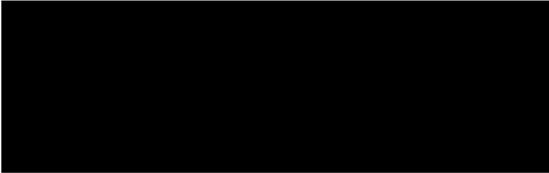


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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals
20 Massachusetts Ave. NW, MS 2090
Washington, DC 20529-2090
**U.S. Citizenship
and Immigration
Services**



H/b

DATE: **FEB 21 2012** OFFICE: CIUDAD JUAREZ FILE:

IN RE:

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 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,

for Perry Rhew, Chief
Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Field Office Director, Ciudad Juarez, 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 pursuant to section 212(a)(9)(B)(i)(II) of the Immigration and Nationality Act (INA or the Act), 8 U.S.C. § 1182(a)(9)(B)(i)(II), for having been unlawfully present in the United States for one year or more and seeking readmission within 10 years of departure from the United States. The applicant seeks a waiver of inadmissibility under INA § 212(a)(9)(B)(v), 8 U.S.C. § 1182(a)(9)(B)(v) in order to reside in the United States with his U.S. citizen spouse.

In a decision dated October 14, 2009, the Field Office Director concluded that the required standard of proof of extreme hardship to a qualifying relative was not met and that the applicant did not merit a waiver of inadmissibility as a matter of discretion. The application for a waiver of inadmissibility was denied accordingly.

On appeal, counsel for the applicant does not contest the applicant's inadmissibility, but states that the applicant's spouse will in fact suffer from extreme hardship. Counsel for the applicant also states that hardship to the applicant's U.S. citizen child was not properly considered.

In support of the waiver application, the record includes, but is not limited to a brief by the applicant's counsel, letters from the applicant's spouse, newspaper articles written in Spanish, medical bills for the applicant's son, financial documentation for the applicant's spouse, documentation regarding the applicant's son's illnesses, letters written by members of the applicant and his spouse's families, and employment information for the applicant's spouse.

The AAO conducts appellate review on a *de novo* basis. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). The entire record was reviewed and considered in rendering a decision on the appeal.

The applicant is inadmissible under INA § 212(a)(9)(B)(i)(II) for having been unlawfully present in the United States for one year or more.

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.

(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 applicant reports that he initially entered the United States without inspection in October 2000 and remained in the United States unlawfully through August 2008, accruing unlawful presence during this entire period. As the period of unlawful presence accrued is over one year, the applicant is inadmissible to the United States under section 212(a)(9)(B)(i)(II) of the Act for a period of 10 years from his departure from the United States. The applicant does not contest this finding of inadmissibility on appeal.

The applicant is eligible to apply for a waiver of this ground of inadmissibility under INA § 212(a)(9)(B)(v), as the spouse of a U.S. citizen. In order to qualify for this waiver, however, he must first prove that the refusal of his admission to the United States would result in extreme hardship to a qualifying relative. The applicant's qualifying relative in this case is his U.S. citizen spouse. Counsel for the applicant relies heavily on the hardship to the applicant's U.S. citizen child in the presentation of the applicant's case, however, the applicant's U.S. citizen child is not a qualifying relative under INA § 212(a)(9)(B)(v). The case law referenced in counsel's brief to support the idea that hardship to the applicant's child was not appropriately considered references a repealed section of the law where U.S. citizen or lawful permanent resident children were qualifying relatives for the purpose of hardship determinations, 8 U.S.C. § 1254(a)(1). That repealed section of the law is not applicable in the applicant's case. Congress did not include hardship to the applicant's child as a factor to be considered in assessing extreme hardship in cases under INA § 212(a)(9)(B)(v) for waivers of unlawful presence. As such, hardship to the applicant or 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 deportation, 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, 885 (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.*

We observe that 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 *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). All hardships must be considered in determining whether the combination of hardships takes the case beyond the consequences ordinarily associated with removal or inadmissibility. *Matter of O-J-O-*, 21 I&N Dec. at 383.

On appeal, counsel for the applicant states that the applicant's U.S. citizen spouse will suffer extreme hardship if he is not admitted to the United States. The primary hardship claimed to the qualifying relative due to separation from the applicant is financial hardship and hardship due to the demands of raising a child without his father present. The applicant's spouse has provided evidence of her income and expenses. Although these documents indicate that there are financial pressures on the applicant's spouse, no connection is made between these financial pressures and the applicant's inadmissibility. The applicant's spouse provides documentation to illustrate the additional expenses that she incurred during the visa application process for the applicant and the cost of calling her family in the United States from Mexico, but we cannot determine that those

expenses have created an ongoing or permanent hardship for the applicant's spouse. No evidence is provided regarding the role that the applicant played in supporting his family financially before he departed the United States. The applicant's spouse indicates that the applicant worked in construction prior to his departure, but no conclusion can be made based on the documents in the record regarding any contribution that he made to assist the applicant financially. Applicant's counsel states that the applicant's spouse could lose her house and ruin her credit. Although there is a notice in the record indicating a past due balance on the applicant's spouse's mortgage of 17 days, there is no indication that the applicant's spouse is at risk of foreclosure on her home or that her difficulty in making the payment is related to the applicant's inadmissibility. Additionally, the record indicates that the applicant's spouse has benefited from financial assistance from her mother and uncle and there is no indication why those individuals cannot continue to assist the applicant's spouse.

The applicant's spouse also claims hardship due to the fact that she does not wish for her son to grow up without his father. While this is a legitimate concern, there is no indication that this hardship is beyond what is normally experienced by families dealing with removal or inadmissibility. *Matter of O-J-O-*, 21 I&N Dec. at 383. The applicant's spouse states that it is not possible for her to take her son to visit his father on a regular basis due to financial reasons and because of her son's health. Documentation in the record indicates that the applicant's son suffers from various medical conditions, including asthma, eczema, dermatitis, strep throat, travelers' diarrhea and infections. The record contains letters from various doctors indicating that they do not advise that the applicant's son travel outside the United States. Although the AAO respects the opinion of these medical professionals, the applicant's spouse has not provided any evidence to illustrate that treatment is not available for her son's conditions in Mexico. As such, it is not possible to come to the conclusion that the applicant spouse is unable to obtain appropriate medical care for her son when visiting Mexico. Moreover, the applicant's spouse has steady employment and income as an elementary school teacher and appears to have a strong family network in the United States to assist her with the burdens of raising a young child. The applicant's spouse states that she spends the evenings at her sister's house and relies on her family for support in the applicant's absence. When considered in the aggregate, the hardship that the applicant's spouse is experiencing due to separation from the applicant does not rise to the level of extreme beyond the common results of inadmissibility. *See Hassan v. INS*, 927 F.2d 465, 468 (9th Cir. 1991); *Perez*, 96 F.3d at 392 (defining "extreme hardship" as hardship that was unusual or beyond that which would normally be expected upon deportation); *Matter of Pilch*, 21 I&N Dec. at 631.

As to whether the applicant's spouse would suffer extreme hardship if she were to relocate to Mexico to reside with the applicant, the applicant's spouse states that she would lose her employment, face security risks, not benefit from the proximity to her mother and sister, and be worried about the health and education of her child in Mexico. Again, hardship to the applicant's child cannot be considered in the determination of whether the applicant meets the standard required under INA § 212(a)(9)(B)(v), unless it is shown how hardship to the child affects the qualifying relative – the applicant's spouse. The applicant indicates that she worries about obtaining appropriate health care for her son in Mexico, however, she has not provided any

reliable evidence that her son is unable to obtain treatment for the conditions that he suffers from in Mexico. The record contains a letter from Dr. [REDACTED] of Dallas, Texas indicating that the applicant's son suffers from asthma and that state of the art asthma treatments and pediatric care is not feasible in other countries. Again, although we respect the opinion of this medical professional, Dr. [REDACTED] expertise in regard to treatments available outside the United States is not demonstrated, and the statement that treatment is not available in other countries is too generalized to allow for us to make a determination that the applicant's spouse would suffer hardship due to lack of medical care for her son in Mexico. Additionally, another letter in the record, from Dr. [REDACTED], states that the applicant's son has returned to the United States with strep throat and gastroenteritis after each of his visits to Mexico and as a result the doctor does not advise that the child and his mother travel to Mexico for an extended period of time to avoid exposure. The AAO does not doubt that the health of her child is of extreme importance to the applicant's spouse; however, the doctor does not state and no evidence is provided to explain why those common ailments are not treatable in Mexico or why the child does not risk exposure to those ailments in the United States.

The applicant's spouse also states that she would suffer hardship if she were to relocate to Mexico and lose her employment, her home, access to her family, and face the risk of being the victim of kidnapping or murder. To support these claims, the applicant's spouse has explained in detail why she believes that the area where her husband lives in Mexico would put her at high risk for experiencing these hardships. Although we cannot consider the documentation that the applicant's spouse submitted in Spanish without translation, we can take note of the general country conditions in Mexico and the increased incidence of violence near the U.S./Mexico border. *U.S. Department of State, Travel Warning, Mexico*, dated April 22, 2011. However, the applicant has not demonstrated that the area where he resides is of particular concern, and it is not clear what difficulties the applicant and his spouse might face if they relocated to a different area in Mexico where the applicant's spouse would have greater access to employment, health care, and face less of a risk of being subject to violent crime. The applicant's spouse speaks Spanish and presumably has a university degree.¹ Additionally, no reason is provided to indicate why the applicant's spouse would not be able to maintain visits and contact with her family in the United States should she relocate to Mexico. As a result, it is not possible to make the determination based on the evidence of record that the applicant's spouse would suffer extreme hardship if she were to relocate to Mexico.

The AAO therefore finds that the applicant has failed to establish extreme hardship to a qualifying relative under required under s INA § 212(a)(9)(B)(v). Having found the applicant ineligible for relief under section INA § 212(a)(9)(B)(v), no purpose would be served in discussing whether the applicant merits a waiver as a matter of discretion.

¹ The applicant's spouse is employed as an elementary school teach specializing in bilingual education and states that due to her husband's inadmissibility she would be unable to obtain a master's degree at the university of her choice. The applicant, however, has not provided any evidence that she would be unable to obtain an advanced degree in Mexico or that the inability to obtain an advanced degree would cause her hardship.

In proceedings for an application for waiver of grounds of inadmissibility under section INA § 212(a)(9)(B)(v), 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.