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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



H6

DATE: OFFICE: CIUDAD JUAREZ

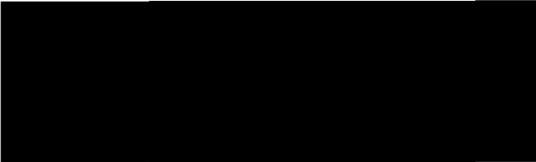
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FEB 23 2012



IN RE: APPLICANT: 

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)

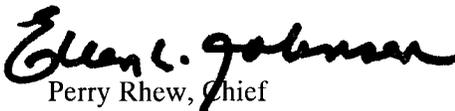
ON BEHALF OF APPLICANT:


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,


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 (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 10 years of her last departure from the United States. The applicant seeks a waiver of inadmissibility in order to reside in the United States with her lawful permanent resident parents.

The Field Office Director concluded that the applicant failed to establish extreme hardship to a qualifying relative and denied the application accordingly. *See Decision of Field Office Director* dated March 4, 2008.

On appeal, counsel for the applicant submits a brief in support, evidence of birth, citizenship, permanent residence, visa issuance, and admission into the United States, copies of cases and immigration memoranda, statements from family, friends, and employers, photographs, and documents on immigration attorneys in North Carolina. In the brief, counsel contends the applicant is not inadmissible under section 212(a)(9)(B) of the Act because of USCIS policy changes regarding the applicant's V-2 status. Counsel indicates even if the applicant is found to be inadmissible, she has shown extreme hardship to a qualifying relative for purposes of the waiver.

The record includes, but is not limited to, the documents listed above, other applications and petitions filed on behalf of the applicant, a letter in Spanish from the applicant's father, and evidence of custody and birth. 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-

....

(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.

(ii) Construction of unlawful presence.- For purposes of this paragraph, an alien is deemed to be unlawfully present in the United States if the alien is present in

the United States after the expiration of the period of stay authorized by the Attorney General or is present in the United States without being admitted or paroled.

....

(iv) Tolling for good cause.-In the case of an alien who-

(I) has been lawfully admitted or paroled into the United States,

(II) has filed a nonfrivolous application for a change or extension of status before the date of expiration of the period of stay authorized by the Attorney General, and

(III) has not been employed without authorization in the United States before or during the pendency of such application, the calculation of the period of time specified in clause (i)(I) shall be tolled during the pendency of such application, but not to exceed 120 days.

(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 obtained a V-2 visa and was admitted to the United States on December 21, 2001. The applicant turned 21 years of age on October 4, 2002, and her V-2 status terminated on that date due to the age-out provisions of 8 C.F.R. § 214.15(g). The applicant then filed a Form I-539, Application to Extend / Change nonimmigrant status, on November 14, 2002, which was denied on March 1, 2003. The applicant remained in the United States until April 2007, when she returned to Mexico in order to obtain an immigrant visa. Counsel asserts that *Akhtar v. Burzynski*, 384 F.3d. 1193 (9th Cir. 2004), and subsequent USCIS policy memos dated January 10, 2005 and June 14, 2006 control in the present matter, and effectively negate the applicant's unlawful presence. The AAO agrees that the USCIS policy memoranda, effective nationwide, allow for an extension of V-2 or V-3 status where the only reason for potentially denying the extension is that the alien has turned 21. See *Memorandum by Terrance M. O'Reilly, Director, Field Operations*, January 10, 2005, see also *Memorandum by Michael Aytes, Associate Director, Domestic Operations*, June 14, 2006. However, to benefit from this change in policy "[a]n alien who had previously been accorded V-2 or V-3 status and whose application for V-2 or V-3 extension was denied solely due to the alien being over the age of 21 may file a new

application for extension.” See *Memorandum by Terrance M. O’Reilly, Director, Field Operations*, January 10, 2005. USCIS has indicated a delay or failure to file for such an extension would be considered to have been due to extraordinary circumstances beyond the control of the applicant, and the extension, once granted, would be valid from the date the alien’s previous authorized stay expired. See *Memorandum by Michael Aytes, Associate Director, Domestic Operations*, June 14, 2006. In this case, in the years since her extension was denied the applicant has failed to file a new application for extension of status. Instead, the applicant received her I-539 denial in March 2003, made no further attempt to rectify her immigration status, and remained in the United States until April 2007.¹ Although counsel indicates USCIS never informed the applicant of the relevant policy changes and that there were no immigration attorneys practicing law in her town to advise her, it remains the applicant’s burden to maintain her immigration status. The applicant failed to do so, and accrued unlawful presence from the expiration of her V-2 status, October 4, 2002, until she returned to Mexico in April 2007.² The applicant has therefore accrued more than one year of unlawful presence and is therefore inadmissible under section 212(a)(9)(B)(i)(II) of the Act. The applicant’s qualifying relatives for a waiver in this case are her lawful permanent resident father and mother.

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*,

¹ Counsel’s argument that section 214(q)(3)(C) of the Act exempts V status holders from inadmissibility under section 212(a)(9)(B)(i)(II), is unpersuasive in this context because section 214(q)(3)(C) of the Act only exempts applicants for nonimmigrant status from such inadmissibility.

² The applicant’s unlawful presence is not tolled due to her filing an application for extension of her V-2 status because it was filed past the date of expiration of the period of stay authorized by the Attorney General.

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.

The applicant’s father indicates he experiences financial hardship without the applicant’s financial contributions, adding that he and the family do not have the money to visit the applicant in Mexico as often as they would like.³ A letter from his employer shows the father makes \$7.90 per hour, and that the mother made \$7.60 an hour when she was employed in 2007. Family members also state that the applicant’s father would benefit financially if the applicant returned to the United States, especially given his financial responsibilities with respect to his other children. The applicant’s parents add that they experience emotional distress due to separation from the applicant, which is corroborated in statements from other family members.

Despite submission of evidence on income, the record does not contain sufficient evidence of the family’s household expenses to support assertions of financial hardship. The applicant further

³ It is noted there is a letter in Spanish without a certified English translation in the record. Without a certified English translation, this document cannot be considered on appeal. 8 C.F.R. § 103.2(b)(3).

fails to provide any evidence regarding whether she would be able to contribute financially if she could join her parents in the United States, and whether the applicant's adult siblings could help alleviate their parents' financial difficulties. Without details and supporting evidence of the family's expenses, the AAO is unable to assess the nature and extent of financial hardship, if any, the applicant's parents will face.

The applicant's parents assert that they experience emotional distress because of the current separation from the applicant. While the AAO acknowledges that the applicant's parents face difficulties as a result of the applicant's inadmissibility, we do not find evidence of record to demonstrate that their 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, emotional or other impacts of separation on the applicant's parents are cumulatively above and beyond the hardships commonly experienced, the AAO cannot conclude that they would suffer extreme hardship if the waiver application is denied and the applicant remains in Mexico without her parents.

The applicant's mother and father made no claim that they could not join the applicant in Mexico. Therefore, the applicant has failed to establish her qualifying relatives would experience extreme hardship upon relocation to Mexico.

In this case, the record does not contain sufficient evidence to show that the hardships faced by the qualifying relatives, 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 lawful permanent resident parents as required under section 212(a)(9)(B)(v) of the Act. As the applicant has not established extreme hardship to qualifying family members 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.