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



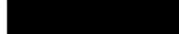
U.S. Citizenship
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DATE: **JAN 25 2012** OFFICE: MEXICO CITY, MEXICO

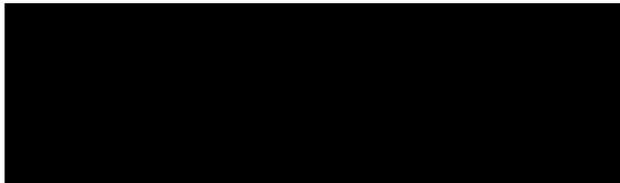
FILE: 

IN RE:

APPLICANT: 

APPLICATION: Application for Waiver of Grounds of Inadmissibility under section 212(a)(9)(B) of the Immigration and Nationality Act, 8 U.S.C. § 1182(a)(9)(B)

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 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 10 years of her last departure from the United States. The applicant seeks a waiver of inadmissibility in order to reside in the United States with her U.S. Citizen spouse and daughter.

The Field Office Director concluded that the applicant failed to show extreme hardship to a qualifying relative and denied the application accordingly. *See Decision of Field Office Director* dated August 10, 2009.

On appeal, counsel for the applicant submits a brief in support, an initial assessment by a licensed professional counselor, statements from the applicant and her spouse, articles on country conditions, financial documents, and a letter from a psychologist. In the brief, counsel contends the applicant's spouse is suffering extreme hardship given the current separation from the applicant and their daughter, who live in Mexico. *Brief in support of appeal*, October 9, 2009. Counsel adds that hardship to the U.S. Citizen daughter should be considered, as it adds to the hardship experienced by the qualifying relative. *Id.*

The record includes, but is not limited to, the documents listed above, other applications and petitions filed on behalf of the applicant, evidence of birth, marriage, and citizenship, evidence of money transfers and billing statements, bank statements, paystubs, other financial documents, and a handwritten letter in Spanish. The entire record was reviewed and considered in rendering a decision on the appeal.¹

Section 212(a)(9) of the Act provides:

(B) ALIENS UNLAWFULLY PRESENT.-

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

¹ It is noted that the record contains several documents in Spanish without an English translation. 8 C.F.R. § 103.2(b) states:

(3) Translations. Any document containing foreign language submitted to 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.

Without a certified English translation, these documents cannot be considered on appeal.

....

(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 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 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. No court shall have jurisdiction to review a decision or action by the Attorney General regarding a waiver under this clause.

Records reflect the applicant admitted she entered the United States without inspection in March 2003, and remained until May 2005 when she returned to Mexico. The applicant has therefore accrued more than one year of unlawful presence, and is inadmissible to the United States under section 212(a)(9)(B)(i)(II) of the Act. The applicant's qualifying relative for a waiver of this inadmissibility in this case is her U.S. Citizen spouse.

The record contains references to hardship the applicant's child would experience if the waiver application were denied. It is noted that Congress did not include hardship to an alien's children as a factor to be considered in assessing extreme hardship. In the present case, the applicant's spouse is the only qualifying relative for the waiver under section 212(a)(9)(B)(v) of the Act, and hardship to the applicant's child will not be separately considered, except as it may affect the applicant's spouse.

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 applicant's spouse contends he experiences financial hardship due to the current separation from the applicant and their daughter who are living in [REDACTED] *Affidavit of applicant's spouse*, October 9, 2009. He explains he lost his home and land in 2008 due to non-payment of property taxes as well as the financial burden of maintaining two households, but has since redeemed that property. *Id.* Evidence of several money transfers from the applicant's spouse to the applicant are submitted in support of a finding of financial hardship, as are billing statements, bank statements, and copies of mortgage statements. *See financial*

documents. The record reflects the applicant's spouse earns \$16.00 an hour and generally works 40 hours per week. *See paystubs*.

The applicant further explains that he has seen a licensed counselor for the stress, anxiety, and grief he experiences due to the separation from the applicant and their young daughter Guadalupe. *Affidavit of applicant's spouse*, October 9, 2009. A handwritten initial assessment from licensed professional counselor [REDACTED] is included on appeal. *Initial assessment*, September 24, 2009. The spouse contends that the applicant and their daughter used to live alone in [REDACTED], but, due to violence and threats, now live with the applicant's parents in [REDACTED]. *Id.* The applicant describes the details of a burglary where her residence was targeted, as well as a nearby kidnapping, violence due to drug dealing, and activities of local soldiers. *Statement of Applicant*, undated. Articles on country conditions are submitted in support of these assertions. *See articles*. The applicant's spouse states that those experiences heighten his stress and anxiety over the applicant's and their daughter's situation. *Affidavit of applicant's spouse*, October 9, 2009. A letter from a psychologist is submitted as evidence the applicant is insecure, lacks independence, fears authority, distrusts, and is restless, with a prognosis of depression. *Letter from* [REDACTED] August 27, 2009. This letter also indicates the daughter is generally psychologically healthy, but tends to act out and requires her father. *Id.*

The applicant indicates her spouse travels to see her every 15 days. *Statement of Applicant*, undated. Counsel submits a police crash report, which he contends is evidence of fatigue due to driving between his residence in the United States and the applicant's home in Mexico. [REDACTED] November 30, 2008.

Despite submission of income, mortgage, billing statements, money transfers, and other financial documents, the record does not contain sufficient evidence of financial hardship. The applicant's spouse earns \$16.00 an hour at his full-time job which was reduced from \$21.00 an hour. *Affidavit of applicant's spouse*, October 9, 2009, *see also paystubs*. The evidence of record does not establish that the applicant's and the spouse's household expenses exceed the spouse's income, especially given that the applicant indicates she and her daughter live with her parents to reduce the financial burden on the applicant's spouse. *Statement of applicant*, undated, *affidavit of applicant's spouse*, October 9, 2009. It is also noted that the spouse's income is also sufficient to meet 125% of income requirement for a family of three according to the poverty guidelines. *See Form I-864P, Poverty Guidelines*, March 1, 2011. Moreover, the applicant fails to provide any evidence regarding her own employment and earnings, and whether she would be able to contribute financially if she could join her spouse in the United States. Given the evidence of record, the AAO is unable to assess the nature and extent of financial hardship, if any, the applicant's spouse faces and will continue to face.

The applicant's spouse's contention that he suffers from anxiety, stress, and grief due to living without the applicant and their daughter is somewhat supported by the initial assessment by the licensed clinical worker. *See affidavit of applicant's spouse*, October 9, 2009, *see also initial assessment*, September 24, 2009. This initial assessment is handwritten and on some pages is

indiscernible; however, the licensed professional counselor indicates in the document that the applicant's spouse has experienced a single episode of major depressive disorder, and recommends that he see a psychiatrist for medical management. *Id.* Published country condition reports support the applicant's assertions that her and her daughter's life in [REDACTED] was dangerous, which may have had an impact on the spouse's psychological state. *See Travel Warning: Mexico, U.S. Department of State, April 22, 2011.* However, the applicant and her daughter have moved to Monterrey, Mexico and are currently living with the applicant's parents. *Statement from applicant, undated.* The applicant has not asserted she and her daughter continue to be endangered in this new living situation, nor is there evidence to support this new situation negatively impacts the applicant's spouse's psychological state. *Id.* Furthermore, although counsel claims the applicant's spouse was in a car accident due to fatigue, the police crash report indicates that the applicant's spouse hit a deer which ran in front of the car, not that the applicant was too fatigued to drive safely. *Police crash report, November 30, 2008.*

While the AAO acknowledges that the applicant's spouse faces difficulties as a result of the applicant's inadmissibility, we do not find evidence of record to demonstrate that his hardship rises above the distress normally created when families are separated as a result of inadmissibility or removal. In that the record fails to provide sufficient evidence to establish the financial, emotional or other impacts of separation on the applicant's spouse are cumulatively above and beyond the hardships commonly experienced, the AAO cannot conclude that he would suffer extreme hardship if the waiver application is denied and the applicant remains in Mexico without her spouse.

The applicant does not assert that her spouse would experience extreme hardship given relocation to Mexico, nor is there any evidence to support such a contention. As such, the AAO cannot find that the applicant's spouse would experience extreme hardship if he relocated to Mexico to live with the applicant and their daughter.

In this case, the record does not contain sufficient evidence to show that the hardships faced by the qualifying relative, considered in the aggregate, rise beyond the common results of removal or inadmissibility to the level of extreme hardship. The AAO therefore finds that the applicant has failed to establish extreme hardship to her U.S. Citizen spouse as required under section 212(a)(9)(B)(v) of the Act. As the applicant has not established extreme hardship to a qualifying family member no purpose would be served in determining whether the applicant merits a waiver as a matter of discretion.

In proceedings for a 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. 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.