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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: FEB 21 2012

Office: CIUDAD JUAREZ, MEXICO

FILE: [REDACTED]

IN RE: Applicant: [REDACTED]

APPLICATION: Application for Waiver of Grounds of Inadmissibility pursuant to section 212(a)(9)(B)(v) of the Immigration and Nationality Act (the 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.

Thank you,

A handwritten signature in black ink, appearing to read "Perry Rhew".

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Field Office Director, Ciudad Juarez, Mexico. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained.

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 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. The applicant is married to a U.S. citizen and 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 with her husband and children in the United States.

The field office director found that the applicant failed to establish extreme hardship to a qualifying relative and that the application should be denied as a matter of discretion. The field office director denied the application accordingly. *Decision of the Field Office Director*, dated August 21, 2009.

On appeal, the applicant's wife submits additional documentation of extreme hardship, including letters from her son's physician and documentation of her daughter's heart problem.

The record contains, *inter alia*: a copy of the marriage certificate of the applicant and his wife, Ms. [REDACTED] indicating they were married on November 19, 2005; a copy of the birth certificate for the couple's U.S. citizen daughter; two letters from Ms. [REDACTED]; a letter from a physician; a letter from a therapist; an appointment reminder for the couple's daughter; articles addressing ventricular septal defect (VSD); and an approved Petition for Alien Relative (Form I-130). The entire record was reviewed and considered in rendering this decision on the appeal.

Section 212(a)(9)(B) of the Act provides, in pertinent part:

(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.

In this case, the record shows, and the applicant does not contest, that he entered the United States in October 2004 without inspection and remained until November 2005. The applicant accrued unlawful presence of over one year. Accordingly, he is 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 one year or more and seeking admission to the United States within ten years of his last departure.

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-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.

In this case, the applicant's wife, Ms. [REDACTED] states that she and her two children have been living with her parents since December 2005, when her husband departed the United States. She states that since her husband's departure, they have been living off of her father's disability benefits, which is not enough to support them. She states she cannot find work and that even if she did, her parents are unable to care for her young children. Ms. [REDACTED] states that if it were not for her parents, they would not have a roof over their heads, and she is thankful for their help, but she has no income and is suffering extreme financial hardship. Moreover, Ms. [REDACTED] states that her son, [REDACTED] has chronic asthma and needs to have medical care at all times. According to Ms. [REDACTED], she has taken him to the emergency room several times each year. She contends she needs her husband to help with their son's medical care. In addition, she states that her daughter, [REDACTED] suffers from Ventricular Septal Defect (VSD). Ms. [REDACTED] states that she is now a single parent to two sick children. She states that she cannot bring her children to see her husband in Mexico because of her daughter's medical problem. Furthermore, according to Ms. [REDACTED] she cannot move back to Mexico because it has become a very violent and corrupt country. She states she is particularly concerned about kidnapping in Mexico and fears her family would become targets because they came from the United States. She also contends she has been seeing a therapist. *Letters from [REDACTED]* both undated.

After a careful review of the record, the AAO finds that the applicant's wife, Ms. [REDACTED] will suffer extreme hardship if the applicant's waiver application were denied. The record contains documentation corroborating Ms. [REDACTED] claim that her son has chronic asthma. A letter from her son's physician states that Jesus has been seen multiple times in the clinic as well as in the emergency department for asthma attacks, and that his family should be kept intact so they can better manage his chronic asthma by monitoring him for symptoms, giving him albuterol treatments, and bringing him to pediatric appointments. *Letter from [REDACTED]* dated October 20, 2009. In addition, the record contains an appointment reminder for the couple's daughter's echocardiogram for her VSD. The applicant has submitted articles addressing VSD, which is a congenital heart defect sometimes referred

to as a hole in the heart. According to the articles in the record, some kids with VSDs may take heart medication prior to surgery to help lessen the symptoms from the defect and most kids who have had a VSD corrected have a normal life expectancy. Furthermore, the record contains a letter from a therapist, corroborating Ms. ██████ contention regarding psychological help. According to the therapist, Ms. ██████ has symptoms of clinical depression, generalized depression, and panic attacks. Letter from ██████ dated October 17, 2009. Considering these unique factors cumulatively, the AAO finds that if Ms. ██████ decides to stay in the United States without her husband, the effect of separation from the applicant goes above and beyond the experience that is typical to individuals separated as a result of inadmissibility or exclusion and rises to the level of extreme hardship.

Furthermore, relocating to Mexico to avoid separation would be an extreme hardship for Ms. ██████. As stated above, the record shows that the couple's children have medical issues for which they are receiving treatment and Ms. ██████ is undergoing therapy for her mental health issues. Relocating to Mexico would disrupt the continuity of their health care. In addition, with respect to Ms. ██████ fear of returning to Mexico, the AAO notes that the applicant is from Michoacan, Mexico, and, according to his Biographic Information form (Form G-325A), he has been residing in Michoacan since returning to Mexico in December 2005. The AAO recognizes that Michoacan is a state the U.S. Department of State urges U.S. citizens to defer non-essential travel due to ongoing violence and persistent security concerns. *U.S. Department of State, Travel Warning, Mexico*, dated February 8, 2012. Moreover, the record shows that Ms. ██████ is from Zacatecas, a state with a similar warning by the U.S. Department of State to defer non-essential travel. *Id.* Considering all of these factors cumulatively, the AAO finds that the hardship Ms. ██████ would experience if she relocated to Mexico to be with her husband is extreme, going well beyond those hardships ordinarily associated with inadmissibility or exclusion. The AAO therefore finds that the evidence of hardship, considered in the aggregate and in light of the *Cervantes-Gonzalez* factors cited above, supports a finding that Ms. ██████ faces extreme hardship if the applicant is refused admission.

The AAO also finds that the applicant merits a waiver of inadmissibility as a matter of discretion.

In discretionary matters, the alien bears the burden of proving that positive factors are not outweighed by adverse factors. *See Matter of T-S-Y-*, 7 I&N Dec. 582 (BIA 1957). The adverse factors in the present case are the applicant's initial entry without inspection and unlawful presence in the United States. The favorable and mitigating factors in the present case include: family ties in the United States including his U.S. citizen wife and children; the extreme hardship to the applicant's wife and children if he were refused admission; and the fact that the applicant has not had any arrests or convictions in the United States.

The AAO finds that, although the applicant's immigration violations are serious and cannot be condoned, when taken together, the favorable factors in the present case outweigh the adverse factors, such that a favorable exercise of discretion is warranted. Accordingly, the appeal will be sustained.

ORDER: The appeal is sustained.