Identifying data deleted to prevent clearly unwarranted invasion of personal privacy

PUBLIC COPY

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

U.S. Citizenship and Immigration Services

#6

[redacted]

DATE: FEB 07 2012 OFFICE: ST. PAUL MN FILE: [redacted]

IN RE: APPLICANT: [redacted]

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:

[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 law was inappropriately applied by us in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of $630. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

Ellen C. Johnson

Perry Rhew, Chief
Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Field Office Director, St. Paul, Minnesota, 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)(I) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(9)(B)(i)(I), for having been unlawfully present in the United States for more than 180 days but less than one year and seeking readmission within three or 10 years of his last departure from the United States. The applicant seeks a waiver of inadmissibility in order to reside in the United States with his U.S. Citizen spouse and child.

The Field Office Director concluded that there was insufficient evidence of extreme hardship to a qualifying relative and denied the application accordingly. *See Decision of Field Office Director* dated December 15, 2009.

On appeal, counsel for the applicant contends both the U.S. Citizen spouse and child have suffered extreme hardship upon separation, as they have experienced similar hardship when separated previously in terms of emotional, financial, and other difficulties. Counsel adds the qualifying relative worries about safety issues in Mexico, and has no family ties there. Moreover, counsel asserts the child would have trouble adjusting, and that the applicant's spouse would be unable to continue her education in Mexico.

The record includes, but is not limited to, statements from the applicant's spouse and child, evidence of birth, marriage, residence, and citizenship, statements from family, friends, and employers, educational documents, police records, evidence of country conditions in Mexico, evidence of removal proceedings, photographs, and some financial documents. The entire record was reviewed and considered in rendering a 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-
>
> (I) was unlawfully present in the United States for a period of more than 180 days but less than 1 year, voluntarily departed the United States (whether or not pursuant to section 244(e) prior to the commencement of proceedings under section 235(b)(1) or section 240), and again seeks admission within 3 years of the date of such alien's departure or removal... 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 record reflects the applicant entered the United States without inspection in July 1997 and returned to Mexico on May 5, 1998.[1] The applicant entered without inspection again on May 31, 1998. The applicant does not contest inadmissibility on appeal.[2] The applicant's qualifying relative for a waiver of this inadmissibility is his U.S. Citizen spouse.

The record contains references to hardship the applicant's child would experience if the waiver application were denied. It is noted that Congress did not include hardship to an alien's children 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 child will not be separately considered, except as it may affect the applicant's spouse.

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

---

[1] The record also reflects the applicant entered without inspection in March 1992 and left in December 1995; however, this residence in the United States occurred prior to the effective date of the unlawful presence provisions, April 1, 1997.

[2] The AAO also notes the applicant may be inadmissible under section 212(a)(2)(A) of the Act because of a 2001 conviction for theft by shoplifting.

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.

On appeal, counsel indicates the applicant and his spouse have been together throughout their entire lives, and during a brief separation, the applicant's spouse experienced difficulties similar to those of a single mother and became depressed. The applicant's spouse corroborates that during this time she had to close the store early, pick up their daughter, return to the store, and listen to her daughter cry because she could not play with her. The spouse adds she previously suffered from depression, though she never received treatment, and that she has become very anxious and depressed because of the applicant's immigration issues. Moreover, counsel and the applicant's spouse aver that she will have to discontinue her part-time education at [redacted] which

she attends online, because it would be unaffordable without the applicant's income. Both the applicant's spouse and counsel discuss at length the impact of separation on the child [redacted]. Counsel additionally describes financial and childcare difficulties which will surface if the applicant and his spouse are separated. Letters from friends and family are submitted describing the relationship between the applicant and his spouse, the applicant's moral character, and the impact of separation and relocation on [redacted]

The applicant's spouse indicates not only will [redacted] education will suffer if they all relocate to Mexico, she will also have to quit her part-time education at Everest University, and she will have to get another job. The applicant's spouse also explains in Mexico she will not be able to receive the training she needs for her career goals, which are to become either a CIS or FBI officer. The applicant's spouse furthermore has concerns over safety issues in Mexico, citing violence due to gang activity. Evidence of country conditions in Mexico is submitted in support of the spouse's assertions. In Mexico, the spouse adds, she would be separated from her family in the United States as well as from her grandmother, who needs her assistance. The spouse contends though she was born in Mexico, and Stephanie speaks Spanish, they will still have a hard time adjusting to life in Mexico.

Although there are some statements regarding financial hardship, the record does not support assertions that the household expenses exceed household income. Specifically, despite submission of some billing statements, the record does not show that household expenses exceed the spouse's income as stated on the Form I-864, Affidavit of Support. Moreover, evidence of record does not support an assertion that the cost of the spouse's part-time education at Everest University is prohibitively expensive without the applicant's financial contribution. The applicant further fails to provide any evidence regarding whether he would be able to contribute to the household financially while in Mexico. Without sufficient details and supporting evidence of the family's expenses and income, the AAO is unable to assess the nature and extent of financial hardship, if any, the applicant's spouse will face.

The applicant's spouse contends she experiences some emotional and psychological difficulties upon separation from the applicant, and that raising a child will be more challenging without the applicant present. While the AAO acknowledges that the applicant's spouse would face difficulties as a result of the applicant's inadmissibility, we do not find evidence of record to demonstrate that her hardship would rise above the distress normally created when families are separated as a result of inadmissibility or removal. In that the record fails to provide sufficient evidence to establish the financial, familial, emotional or other impacts of separation on the applicant's spouse are cumulatively above and beyond the hardships commonly experienced, the AAO cannot conclude that she would suffer extreme hardship if the waiver application is denied and the applicant returns to Mexico without his spouse.

The applicant also fails to establish extreme hardship to his spouse upon relocation to Mexico. The record reflects the applicant's spouse is a native of Mexico, lived in Mexico, is familiar with Mexican culture and has Spanish language skills. Furthermore, although the applicant's spouse discusses her fear of gang violence, she fails to specify where in Mexico she and the applicant

would relocate to, and whether and why she or her family in particular would be targeted. The current U.S. Department of State travel warning notes that some areas in Mexico are safe, and that millions of U.S. Citizens visit and live in Mexico safely each year. *Travel Warning: Mexico, U.S. Department of State,* April 22, 2011. Furthermore, the applicant's spouse's birthplace, Tarimoro, Guanajuato, Mexico, is not listed as an area of concern by the travel warning. *Id.* It is also noted that the spouse's assertion that she will be unable to continue her education online at Everest University because she will not have internet access in Mexico is unsupported by evidence of record. It is noted that the applicant's spouse will be separated from some family members if she moves to Mexico. The AAO again acknowledges that the applicant's spouse will experience some difficulties upon relocation; however, given the evidence of record, the AAO cannot conclude that her hardships will be above and beyond those normally experienced by relatives of inadmissible aliens.

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 his 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 a 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.