

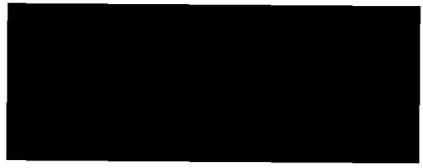
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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services

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Date: **JAN 18 2012** Office: LOS ANGELES, CALIFORNIA 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
Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Field Office Director, Los Angeles, California, 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 readmission within ten years of her last departure from the United States. The applicant is married to a United States citizen and the beneficiary of an approved Petition for Alien Relative (Form I-130). The applicant 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 with her spouse.

The Field Office Director found that the applicant had failed to establish that extreme hardship would be imposed on the applicant's qualifying relative and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) accordingly. *Decision of the Field Office Director*, dated July 8, 2009.

The applicant, through counsel, asserts that United States Citizenship and Immigration Services (USCIS) erred in denying the applicant's waiver application. *See appeal brief*, dated August 5, 2009.

The record includes, but is not limited to, counsel's appeal brief, counsel's brief in support of the Form I-601, statements from the applicant and her husband, medical documents for the applicant's husband, insurance documents, tax documents, and an employment verification document and pay stubs for the applicant's husband. The entire record was reviewed and considered in arriving at a decision on the appeal.

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

(B) Aliens Unlawfully Present.-

(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.

....

(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 [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.

In the present application, the record indicates that in 1997, the applicant entered the United States without inspection. On January 6, 2006, the applicant filed an Application for Status as a Temporary Resident under section 245A of the INA (Form I-687). In December 2006, the applicant departed the United States.

The applicant accrued unlawful presence from April 1, 1997, the effective date of the unlawful presence provisions under the Act, until January 6, 2006, the date she filed her Form I-687. The applicant is attempting to seek admission into the United States within ten years of her December 2006 departure from the United States. The applicant is, therefore, inadmissible to the United States under section 212(a)(9)(B)(i)(II) of the Act for being unlawfully present in the United States for a period of more than one year and seeking admission within 10 years of her departure from the United States.

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 can be considered only insofar as it results in hardship to a qualifying relative. The applicant's husband 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 of Immigration Appeals (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.

In a statement dated June 11, 2009, the applicant’s husband states “it would be impossible for [him] to move to Mexico to be with [the applicant].” He claims that he is “very seriously sick.” Counsel claims that the applicant’s husband “has suffered from diabetes for at least the past 3 and a half years.” The applicant’s husband states his “diabetes is so severe that [he] [has] to inject insulin 4 times a day.” The AAO notes that medical documentation in the record establishes that the applicant’s husband has been diagnosed with hypertension, diabetes, and dyslipidemia, and he takes various medications. See letter from [REDACTED], dated October 21, 2008; see also final report from [REDACTED] dated January 22, 2009. However, the AAO notes that no medical documentation has been submitted establishing that the applicant’s husband cannot receive treatment for his medical conditions in Mexico, that he has to remain in the United States to receive treatments, or that his medical conditions would affect his ability to relocate. 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)). The applicant’s husband states that the applicant cares for him and “[m]oving to Mexico so that [the applicant] can continue to care for [him] is not something that [he] can even think about.” Additionally, counsel claims that the applicant’s husband would be unable “to seek employment in

Mexico due to his medical conditions.” The applicant’s husband states they would live in poverty in Mexico. He states that in the United States, he has a steady income, and in Mexico, he “would have no benefits and [he] would not qualify for medical care.” The AAO notes the applicant’s husband’s concerns regarding the difficulties he would face in relocating to Mexico.

The AAO acknowledges that the applicant’s husband has resided in the United States for many years and that relocation abroad would involve some hardship. However, the AAO notes that the applicant’s spouse is a native of Mexico and it is presumed that he would be able to adapt to the culture and language of Mexico. The AAO recognizes that the applicant’s husband is employed in the United States and he would be required to give up his employment. However, the AAO notes that the record does not contain documentary evidence, e.g., country conditions reports on Mexico, that demonstrate that the applicant’s husband would be unable to obtain employment upon relocation that would allow him to use the skills he has acquired in the United States. Additionally, as noted above, there is no evidence in the record to establish that the applicant’s spouse would be unable to receive any necessary medical care in Mexico. Nor is there evidence of any other hardships the applicant’s spouse may experience as a result of relocation to Mexico. Therefore, based on the record before it, the AAO finds that, even considering the potential hardships in the aggregate, the applicant has failed to establish that her husband would suffer extreme hardship if he relocated to Mexico.

In addition, the record also fails to establish extreme hardship to the applicant’s husband if he remains in the United States. As noted above, the record establishes that the applicant’s husband has been diagnosed with hypertension, diabetes, and dyslipidemia, and he takes various medications. *See letter from [REDACTED] supra; see also final report from [REDACTED]* The applicant’s husband states the applicant is the only person who can provide the care he needs. In counsel’s brief in support of the Form I-601, dated June 11, 2009, counsel claims that the applicant’s husband “requires [the applicant’s] attention 24 hours a day,” and he “is dependent upon [the applicant] to administer his medication and monitor his diet.” Counsel states that the applicant’s husband claims that “he would surely die if [the applicant] is not there to assist him when his sugar levels drop while he is sleeping possibly leading him to fall into a coma.” In a statement dated June 11, 2009, the applicant states she needs to monitor her husband, especially at night, and he cannot “survive on his own without close supervision that only [she] can provide.” The applicant’s husband states that he “cannot be by [himself] at [his] age and with [his] health conditions.” The AAO notes that no medical documentation has been submitted establishing that the applicant’s husband requires the applicant’s assistance due to his medical conditions. The applicant states her family would be devastated if she has to return to Mexico. The AAO notes the medical concerns of the applicant’s husband.

The applicant’s husband states the applicant is “the only woman that [he] could live out the rest of [his] life with.” He claims that he is suffering depression and stress, and having the applicant in the United States, “helps [him] deal with the daily stresses of life in general.” He claims that without the applicant in the United States “to provide [him] with the emotional and moral support that only she can provide, [he] fear[s] that [his] life would take a turn for the worst [sic] and that [he] would be unable to care for [himself] because of [his] medical conditions.” The AAO notes the emotional concerns of the applicant’s husband.

The AAO acknowledges that the applicant's husband may suffer some emotional problems in being separated from the applicant. However, the AAO notes that while it is understood that the separation of spouses often results in significant psychological challenges, the applicant has not distinguished her husband's emotional hardship upon separation from that which is typically faced by the spouses of those deemed inadmissible. Based on the record before it, the AAO finds that the applicant has failed to establish that her husband would suffer extreme hardship if her waiver application is denied and he remains in the United States.

A review of the documentation in the record fails to establish the existence of extreme hardship to the applicant's husband caused by the applicant's inadmissibility to the United States. Having found the applicant statutorily ineligible for relief, the AAO finds 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 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.