

identifying data deleted to prevent clearly unwarranted invasion of personal privacy

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

PUBLIC COPY



H6

DATE: **JAN 03 2012**

Office: CIUDAD JUAREZ, MEXICO

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,

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 dismissed.

The applicant is a native and citizen of Mexico. He 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 his last departure. He is married to a United States citizen. He 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 his admission would impose extreme hardship on a qualifying relative, his U.S. citizen spouse, and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) on June 16, 2009.

On appeal, counsel for the applicant states that the applicant's spouse has lost her home and is suffering from suicidal ideation. *Form I-290B*, received on July 22, 2009.

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 November 2000 and remained until he departed February 2008. As the applicant has resided unlawfully in the United States for over a year and is now seeking admission within ten years of his last departure from the United States, he is inadmissible under section 212(a)(9)(B)(i)(II) of the Act.

The record includes, but is not limited to, counsel's brief; a statement from the applicant's spouse; a statement from [REDACTED] dated January 28, 2008, relating to the applicant's spouse; a statement from [REDACTED] pertaining to the applicant's son; a statement from a co-worker of the applicant's spouse, dated April 7, 2008; statements from friends and family members of the applicant and his spouse; electronic billing statements for a residential property; an automobile liability insurance statement; copy of a automobile loan billing statement; pictures of the applicant, her husband and their daughter; a letter from the applicant's employer, tax records and pay stubs for the applicant's spouse.

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

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 his 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-Moralez*, 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 for the applicant asserts on appeal that the applicant’s spouse has lost her home and is suffering from suicidal ideation. *Form I-290B*, received July 22, 2009. With regard to hardship upon relocation, the applicant submitted a statement dated January 25, 2008, that because she is a native of El Salvador she would not relocate to Mexico to be with her spouse. She states that she has been living in the United States for the past 20 years and has become fully assimilated to life in the United States, that she would not have any legal status in Mexico and would be unable to adjust to the cultural differences in Mexico.

The AAO recognizes the applicant’s spouse is not from Mexico, and has lived in the United States for many years. However, the impacts asserted by the applicant’s spouse represent common impacts for relatives of inadmissible aliens who relocate abroad with their spouses. No evidence has been submitted regarding the applicant’s spouse’s assimilation to life in the United States or difficulties she might face in adjusting to life in Mexico. Absent such evidence, the AAO cannot determine that the applicant’s spouse would face uncommon hardship as a result of relocation. Although the applicant’s spouse references the fact that her children do not speak Spanish, the AAO notes that children are not qualifying relatives in this proceeding, and hardships to them are only relevant to the

degree that they indirectly impact the qualifying relative. The record does not support that the applicant's spouse's children would experience any uncommon hardship rising to such a degree that it would create an indirect hardship impact on her.

In this case, the record does not contain sufficient evidence to establish that the hardship impacts upon relocation, even when considered in the aggregate, rise to the degree of extreme hardship.

With regard to hardship upon separation, counsel has asserted that the applicant's spouse has lost her house and is suffering from suicidal ideation. The applicant's spouse previously submitted a letter in which she asserts that she and the applicant purchased a home which she will not be able to afford without his assistance. The applicant's spouse asserts that she is suffering from depression and that the impact of the applicant's departure is causing her children to act out and become aggressive.

The record includes letters and statements from friends and family members of the applicant and his spouse which attest to the emotional impacts on the applicant's spouse and which assert that the applicant's spouse is struggling financially to support her children and the applicant in Mexico.

The record contains a statement from [REDACTED] dated January 28, 2008, which asserts the applicant's spouse is suffering from Major Depression, single episode. The statement is brief, fails to provide a basis for the conclusion, does not provide any prognosis for the applicant's condition. Nonetheless, the AAO will give some consideration to the emotional impact on the applicant's spouse when aggregating the impacts upon separation.

The record also contains mortgage billing statements for the residential property address listed by the applicant and his spouse. However, the AAO notes that the mortgage is in the name of a third party, not the applicant or his spouse. In addition, the AAO notes that the record contains a grant deed from the person listed on the mortgage billing statement to the applicant and his spouse, and which states that the property in question was not sold but was a gift of affection. Thus, while the deed may be in the applicant's spouse's name the mortgage is not, therefore the record does not establish that the applicant is legally responsible for any mortgage on the property. Nor does the record contain any documentation that this property has been entered into foreclosure, or that the applicant's spouse is no longer living there. Based on the evidence in the record the AAO finds no basis of support for the applicant's spouse's assertions that she has or will lose her house.

There is no evidence of the applicant's spouse's income. Although the record contains billing statements for such items as auto insurance and car loans that are in the applicant's spouse's name, there is no evidence to indicate that she is unable to meet her financial obligations. There is no documentation that the applicant's spouse is financially supporting the applicant in Mexico. Without probative evidence of her income and actual financial obligations, the AAO cannot discern the degree financial impact on the applicant's spouse. The record does not establish that the applicant's spouse will experience uncommon financial hardship due to separation.

The applicant's spouse has also asserted that she is suffering a physical impact from having to assume additional parenting duties, working to support her children and expenditure of her savings. The record contains a letter from [REDACTED], dated April 10, 2008, in which he states that the applicant's absence is resulting in more aggressive behavior in her son. The letter does not provide any examples of this behavior and does not indicate to what degree, if any, the son's behavior is actually impacting the applicant's spouse. There is no evidence that the applicant's spouse has expended any savings in providing care for herself or her children. While the AAO does recognize that the applicant's spouse will bear additional responsibility in the care of their children, there is insufficient evidence in this case that those burdens rise above the common impacts on the relatives of inadmissible aliens who remain in the United States to a degree that it constitutes a hardship factor on the applicant's spouse.

The AAO acknowledges that the applicant's spouse may experience emotional hardship if she 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 he 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.