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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



HG

DATE: JUL 26 2012 Office: MEXICO CITY FILE: 
(CIUDAD JUAREZ)

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 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. The denial was appealed to the Administrative Appeals Office (AAO). The appeal was dismissed. The applicant filed a motion to reopen and reconsider the AAO decision, which is now before the AAO. The motion will be granted and previous decisions of the district director and AAO will be affirmed.

The applicant is a native and citizen of Mexico. She 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 her last departure. She is married to 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).

The District Director concluded that the applicant had failed to establish that the bar to her admission would impose extreme hardship on a qualifying relative, her U.S. citizen husband, and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) on October 17, 2006. The AAO found that the applicant had failed to establish extreme hardship to a qualifying relative and dismissed the appeal on November 5, 2009.

On motion, counsel for the applicant asserts that the hardships experienced by the applicant's spouse rise above the common hardships experienced by the relatives of inadmissible aliens. *Brief in Support of Waiver*, received December 4, 2009.

The record contains, but is not limited to, the following documentation and evidence: a brief from counsel for the applicant; statements from the applicant's spouse, the applicant's spouse's parents, and family members and associates of the applicant's spouse; a psychological evaluation of the applicant's spouse by [REDACTED], dated November 21, 2009; copies of an MRI report for a work-related injury sustained by the applicant's spouse, dated November 30, 2009, compiled by [REDACTED]; documents related to a worker's compensation claim for the applicant's spouse; a statement by [REDACTED], dated August 13, 2009, pertaining to the applicant's spouse's mother; and educational records pertaining to the applicant's spouse. The entire record was reviewed and all relevant evidence considered in rendering this decision.

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 in 2002 without inspection and remained until she departed in November 2005. As the applicant resided unlawfully in the United States for over a year and is now seeking admission within ten years of her last departure from the United States, she is inadmissible under section 212(a)(9)(B)(i)(II) of the Act. The applicant does not contest her inadmissibility on appeal.

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 child 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-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 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.

On appeal, counsel asserts that the applicant’s spouse would experience financial and physical hardship upon relocation to Mexico. *Brief in Support of Waiver*, received December 4, 2009. Counsel asserts that the applicant’s spouse was born in the United States, has no family ties in Mexico and was planning to attend college in the United States. He further states that the applicant’s spouse resides with his parents and helps support them, which he would not be able to do if he relocated to Mexico, and that he would lose medical insurance coverage if he relocated to Mexico and be unable to receive the quality of medical care that he receives in the United States.

With regard to the financial impact of relocation abroad, the record does not contain any documentation to support counsel’s assertions. The record contains a statement from the applicant’s spouse and the applicant’s spouse’s parents that the applicant’s spouse and son are residing with his

parents, and that it is the applicant's spouse's parents who are supporting him financially. Although the applicant's spouse states that he has been unable to work or find employment since he suffered an injury at work in 2007, the AAO notes that there is no evidence that he has attempted to find employment, and instead has enrolled himself in college classes in order to earn a business degree. *Statement of the Applicant's Spouse*, dated November 25, 2009. There is no documentation indicating that the applicant's spouse provides any physical, financial or other support for his parents as asserted by counsel, but instead the record indicates that the applicant's spouse's parents are supporting him financially and physically.

The record does contain medical records from Redwood City MRI indicating that the applicant's spouse suffers from a herniated disc and must take pain medication in order to control the pain related to his condition. A note from [REDACTED] states that the applicant's spouse has a permanent work restriction of not lifting anything over 30 pounds and no prolonged bending. However, as noted above, there is insufficient evidence to indicate that the applicant's spouse would be unable to receive medical care in Mexico for this condition. Nor is the evidence submitted sufficiently probative to indicate that severing his ties with his current doctors would present an uncommon physical hardship for him.

The record does contain documentation that the applicant's spouse received a settlement from a former employer to provide him with medical coverage for a work-related injury he suffered in 2007. However, these documents do not state that he is required to reside in the United States to receive medical coverage. The record does not contain any documentation indicating that the applicant's spouse would be unable to receive adequate medical care if he relocated to Mexico.

The record contains educational records indicating the applicant's spouse attends college in the United States. While the AAO accepts this evidence as sufficient to demonstrate that the applicant's spouse is attending college, it does not find this evidence sufficient to demonstrate that he would be unable to attend college in Mexico and obtain a comparable degree.

The applicant's spouse has submitted a statement explaining that he suffers pain from a work-related injury, he must take medication to control his condition and that he depends greatly on the insurance coverage he received in the settlement from his former employer. *Spouse's Declaration*, dated November 25, 2009. He states that he can no longer work, he is completely financially dependent on his parents and that he and his son must live with them because they cannot afford to live on their own.

The applicant's spouse also states that his mother suffers medical problems in one of her knees and will require surgery, and that when the time comes he wishes to be there to care for her. He further states that he does not want to relocate to Michoacan, Mexico, because of the violent conditions there, and that he would be unable to find employment there without any relevant business or family contacts.

The AAO takes note of the violent conditions in some areas of Mexico, but in this case the record does not contain any documentation to support the applicant's spouse's assertion that these conditions are impacting the area where the applicant resides. In addition, as noted above, there is no evidence that the applicant's spouse would be unable to find employment based on his prior work experience, or that the general economic conditions in Mexico would create unusual economic difficulty for him. *Kuciemba v. INS*, 92 F.3d 496 (7th Cir. 1996).

When the impacts upon relocation are considered in the aggregate, the AAO does not find them to rise above the common consequences of inadmissibility to a degree constituting extreme hardship.

In relation to hardship upon separation, counsel for the applicant asserts that the applicant's inadmissibility has resulted in clinical depression, insomnia and "quotidian" anxiety. *Brief in Support of Waiver*, received December 4, 2009.

The applicant's spouse asserts that he and his son are suffering emotional and physical hardship due to separation from the applicant. *Spouse's Declaration*, dated November 25, 2009. He states that he has been unable to work because of his injury, and he has been unable to find employment. He further states that he has been unable to afford to travel to Mexico to see the applicant and that he has been forced to drop some of his college classes in order to care for their son.

Letters from family members and friends assert that the applicant's spouse is suffering emotional impacts due to separation from the applicant.

The record contains a psychological evaluation of the applicant's spouse by [REDACTED], dated November 21, 2009. Ms. [REDACTED] details the emotional impacts on the applicant's spouse as relayed to her by him, and concludes that he is suffering from Major Depression, Single Episode. The evaluation does not indicate what treatment is recommended for the applicant's spouse. The AAO notes that, although Ms. [REDACTED] describes the applicant's spouse as having moderate symptoms of Major Depression and states that he has trouble concentrating, he is attending college courses while residing in his parents' home and that he wishes to earn a degree in business administration. Thus, based on other evidence in the record, the AAO finds that this sole report does not show that he is facing uncommon emotional consequences. Nonetheless, the AAO will give consideration to the emotional impact on the applicant's spouse when aggregating the impacts due to separation.

The applicant's spouse asserts he has been unable to find employment, and that he has to rely on his parents to support himself and his son. The applicant suffered a work-related injury in 2007, and the record includes sufficient documentation to establish that he received a settlement from his prior employer and has to take medication to control his pain. The medical evidence also notes restrictions of lifting more than 30 pounds or bending over for long periods of time. The evidence does not, however, establish that the applicant's spouse is unable to work, or that he requires any physical assistance to function on a daily basis. Nor does the record contain evidence of the applicant's spouse's financial obligations. The record reflects that he is able to reside with his

parents, and that they are paying for him to attend college, mitigating the financial impact of separation from his spouse. The record does not contain any evidence which indicates that the applicant previously provided any financial support for their family while residing in the United States. Based on these observations, the AAO does not find the record to establish that the applicant's spouse will experience uncommon financial hardship due to separation from the applicant.

With regard to the emotional impact on the applicant's son, the record contains numerous statements attesting to the fact that the child misses his mother. However, children are not qualifying relatives in this proceeding, and as such, any hardships to them are only relevant to the extent that they impact the qualifying relative. In this case, there is no evidence that the emotional impact on the applicant's son rises above that which is commonly experienced, or to such a degree that it results in substantial increased difficulty for the applicant's spouse.

When the hardship factors for the applicant's spouse are considered in the aggregate, the AAO does not find the record to establish that they rise significantly above the common impacts of separation to a degree constituting extreme hardship.

The AAO acknowledges that the applicant's spouse will experience emotional hardship if he 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. As the applicant has failed to establish that a qualifying relative would experience extreme hardship due to her inadmissibility, no purpose would be served in determining whether she warrants a waiver as a matter of discretion.

Section 291 of the Act, 8 U.S.C. § 1361, provides that the burden of proof is upon the applicant to establish that he is eligible for the benefit sought. *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 motion is dismissed.