival [Transnational Criminal Organizations] involving automatic weapons.” *Travel Warning, Mexico*, issued November 20, 2012. In the aggregate, the AAO finds that the applicant’s spouse would suffer extreme hardship if he were to relocate to Mexico.

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. In re Pilch*, 21 I&N Dec. at 632-33. 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.

In this case, the record does not contain sufficient evidence to show that the hardship faced by the qualifying relative, considered in the aggregate, rises 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 spouse 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 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.