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



H6

Date: JUL 20 2012 Office: MEXICO CITY, MEXICO
(CIUDAD JUAREZ)

FILE: [REDACTED]

IN RE: Applicant: [REDACTED]

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 AAO inappropriately applied the law in reaching its decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen in accordance with the instructions on Form I-290B, Notice of Appeal or Motion, with a fee of \$630. The specific requirements for filing such a motion can be found at 8 C.F.R. § 103.5. **Do not file any motion directly with the AAO.** Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires any motion to 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 District Director, Mexico City, Mexico. A subsequent appeal was dismissed by the Administrative Appeals Office (AAO). The matter is now before the AAO on a motion to reopen and reconsider. The motion will be granted and previous decisions of the district director and AAO will be affirmed.

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 one year or more and seeking readmission within 10 years of her last departure from the United States. The record indicates that the applicant is married to a U.S. citizen and she has two U.S. citizen children. 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 U.S. citizen spouse and children.

The district director found that the applicant failed to establish that extreme hardship would be imposed on the applicant's spouse and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) accordingly. *Decision of the District Director*, dated June 18, 2007. The AAO found that the applicant had failed to establish that extreme hardship would be imposed upon a qualifying relative and dismissed the appeal accordingly. *AAO Decision*, dated November 6, 2009.

On motion, counsel asserts that the applicant's spouse would suffer extreme hardship if the waiver application were denied. *Form I-290B*, dated December 4, 2009.

The record includes, but is not limited to, counsel's motion, an employer letter, financial records, school records, a psychological evaluation and letters from the applicant's spouse. The entire record was reviewed and considered in arriving at a decision on the appeal.

The record indicates that the applicant initially entered the United States in July 1998 without inspection. In April 2005, the applicant departed the United States. The applicant accrued unlawful presence from July 1998, the date the applicant entered the United States without inspection, until April 2005, the date the applicant departed the United States. The applicant is 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 one year or more and seeking readmission within ten years of her April 2005 departure from the United States.

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.

A section 212(a)(9)(B)(v) waiver of the bar to admission resulting from section 212(a)(9)(B)(i)(II) of the Act is dependent first upon a showing that the bar imposes an extreme hardship to the U.S. citizen or lawfully resident spouse or parent of the applicant. Hardship to the applicant or her children is not considered in section 212(a)(9)(B)(v) waiver proceedings unless it causes hardship to a qualifying relative, in this case the applicant's spouse. Once extreme hardship is established, it is but one favorable factor to be considered in the determination of whether the Secretary should exercise discretion. *See Matter of Mendez*, 21 I&N Dec. 296 (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 states that: the applicant and her spouse have two young children and their education would be disrupted in Mexico; their children are not fluent in Spanish; the applicant’s spouse has a full-time job earning \$19.50 per hour; he would not be able to earn comparable pay for the same position in Mexico; and country conditions would pose a hardship. The record reflects that the applicant’s spouse earns about \$55,000 a year in the United States. The record includes school records for the applicant’s children. The applicant’s spouse reported in his psychological evaluation that the children lived with the applicant for a few years, but they had concerns about the educational system as school only lasts for four hours and sometimes the schools are shut down for days.

In a letter dated June 8, 2007, the applicant’s spouse states his children are not doing well in Mexico because “the education there is not good.” The applicant’s spouse states his youngest daughter has been getting sick and she cannot get “the quality treatment like [they] have here in the U.S.” The AAO notes that there is no other supporting documentary evidence in the record establishing that the applicant’s daughter is currently suffering from any medical conditions. Additionally, the AAO notes that there is

no evidence in the record that the applicant's daughter cannot be treated for any medical conditions in Mexico or that she has to return to the United States to receive treatment. The AAO notes that it has not been established that the applicant's spouse does not speak Spanish or that he has no family ties in Mexico. Although the applicant's spouse has employment in the United States, the record does not include supporting documentary evidence that he would experience financial hardship in Mexico. The record does not include documentation that the school day is only four hours long in Mexico or that it is shut down for days, although the AAO notes the general education opportunities that their children may lose by not residing in the United States. The record does not include any other evidence of country conditions that would pose a hardship to the applicant's spouse. The record lacks sufficient documentary evidence of emotional, financial, medical or other types of hardship that, in their totality, establish that a qualifying relative would suffer extreme hardship upon relocating to Mexico.

The applicant's spouse details his closeness to the applicant in his statements. Counsel states that the applicant's spouse has been separated from the applicant since April 2005; he has suffered from multiple psychological symptoms since being separated; the physical and psychological impacts of separation will likely result in clinical depression and/or the breakup of his marriage; taking care of his children has been a tremendous burden; he works the night shift and worries about his children; he has lost the support of his spouse during the recession in the United States; he is maintaining the upkeep of the applicant in Mexico; and the applicant's daughters are experiencing extreme hardship due to separation. The applicant's spouse's employer states that: the applicant's spouse is responsible for the welfare of his children; he works the night shift and has to secure a babysitter while he is at work; it would be a hardship for the employer if he changed to a day shift; and he is not able to get the children ready for school in the morning. The psychologist who evaluated the applicant's spouse diagnosed him with Depressive Disorder; states that his father is deceased and his mother passed away in 2007; and states that he endorsed sad mood, anhedonia, sleep disturbance and intense feelings of loneliness.

The record reflects that the applicant's spouse is raising two children on his own; he is working a night shift; he does not see his children much; and it is not likely that he could switch to a day shift. The record reflects that the applicant's spouse is experiencing many symptoms due to separation from the applicant and that he has been diagnosed with depressive disorder. Based on these hardship factors, and the normal result of separation, the AAO finds that the applicant's spouse would experience extreme hardship upon remaining in the United States.

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 the

qualifying relative in this case. 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 application for waiver of grounds of inadmissibility under section 212(a)(9)(B) 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 previous decisions of the district director and the AAO will be affirmed.

ORDER: The motion is granted and the previous decisions of the district director and the AAO are affirmed.