

identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

PUBLIC COPY



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: **JAN 03 2012**

Office: Mexico City (Ciudad Juarez)

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, 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,

Perry Rhew

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Field Office Director, Mexico City, Mexico, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The record establishes that the applicant, a native and citizen of Mexico, entered the United States without authorization in February 2006 and did not depart the United States until November 22, 2007. The applicant accrued unlawful presence from November 8, 2006, when she turned 18 years of age,¹ until November 22, 2007. As a result of this period of unlawful presence, she 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. The applicant does not contest this finding of inadmissibility. Rather, she is seeking a waiver of inadmissibility in order to reside in the United States with her U.S. citizen father and lawful permanent resident mother.

The field office director concluded the applicant had failed to establish that extreme hardship would be imposed on a qualifying relative and, accordingly, denied the Application for Waiver of Ground of Inadmissibility (Form I-601). *Decision of the Field Office Director*, dated August 7, 2009.

In support of the appeal, the applicant's counsel submitted an addendum to the Form I-290B, containing documents including the following: a naturalization certificate and a permanent resident card; the affidavit of applicant's father; household expense statements and bills; receipts for wire transfers; federal tax returns and Form W-2 Wage and Tax Statements; medical and prescription records; reference letters for the applicant; and published information regarding Mexico. The record also contains documents submitted in support of the waiver application, federal tax returns and W-2 forms and a letter from applicant's father. The entire record was reviewed and considered in rendering this decision.

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

Aliens Unlawfully Present.-

(i) In general. - Any alien (other than an alien lawfully admitted for permanent residence) who-

....

¹ Section 212(a)(9)(B) of the Acts states, in pertinent part:

(iii) Exceptions—

(I) Minors

No period of time in which an alien is under 18 years of age shall be taken into account in determining the period of unlawful presence in the United States under clause (i).

(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...

A waiver of inadmissibility under section 212(a)(9)(B)(v) 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 can be considered only insofar as it results in hardship to a qualifying relative. The applicant's U.S. citizen father and lawful permanent resident mother are the only qualifying relatives 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 applicant has established extreme hardship to a qualifying relative. 22 I&N Dec. 560, 565 (BIA 1999). 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; the Board added that not all of these factors need be analyzed in any given case and emphasized that the list is 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, while 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, or cultural readjustment 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, although 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)); conversely, 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 case-by-case whether denial of admission would result in extreme hardship to a qualifying relative.

Counsel states that the applicant’s father and mother will suffer emotional hardship if their daughter is unable to reside in the United States as the family will be separated. The applicant’s father says that he worries about his daughter’s safety and is also concerned about her future prospects due to the lack of opportunity in Mexico. In support of these claims, he provides news articles regarding violence in Mexico, as well as articles regarding poor employment and educational opportunities in the country. The record also contains applicant’s father’s detailed affidavit establishing that his daughter is residing in the family home together with four or five of her siblings. The applicant’s father’s tax returns and prior statements suggest that a number of relatives, both extended and immediate family members, are living with him and his wife. The evidence on the record is insufficient to establish that the applicant’s parents will suffer emotional hardship beyond the anxiety commonly caused by separation from a family member.

The applicant’s father states that separation from the applicant is imposing financial hardship. He reports being the primary provider for a family of 11, divided between Mexico and the United States, and says that applicant cannot find a job in Mexico due to the employment situation there. Other

than an unsubstantiated claim of employment applicant submitted on a G-325, Biographic Information form, the record lacks any evidence of applicant's work history to suggest that her presence in the United States would help with household maintenance. There is also no evidence that applicant's father incurs greater expenses for the applicant to live in the family's Mexican homestead than he would have supporting her in Arizona. Applicant's father claims that his daughter's U.S. presence would decrease the travel costs to him and his wife in visiting Mexico to maintain family unity, but fails to explain how these savings could be realized without sacrificing contacts with their other children living in Mexico. Therefore, the record falls short of establishing particularly harsh financial consequences beyond those commonly or typically associated with geographical separation of family members.

For all these reasons, the cumulative effect of the emotional and financial hardships the applicant's parents are experiencing due to their daughter's inadmissibility does not rise to the level of extreme. The AAO concludes based on the evidence provided that, were her parents to remain in the United States without the applicant due to her inadmissibility, they would not suffer extreme hardship beyond those problems normally associated with family separation.

The qualifying relatives contend that they would experience hardship if they relocated abroad to reside with the applicant. On the one hand, the record shows they were born and raised in Mexico, her mother immigrated in 2007, and her father has traveled to Mexico to visit his relatives there. According to applicant's father's affidavit, the family maintains a home in Mexico where a number of his children live. This affidavit shows two of his other children living in that household also seeking inadmissibility waivers under circumstances similar to those of the applicant before us. Letters in the record establish that the family members have strong ties to their community in Mexico.

On the other hand, the record establishes that applicant's father has lived in the United States for over 21 years, had stable employment for at least six years, and became a naturalized U.S. citizen earlier this year, while his wife has been a lawful permanent resident for nearly five years. The record further shows both of applicant's parents being treated for medical conditions: her father takes medication for angina and gastric reflux disease and her mother for insulin-dependent diabetes and hypertension; both have elevated cholesterol. The applicant's father states that the wages available in Mexico are miniscule compared to the United States, but stops short of claiming he is unemployable in Mexico. He explains his concern that, although he and his wife are not wealthy, the perception in Mexico that they have money will make them a target of kidnappers seeking ransom.

In view of a record reflecting applicant's parents' current treatment for significant medical conditions, her father's more than two decades residing in the United States, and concerns about violence in Mexico directed at persons perceived to have money, applicant has established that any move by her parents back to Mexico would likely negatively impact their health and could expose them to potential violence. Based on a totality of the circumstances, the AAO concludes that the applicant has established that her qualifying relatives would suffer extreme hardship were either or

both of them to relocate abroad to reside with the applicant due to their medical conditions, length of residence in the United States, and concern for their safety in Mexico.

The documentation in the record, when considered in its totality, reflects that although the applicant has established that her U.S. citizen father and lawful permanent resident mother would suffer extreme hardship were they to relocate abroad to reside with the applicant, it fails to establish that the applicant's parents would suffer extreme hardship were they to remain in the United States while the applicant resides abroad. Including the applicant, her parents have more of their children residing in the family's Mexican home than at their U.S. address. The record demonstrates that the applicant's parents face no greater hardship than the unfortunate, but expected, disruptions, inconveniences, and difficulties arising whenever a family member is removed from the United States or refused admission. Having found the applicant statutorily ineligible for relief, no purpose would be served in discussing whether the applicant merits a waiver as a matter of discretion.

Although the applicant has demonstrated that her qualifying relatives would experience extreme hardship if they relocated abroad to reside with the applicant, we can find extreme hardship warranting a waiver of inadmissibility only where an applicant has shown extreme hardship to a qualifying relative in both the scenario of relocation *and* the scenario of separation. The AAO has long interpreted the waiver provisions of the Act to require a showing of extreme hardship in both possible scenarios, as a claim that a qualifying relative will relocate and thereby suffer extreme hardship can easily be made for purposes of the waiver even where there is no actual intention to relocate. *Cf. Matter of Ige*, 20 I&N Dec. 880, 886 (BIA 1994). Furthermore, to relocate and suffer extreme hardship, where remaining in the United States and being separated from the applicant would not result in extreme hardship, is a matter of choice and not the result of inadmissibility. *Id.*, also *cf. Matter of Pilch*, 21 I&N Dec. 627, 632-33 (BIA 1996). As the applicant has not shown extreme hardship from separation, we cannot find that refusal of admission would result in extreme hardship to either qualifying relative in this case.

In proceedings for application for waiver of grounds of inadmissibility, the burden of establishing that the application merits approval remains entirely with the applicant. Section 291 of the Act, 8 U.S.C. § 1361. The applicant has not met that burden. Accordingly, this appeal will be dismissed.

ORDER: The appeal is dismissed. The waiver application is denied.