

U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services

H6



Date: **DEC 31 2012** Office: MEXICO CITY (ANAHEIM) 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, 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 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 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)(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 ten years of her last departure from the United States. The applicant is married to a U.S. citizen and the mother of two U.S. citizen children. She is the beneficiary of an approved Petition for Alien Relative (Form I-130). The applicant seeks a waiver of inadmissibility pursuant to section 212(a)(9)(B)(v) of the Act, 8 U.S.C. § 1182(a)(9)(B)(v), in order to reside in the United States with her spouse and children.

The District Director found that the applicant had failed to establish that extreme hardship would be imposed on the applicant's qualifying relative and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) accordingly. *Decision of the District Director*, dated November 16, 2011.

On appeal, the applicant's husband claims he would have difficulty finding employment and treatment for his medical conditions in Mexico, and their children are often sick in Mexico. *Form I-290B, Notice of Appeal or Motion*, filed December 13, 2011. Additionally, the state where the applicant resides is dangerous because of criminal activity. *Id.*

The record includes, but is not limited to, a declaration from the applicant's husband; letters of support; statements from a licensed clinical social worker regarding the applicant's husband; medical documents for the applicant, her husband, and their children; employment documents for the applicant's husband; financial documents; household bills; and country-conditions documents.¹ The entire record was reviewed and considered, with the exception of the Spanish-language documents, in arriving at a decision on the appeal.

Section 212(a)(9) 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-

....

¹ Pursuant to the regulation at 8 C.F.R. § 103.2(b)(3), an applicant who submits a document in a foreign language must provide a certified English-language translation of that document. As the country-conditions documents are in Spanish and are not accompanied by English-language translations, the AAO will not consider them in this proceeding.

(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 [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 [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.

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 children can be considered only insofar as it results in hardship to a qualifying relative. The applicant's spouse 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 United States Citizenship and Immigration Services (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 (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 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.

In the present application, the record indicates that in January 2001, the applicant entered the United States without inspection. In January 2011, the applicant departed the United States. The applicant accrued over one year of unlawful presence between January 2001 and January 2011. The applicant is, therefore, inadmissible to the United States under section 212(a)(9)(B)(i)(II) of the Act for being unlawfully present in the United States for a period of more than one year, and she seeks admission within 10 years of her departure from the United States. The applicant does not contest her inadmissibility.

The record contains references to hardship the applicant’s children would experience if the waiver application were denied. It is noted that Congress did not include hardship to an alien’s child as a factor to be considered in assessing extreme hardship. In the present case, the applicant’s spouse is the only qualifying relative for the waiver under section 212(a)(9)(B)(v) of the Act, and hardship to the applicant’s children will not be separately considered, except as it may affect the applicant’s spouse.

Describing his hardship should he join the applicant in Mexico, in his declaration dated November 2, 2011, the applicant’s husband states he would be “emotionally and financially devastated” if he relocated to Mexico. He claims that it would be impossible to find employment in Mexico because of his age and “limited work skill set,” and he would be unable to financially support his family. Additionally, he claims that he would suffer by trying to raise their children in Mexico. In his statement dated May 16, 2011, licensed clinical social worker [REDACTED] reports that the applicant’s children are living in a

cockroach- and scorpion-infested home in Mexico, and it is not a safe environment. Additionally, they are receiving an “inferior education” and their youngest son is developing nasal infections because of the dust and debris in their home. Medical documentation establishes that the applicant’s oldest son was treated in Mexico for constipation and their youngest son was prescribed medicated lotion but is otherwise in good health.

In his statement dated January 7, 2011, [REDACTED] states Mexico is “quite unstable.” The AAO notes that on November 20, 2012, the Department of State issued a travel warning to U.S. citizens about the security situation in Mexico. The warning states that “the Mexican government has been engaged in an extensive effort to counter [Transnational Criminal Organizations (TCOs)] which engage in narcotics trafficking and other unlawful activities throughout Mexico.... As a result, crime and violence are serious problems throughout the country and can occur anywhere.” The warning also states U.S. citizens have been the victims of “homicide, gun battles, kidnapping, carjacking and highway robbery,” and the rise in “kidnappings and disappearances throughout Mexico is of particular concern.” The record establishes that the applicant currently resides in Michoacán with her in-laws. The Department of State has recommended that non-essential travel should be deferred to Michoacán, as “[a]ttacks on Mexican government officials, law enforcement and military personnel, and other incidents of TCO-related violence, have occurred” throughout the state.

The AAO acknowledges that the applicant’s husband is a U.S. citizen, and that relocation abroad would involve some hardship. However, no evidence has been submitted showing that the applicant’s husband, a native of Mexico, does not speak Spanish, is unfamiliar with the culture and customs in Mexico, or has no family ties there. The record establishes that his parents and at least one of his siblings reside in Mexico. Additionally, the record does not contain documentary evidence showing that the applicant’s husband would be unable to obtain employment in Mexico that would allow him to use the skills he has acquired in the United States. 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)). Further, though the security concerns about Mexico are corroborated by country-conditions documents, these documents alone do not support a finding of extreme hardship to the applicant’s husband should he join the applicant in Mexico. Moreover, regarding the hardship that the applicant’s children may be experiencing in Mexico, they are not qualifying relatives under the Act, and the applicant has not shown that hardship to their children has elevated her husband’s challenges to an extreme level. Therefore, based on the record before it, the AAO finds that, considering the potential hardships in the aggregate, the applicant has failed to establish that her husband would suffer extreme hardship if he relocated to Mexico.

Concerning the applicant’s husband’s hardship in the United States, in his statement dated December 5, 2011, the applicant’s husband’s employer indicates that the applicant’s husband is suffering financially and emotionally by being separated from his family. In his statement dated December 5, 2011, [REDACTED] the applicant’s husband’s neighbor, indicates that the applicant’s husband does not leave his house as he once did since the applicant and their children returned to Mexico; he is depressed and always sick, and he has taken him to the hospital twice. Medical documentation establishes that the applicant’s husband suffers from diabetes, hypocalcemia, hypokalemia, hypertension, and gastroesophageal reflux disease, and he was prescribed medications to treat his medical conditions. The record also shows that he was admitted to a hospital from October 24, 2011, until October 30, 2011, for

acute pancreatitis. Moreover, [REDACTED] states the applicant's husband is developing depression and the longer he is separated from the applicant, his symptoms "will increase." [REDACTED] also indicates that the applicant's husband is having difficulty maintaining his diet and taking his medications, and he needs the applicant to prepare his meals and help him take his medications.

The applicant's husband states their children are suffering emotionally. [REDACTED] states the applicant's husband is very close with their children.

The applicant's husband states he is also suffering financially. [REDACTED] reports that the applicant's husband has to borrow money from family members to help maintain two households, one in Mexico and one in the United States. He states the applicant's husband earns approximately \$2500 a month, and he sends the applicant \$1200 a month. Documentation in the record shows that the applicant's husband sends the applicant money. Additionally, [REDACTED] reports that it is an expensive and lengthy trip to the applicant's home in Mexico.

The AAO acknowledges that the applicant's husband is suffering emotional difficulties in being separated from the applicant. While it is understood that the separation of spouses often results in significant psychological challenges, the applicant has not distinguished her husband's emotional hardship upon separation from that which is typically faced by the spouses of those deemed inadmissible. Moreover, though the applicant's husband refers to financial difficulties, the record does not contain objective evidence corroborating his claim. The applicant, therefore, has not distinguished her husband's financial challenges from those commonly experienced when a family member remains in the United States. The AAO also notes that the applicant's children may be suffering some hardship in being separated from their father; however, the applicant has not shown that their children's hardship has elevated her husband's challenges to an extreme level. Based on the record before it, the AAO finds that the applicant has failed to establish that her husband would suffer extreme hardship if her waiver application is denied and he remains in the United States.

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 spouse as required under section 212(a)(9)(B)(v) of the Act. Having found the applicant statutorily ineligible for relief, the AAO finds no purpose would be served in discussing whether she 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. *See* 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.