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U.S. Department of Homeland Security
Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090



U.S. Citizenship
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Services

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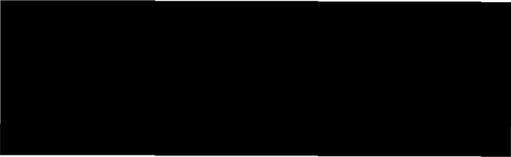
H6

DATE: **JAN 18 2012** Office: MEXICO CITY, MEXICO



IN RE: 

APPLICATION: Application for Waiver of Ground 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
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 reflects that 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 admission within ten years of her last departure. The applicant is the spouse of 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), in order to reside in the United States.

The Field Office Director found that the applicant had failed to establish extreme hardship to a qualifying relative and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601), accordingly. *Decision of the Field Office Director*, dated June 29, 2009.

On appeal, counsel asserts that the applicant was ineffectively represented by a notario, who failed to submit documentary evidence of hardship to the applicant's spouse and children. Counsel submits evidence with the appeal.¹ *Form I-290B, Notice of Appeal or Motion*, dated July 27, 2009.

The record includes, but is not limited to, counsel's brief and a statement; statements from the applicant's spouse; a psychological assessment of the applicant's spouse; medical documentation relating to the applicant's spouse; a copy of a rental agreement; a copy of a life insurance policy statement; letters from the school previously attended by the applicant's children; copies of money transfer receipts dated in 2009; letters of support from friends of the applicant; and a copy of the divorce decree for the applicant's spouse's first marriage. The entire record was reviewed and all relevant evidence in the English language considered in reaching a decision on appeal.²

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

(B) Aliens Unlawfully Present -

(i) In general

¹ The AAO conducts appellate review on a *de novo* basis and will consider all evidence in the record to reach a decision on the appeal. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004).

² A statement from the applicant's spouse in the Spanish-language, dated April 15, 2008, was not considered by the AAO as it is not accompanied by an English-language translation. The regulation at 8 CFR § 103.2(b)(3) provides that any document in a foreign language submitted to United States Citizenship and Immigration Services (USCIS) shall be accompanied by a full English-language translation, which the translator has certified as complete and accurate, and by the translator's certification that he or she is competent to translate from the foreign language into English.

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 reflects that the applicant entered the United States without inspection in May 1989 and remained until she voluntarily departed to Mexico in February 2008. Based on this history, the AAO finds that the applicant accrued unlawful presence from April 1, 1997, the effective date of the unlawful presence provisions under the Act, until she departed the United States in February 2008. As the applicant is seeking admission within ten years of her 2008 departure, she is inadmissible pursuant to section 212(a)(9)(B)(i)(II) of the Act for having accrued more than one year of unlawful presence in the United States.

Section 212(a)(9)(B)(v) of the Act provides for a waiver of section 212(a)(9)(B)(i)(II) 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 an applicant or other family members 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 United States Citizenship and Immigration Services 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.

The AAO now turns to the question of whether the applicant in the present case has established that her U.S. citizen spouse would experience extreme hardship as a result of her inadmissibility.

In a February 8, 2008 statement, the applicant's spouse asserts that moving to Mexico would result in extreme hardship for him and his children. The applicant's spouse states that he has been residing in

the United States since 1984, that he is a native of Costa Rica and a citizen of the United States. He indicates that he has medical problems that need to be controlled, that his children have learning problems and need additional help, that they know little Spanish and that all their friends are in the United States. The applicant's spouse further states that he has two children from a previous relationship and that he provides spousal support to his former spouse.

On appeal, counsel asserts that the applicant's spouse is a native of Costa Rica and a citizen of the United States, that he has significant familial and economic ties to the United States and no ties to Mexico, that he has never lived in Mexico, and that he does not have a home for him and his family in Mexico. Counsel asserts that the applicant currently lives with her family in a poor section of Mexico City, that her children are having a very difficult time adjusting to living in Mexico, that they have been targeted for harassment and beaten up at school by their peers because they dress and speak differently than the other children at school. Counsel states that the applicant's spouse is concerned about the health, security and overall well-being of his family in Mexico due to the poor environment they live in, the violence his children are exposed to on a daily basis at school, and the high level of crime in the area of Mexico where they live.

The AAO acknowledges the applicant's spouse's claims on the impact of relocation on his children. However, children are not qualifying relatives under section 212(a)(9)(B)(v) of the Act and any hardship to them must, therefore, be evaluated in terms of its impact on the applicant's spouse, the only qualifying relative in this case. The AAO notes the applicant's spouse's concern about the health, safety and the overall well-being of his children in Mexico due to the high level of crime and violence there. We note that the U.S. Department of State's 2011 travel warning on Mexico reports of country-wide drug violence, and advises U.S. citizens against travel to certain areas of Mexico. However, Mexico City, where the applicant and her children currently reside is not one of the locations identified by the Department of State in its travel warning as being a location where U.S. citizens would be at risk from the increased drug violence sweeping Mexico. We also note the psychological evaluation of the applicant's spouse prepared by [REDACTED]. While [REDACTED] reports that the applicant's spouse is excessively anxious about his children and his family being safe in Mexico and that he is experiencing tremendous anxiety about his two sons' well-being, the record does not contain evidence documenting that his children are being targeted for harassment and beatings at school.

In this case, while the AAO acknowledges that the country-wide drug violence in Mexico may pose some threat to the applicant's children, the record does not contain evidence to support the other claims of hardship on the applicant's children. Without supporting documentation, the assertions of counsel are not sufficient to meet the burden of proof in these proceedings. The assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980). Thus, the applicant is inadmissible under section 212(a)(6)(C)(i) of the Act. Also, going on record without supporting documentation is not sufficient to meet the applicant's burden of proof in this proceeding. *See Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)). Accordingly, the AAO finds that the evidence of record does not establish that relocation would result in hardship to the

applicant's children or that any harm to them would result in extreme hardship to the applicant's spouse if he relocated to Mexico.

On appeal, counsel also asserts that the applicant's spouse has suffered and continues to suffer physical, emotional and financial hardship as a result of his separation from the applicant and his children. Counsel states that the applicant's spouse's health is deteriorating and that he has been diagnosed with Sciatic Hernia, and high blood pressure. He also asserts that the applicant's spouse is under tremendous psychological trauma. Adding to the applicant's spouse's emotional distress, counsel states, are his concerns about the poor living conditions of his family in Mexico, the escalating violence in the area where they live and the constant harassment and violence against his children at their school.

Counsel also indicates that the applicant's spouse's financial situation has changed drastically since the Form I-601 was filed and that he now has less income and more expenses. He also asserts that the applicant's spouse is working as a landscapist, but that his sciatic hernia limits his ability to do manual labor and that he is unable to find other types of employment because of the poor economy. Counsel reports that the applicant's spouse now earns \$1600 a month, and that after paying his former spouse \$725 in alimony, he is left with \$875 a month to support himself and his family in Mexico. Counsel states that after the applicant's spouse sends money to the applicant in Mexico, he does not have enough money to meet his financial obligations in the United States. He claims that the applicant's spouse is behind in paying his bills and that he is on the verge of discontinuing his pain medications because he can no longer afford them.

The AAO notes the medical statement in the record from Arrowhead Regional Medical Center, indicating that the applicant's spouse is diagnosed with L-Spine Sciatica, which improves with ease treatment and medication. The AAO also notes that [REDACTED] prescribed Flexeril and Ultram for the applicant's spouse to relieve his pain. Online information on the two medications submitted for the record, indicates that they are used to relieve pain. However, the record does not document the severity of the applicant's spouse's medical condition or how it affects his ability to meet his daily responsibilities including his employment.

In support of the emotional hardship claim, the record contains an August 19, 2009 psychological assessment of the applicant's spouse prepared by [REDACTED] a Clinical Psychologist. [REDACTED] reports that based on her interview of the applicant's spouse and the administration of multiple psychological testing instruments, he is emotionally distraught and is experiencing acute distress. [REDACTED] observes that during her evaluation of the applicant's spouse, that he initially appeared to be disoriented, that his concentration was extremely poor, that he showed short-term memory deficits and his judgment was severely impaired. [REDACTED] reports that the applicant's spouse has a history of severe anxiety, with episodes of panic attacks and an obsessive-compulsive behavior, that his symptoms have been exacerbated by the separation from the applicant and his children and an overwhelming sense of anxiety about his children's well-being in Mexico.

[REDACTED] diagnoses the applicant's spouse with Generalized Anxiety Disorder, Dysthymic Disorder, and Attention-Deficit/Hyperactivity Disorder, Combined Adjustment Disorder, With Mixed

Disturbance of Emotions and Conduct. She indicates that his prognosis is poor, that he requires medical, psychological, and psychiatric intervention, as well as a relief from the emotional triggers that he is experiencing. [REDACTED] states that the applicant's spouse does not have any social support from family and friends, that he is deteriorating into isolation, that he desperately needs social support from the applicant, and further needs to be able to feel as though he can protect his children from abuse. [REDACTED] recommends that the applicant's spouse be reunited with the applicant and his children as a means of ensuring his overall psychological well-being.

The AAO finds [REDACTED] detailed mental health analysis of the applicant's spouse sufficient evidence to establish that he is experiencing significant emotional hardship as a result of his separation from his family.

To establish the applicant's spouse's financial hardship, the record contains a February 15, 2006, divorce decree from Superior Court of California, County of San Bernardino, ordering the applicant's spouse to pay \$725 per month in alimony to his former spouse, beginning September 1, 2005, and continuing until the death of either party, the remarriage of his former spouse or further order of a court. It also includes a medical receipt from Arrowhead Regional Medical Center relating to the applicant's spouse's hospital visit on June 6, 2007; an insurance policy statement from Primerica Life Insurance Company; a care insurance statement from Infinity Insurance Company; a copy of a bank statement dated January 12 to February 12, 2008; a copy of a rental agreement indicating a monthly rent of \$900; and copies of money transfer receipts, dated in January through July 2009.

As to the financial hardship of separation, the AAO acknowledges that the applicant's spouse's support of his family in Mexico, as evidenced by the money transfer receipts, has resulted in some level of financial hardship. However, there is insufficient financial documentation in the record to establish the extent of that hardship. We note the divorce decree ordering the applicant's spouse to pay \$750 in alimony to his former spouse; a rental agreement for a prior residence indicating a monthly rent of \$900, a car and life insurance payments, as some of the applicant's spouse's financial obligations. However, there is no documentation in the record that establishes the applicant's spouse's income and no other evidence of the spouse's financial obligations. Thus, without the additional information, the AAO is not in the position to determine the extent of the financial hardship the applicant's spouse is experiencing.

The AAO notes that while the record does not sufficiently document the extent of the financial hardship the applicant's spouse is experiencing or the severity of his physical health, we do find, he is experiencing significant emotional hardship as a result of separation from his family. Consequently, when his fragile mental health is added to the difficulties and disruptions normally created by the removal or exclusion of a family member, the AAO concludes that the applicant's spouse would experience extreme hardship if he continues to reside in the United States without the applicant.

Although the applicant has demonstrated that her spouse would experience extreme hardship if separated from her, we can find extreme hardship warranting a waiver of inadmissibility only where

an applicant has demonstrated extreme hardship to a qualifying relative in the scenario of separation *and* the scenario of relocation. A claim that a qualifying relative will remain in the United States and thereby suffer extreme hardship as a consequence of separation can easily be made for purposes of the waiver even where there is no intention to separate in reality. *See Matter of Ige*, 20 I&N Dec. 880, 886 (BIA 1994). Furthermore, to separate and suffer extreme hardship, where relocating abroad with the applicant would not result in extreme hardship, is a matter of choice and not the result of inadmissibility. *Id.*, *see also Matter of Pilch*, 21 I&N Dec. 627, 632-33 (BIA 1996). As the applicant has not demonstrated extreme hardship from relocation, we cannot find that refusal of admission would result in extreme hardship to her spouse.

As the record does not establish that a qualifying relative would suffer extreme hardship as a result of the applicant's inadmissibility, she has failed to establish eligibility for a waiver of inadmissibility under section 212(a)(9)(B)(v) of the Act. 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 an application for a waiver of grounds of inadmissibility under section 212(a)(9)(B)(v) of the Act, the burden of establishing that the application merits approval remains entirely 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.