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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: **FEB 24 2012** OFFICE: DENVER, COLORADO

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)

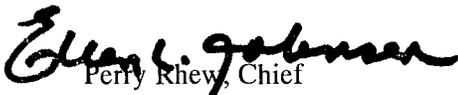
ON BEHALF OF APPLICANT:

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, Denver, Colorado, 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 years of her last departure from the United States. The applicant seeks a waiver of inadmissibility in order to remain in the United States with her lawful permanent resident father.

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 November 24, 2009.

On appeal, counsel for the applicant submits a brief in support of appeal. Therein, counsel contends the applicant is no longer inadmissible under section 212(a)(9)(B)(i)(I) of the Act because more than three years have elapsed since her last departure. Counsel adds that even if the applicant is found to be inadmissible, she has demonstrated that her lawful permanent resident father will experience extreme hardship given her inadmissibility.

The record includes, but is not limited to, medical records, articles on familial relationships, elder care, and country conditions in Mexico, statements from the applicant's father, evidence of birth, marriage, admission, and permanent residence, and other applications and petitions filed on the applicant's behalf. The entire record was reviewed and considered in rendering a decision on the appeal.

Beyond the decision of the director, the AAO conducts appellate review on a *de novo* basis. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004).

Section 212(a)(6)(C) of the Act provides, in pertinent part:

- (i) Any alien who, by fraud or willfully misrepresenting a material fact, seeks to procure (or has sought to procure or has procured) a visa, other documentation, or admission into the United States or other benefit provided under this Act is inadmissible.

Section 212(i) of the Act provides:

- (1) The [Secretary] may, in the discretion of the [Secretary], waive the application of clause (i) of subsection (a)(6)(C) in the case of an alien who is the spouse, 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 the United States of such

immigrant alien would result in extreme hardship to the citizen or lawfully resident spouse or parent of such an alien.

The Department of State Foreign Affairs Manual states that, “in determining whether a misrepresentation has been made, some of the most difficult questions arise from cases involving aliens in the United States who conduct themselves in a manner inconsistent with representations they made to the consular officers concerning their intentions at the time of visa application. Such cases occur most frequently with respect to aliens who, after having obtained visas as nonimmigrants, either: ... Fail to maintain nonimmigrant status (for example, by engaging in employment without authorization by DHS...” *DOS Foreign Affairs Manual*, § 40.63 N4.7(a)(2).

The Department of State developed the 30/60-day rule which applies when, “an alien states on his or her application for a B-2 visa, or informs an immigration officer at the port of entry, that the purpose of his or her visit is tourism, or to visit relatives, etc., and then violates such status by ... Actively seeking unauthorized employment and, subsequently, becomes engaged in such employment...” *Id.* at § 40.63 N4.7-1(1).

Under this rule, “If an alien violates his or her nonimmigrant status in a manner described in 9 FAM 40.63 N4.7-1 within 30 days of entry, you may presume that the applicant misrepresented his or her intention in seeking a visa or entry.” *Id.* at § 40.63 N4.7-2.

In the present case, the record reflects that the applicant obtained a B-1/B-2 nonimmigrant visa on June 23, 1998, and was inspected and admitted to the United States in B-1/B-2 status on July 4, 1998. She was also admitted in B-1/B-2 status on March 11, 2000, April 22, 2001 and September 4, 2002. After demonstrating to an immigration official that she met the requirements to be admitted as a nonimmigrant, including having nonimmigrant intent, the applicant immediately obtained unauthorized employment as a waitress in the United States which she resumed on each of her returns. *See Form G325A, Biographic Information.* As such, the record reflects the applicant was engaged in unauthorized employment within 30 days of her March 11, 2000, April 22, 2001 and September 4, 2002 entries. This conduct violates the 30/60 day rule. The applicant was not coming to the United States as a visitor, but as an alien returning to unauthorized employment. The AAO therefore finds the applicant is inadmissible pursuant to section 212(a)(6)(C) of the Act for having misrepresented her intention in seeking entry to the United States.<sup>1</sup> Because the applicant is inadmissible pursuant to section 212(a)(6)(C) of the Act, the AAO will not examine whether the applicant remains inadmissible under section 212(a)(9)(B)(i)(I) of the Act as inadmissibility under section 212(a)(6)(C) of the Act is a permanent bar and a waiver of that inadmissibility involves the same hardship requirements as a waiver of the 3 year bar under section 212(a)(9)(B)(i)(I) of the Act. The applicant’s qualifying relative for a waiver of this inadmissibility is her lawful permanent resident father.

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<sup>1</sup> The record also reflects that the applicant worked as a waitress in 1998 after her initial entry, though the date of her employment is not clear.

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 children as a factor to be considered in assessing extreme hardship. In the present case, the applicant's father 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 father.

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.

The applicant's father explains he would experience emotional, financial, and medical hardship without the applicant. He states that he would be depressed and he would miss the applicant and his two grandchildren if they relocated to Mexico. The applicant's father adds that he would worry about them because in Mexico they would not have a place to live and they would be unable to buy food. He asserts that the stress of such a separation would negatively impact his health, because he suffers from chronic obstructive pulmonary disease and his doctor has told him that it would be bad for his heart to do too much or become stressed. Medical records are attached in support of this assertion. The applicant's father indicates that the applicant transports him to medical appointments, translates for him, and generally takes care of him. He adds that his health problems have affected him financially, because he has been unable to get a job because of his heart condition. He explains that as a consequence, he relies on the applicant for financial support, which includes money for medical expenses. Without the applicant's financial assistance, her father contends he may not be able to afford his medical care.

Counsel for the applicant explains that the applicant will be unable to pay for her father's medical expenses if she moves to Mexico, given the cost of living and the minimum wage in Mexico. Counsel includes on appeal evidence related to the applicant's children's medical issues, stating that the applicant's father's knowledge that his grandchildren would be unable to access adequate medical care in Mexico would add to his hardship.

Despite assertions of financial hardship, the record does not contain evidence on the applicant's income or her father's household expenses to support these assertions. Moreover, the applicant fails to supplement the record with evidence on whether the father's other children can help support him financially. Although counsel submits numerous articles on employment and minimum wage in Mexico, the record lacks evidence showing the applicant would be unable to earn more than the minimum wage. Without details and supporting evidence on the family's expenses and income, the AAO is unable to assess the nature and extent of financial hardship, if any, the applicant's father will face.

The applicant's father contends the applicant assists him with his medical condition. In support of these assertions the record contains copies of medical records for the applicant's father. The records consist of physician's progress notes for medical care from 2006 to 2008. Significant conditions of health, particularly when tied to an unavailability of suitable medical care in the country to which the qualifying relative would relocate, are relevant factors in establishing extreme hardship. The evidence on the record is insufficient to establish, however, that the applicant's father suffers from such a condition. The record contains copies of medical records containing medical terminology and abbreviations that are not easily understood. The documents submitted were prepared for review by medical professionals and do not contain a clear explanation of the current medical condition of the applicant's father. Absent an explanation in plain language from the treating physician of the exact nature and severity of any condition and a description of any treatment or family assistance needed, the AAO is not in the position to reach conclusions concerning the severity of a medical condition or the treatment needed.

The applicant's father contends he will experience emotional distress, including depression, if separated from the applicant. While the AAO acknowledges that the applicant's father would face difficulties as a result of the applicant's inadmissibility, we do not find evidence of record to demonstrate that his 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, medical, emotional or other impacts of separation on the applicant's father are cumulatively above and beyond the hardships commonly experienced, the AAO cannot conclude that he would suffer extreme hardship if the waiver application is denied and the applicant returns to Mexico without her father.

The applicant's father, a native and citizen of Mexico, makes no claim that he is unable to relocate to Mexico with the applicant. The AAO therefore finds that the applicant has failed to establish extreme hardship to her father upon relocation to Mexico.

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 lawful permanent resident father 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.