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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**



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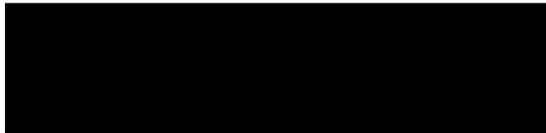
DATE: **FEB 29 2012**

Office: ROME, ITALY File: 

IN RE: Applicant: 

APPLICATION: Application for Waiver of Grounds of Inadmissibility under section 212(a)(9)(B)(v) of the Immigration and Nationality Act (the Act), 8 U.S.C. section 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 be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

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, Rome, Italy. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native and citizen of Mexico. She 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 one year or more and seeking admission within ten years of her last departure. She is married to a United States citizen. She 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).

The Field Office Director concluded that the applicant had failed to establish that the bar to her admission would impose extreme hardship on a qualifying relative, her U.S. citizen spouse, and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) on September 16, 2009.

On appeal, counsel for the applicant states that the Field Office Director failed to consider all of the hardship factors impacting the applicant's spouse, and that based on the evidence presented concerning a number of hardships, the applicant has established that a qualifying relative will experience extreme hardship. *Form I-290B*, received on October 19, 2009.

The record includes, but is not limited to, counsel's brief; a statement from the applicant's spouse; statements from friends and family members of the applicant and her spouse; a statement from [REDACTED] dated August 21, 2009; a psychological evaluation form from [REDACTED] dated October 2, 2009; copy of a 2008 tax return for the applicant's spouse; and photographs of the applicant, her spouse and their child.

The entire record was reviewed and all relevant evidence considered in rendering this decision.

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.

....

The record indicates that the applicant entered the United States without inspection in 1981 and remained until she departed in September 2005. Therefore, the applicant was unlawfully present in

the United States for over a year from April 1, 1997, the effective date of the unlawful presence provision of the Act until September 2005, and is now seeking admission within ten years of her last departure from the United States. Accordingly, the applicant is inadmissible to the United States under section 212(a)(9)(B)(i)(II) of the Act. The applicant does not contest this finding.

Section 212(a)(9)(B)(v) of the Act provides for a waiver of section 212(a)(9)(B)(i) inadmissibility as follows:

The Attorney General [now Secretary of Homeland Security] 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 . . . 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.

A waiver of inadmissibility under section 212(a)(9)(B)(v) of the Act is dependent on a showing that the bar to admission imposes extreme hardship on a qualifying relative, which includes the U.S. citizen or lawfully resident spouse or parent of the applicant. Hardship to the applicant or her children can be considered only insofar as it results in hardship to a qualifying relative. The applicant's spouse is the only qualifying relative in this case. If extreme hardship to a qualifying relative is established, the applicant is statutorily eligible for a waiver, and USCIS then assesses whether a favorable exercise of discretion is warranted. *See Matter of Mendez-Morales*, 21 I&N Dec. 296, 301 (BIA 1996).

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.

Counsel asserts on appeal that the applicant would experience extreme hardship if he relocated to Italy with the applicant because he would have to separate from his family, his long term employment and his long term residence in the United States. *Form I-290B*, received on October 19, 2009. He states that he would not be able to support his family financially if he relocated to Italy and that his son will miss the educational opportunities in the United States.

The applicant’s spouse has submitted a statement asserting that the separation from the applicant and their son has been emotionally difficult for him and that he wants his son to be educated in the United States. *Statement of the Applicant’s Spouse*, dated August 20, 2009.

The AAO recognizes that the applicant’s spouse has resided in the United States for a significant period and that he has significant family and community ties to the United States, and will give this factor some consideration when aggregating the impacts upon relocation.

There is no evidence that the educational opportunities in Italy are any less than what they would be in the United States. As noted above, children are not qualifying relatives in this proceeding, as such, any impact on them is only relevant to the extent that it impacts the qualifying relative, in this case the applicant's spouse. There is insufficient evidence to indicate that the applicant's son, who resides in Italy with the applicant, will experience any uncommon hardship to such a degree that it would indirectly impact the applicant's spouse, who resides in the United States.

The AAO notes that evidence in the record indicates the applicant's spouse has been employed with the same company (a restaurant) since 1990. However, there are no country conditions materials or any other documentation indicating that the applicant's spouse would be unable to find employment or that the applicant herself would be unable to work in order to support their family. Without evidence which is probative of the applicant or her spouse's inability to find employment in Italy the AAO cannot determine that he would experience any uncommon financial hardship upon relocation.

While having to sever family and community ties in the United States after a long period of residence does establish that the applicant's spouse would experience some hardship impact upon relocation, there is insufficient evidence, even when considered in the aggregate, that these impacts rise above the common impacts of relocation to a degree constituting extreme hardship.

Counsel asserts on appeal that the applicant's spouse will experience emotional and financial hardship due to separation from the applicant and their child. *Statement of the Applicant's Spouse*, dated August 20, 2009. Counsel explains that the applicant's spouse feels as if he and his son have missed several important milestones in his life, and that he should have a father when growing up.

The applicant's spouse has submitted a statement asserting that he misses the applicant and his son, and that he wants his son to be educated in the United States because it is better than the private school he has been enrolled in. *Statement of the Applicant's Spouse*, dated August 20, 2009.

Statements from friends and family members in the record attest to the emotional impact on the applicant's spouse as well as the moral character of the applicant.

An examination of the record reveals no evidence to support counsel's assertions of financial hardship. A tax return from 2008 indicates that the applicant's spouse earned \$41,620 that year. In light of the evidence regarding the applicant's spouse's income, the record does not contain evidence that the applicant's spouse would be unable to meet his financial obligations. The record fails to establish that he will experience any uncommon financial impact.

With regard to the emotional impact on the applicant's spouse due to separation, the record contains a statement from [REDACTED] as well as statements from friends and family members. The letter from [REDACTED] states that the applicant's spouse is enduring a major stressor and hardship due to separation from the applicant and his son, and that he recommended the applicant's spouse seek a psychiatric evaluation. [REDACTED] provides a statement in which she discusses the emotional impacts of the applicant's inadmissibility on the applicant's spouse and concludes that

separation would be devastating on the applicant and her spouse's relationship. Based on this evidence the AAO will give some consideration to the emotional impact experienced by the applicant's spouse due to separation.

The AAO acknowledges that the applicant's spouse will experience emotional hardship if he remains in the United States without the applicant, but the applicant has failed to demonstrate that this hardship, even when combined with other hardship factors, will be extreme. The AAO recognizes the significance of family separation as a hardship factor, but concludes that the hardship articulated in this case, based on the evidence in this record, does not rise above the common result of removal or inadmissibility and thus does not constitute extreme hardship. U.S. court decisions have repeatedly held that the common results of removal or inadmissibility are insufficient to prove extreme hardship. *See Hassan v. INS*, 927 F.2d 465, 468 (9th Cir. 1991). In addition, *Perez v. INS*, 96 F.3d 390 (9th Cir. 1996), held that the common results of deportation are insufficient to prove extreme hardship and defined extreme hardship as hardship that was unusual or beyond that which would normally be expected upon deportation. Having found the applicant statutorily ineligible for relief, no purpose would be served in discussing whether she merits a waiver as a matter of discretion.

In proceedings for application for waiver of grounds of inadmissibility under section 212(a)(9)(B)(v) of the Act, the burden of proving eligibility rests with the applicant. *See* 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.