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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
and Immigration
Services**



H6



DATE: **JUL 27 2012**

OFFICE: MEXICO CITY, MEXICO

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 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 with the field office or service center that originally decided your case by filing a 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 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 under 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 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 child.

The Field Office Director concluded that the applicant failed to establish that extreme hardship would be imposed on a qualifying relative and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) accordingly. *See Decision of the Field Office Director*, dated August 13, 2010.

On appeal counsel asserts that the applicant's spouse will suffer extreme, unusual and exceptional hardship if the waiver is not granted. *See Form I-290B, Notice of Appeal or Motion*, received September 14, 2010.

The record contains, but is not limited to: Form I-290B and counsel's brief; various immigration applications and petitions; two hardship letters; a psychological evaluation, a physician's letters, and a health insurance letter; supporting letters from friends; an employment verification letter; copies of bills; and family photos. The entire record was reviewed and considered in rendering this decision on the appeal.

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- ...

(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 on or about February 5, 2006, when she was 17-years-old, and remained until October 2009 when she departed voluntarily to Mexico. The applicant accrued unlawful presence in the United States from her 18th birthday on March 5, 2007 until her date of departure, a period in excess of one year. As the applicant is seeking admission within 10 years of her departure, she was found to be inadmissible pursuant to section 212(a)(9)(B)(i)(II) of the Act, 8 U.S.C. § 1182(a)(9)(B)(i)(II).

The record supports this finding, the applicant does not contest inadmissibility, and the AAO concurs that the applicant is inadmissible under section 212(a)(9)(B)(i)(II) of the Act.

A waiver of inadmissibility under section 212(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 her child can be considered only insofar as it results in hardship to a qualifying relative. In the present case, the applicant's spouse is the only qualifying relative. 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.

The record reflects that the applicant's spouse is a 27-year-old native of Mexico and citizen of the United States who has been married to the applicant since November 2007. He explains that separation from his wife and 3-year-old son has caused heartache as they are a very close family, did everything together, and now can only visit about every four months which has caused financial suffering because he does not get paid when he does not work. He adds that his employer has warned he will lose his job if he continues taking time off work to travel to Mexico, which a corroborating letter in the record confirms. Another letter shows that health insurance premiums are deducted from the applicant's spouse's paychecks and when he travels for extended periods he must make alternate arrangements to pay the premiums. The applicant's spouse maintains that he is the family's sole breadwinner, he now supports two households, and the applicant used to manage all the family's finances because he himself cannot read or write. It is unclear from this statement whether the applicant's spouse is asserting that he cannot read or write English or that he is illiterate. Counsel does not address the subject, the record contains no corroborating evidence of illiteracy, and no explanation is offered concerning the origin of the Spanish-language letters purportedly written and signed by the applicant's spouse and translated into English. While the AAO recognizes that the applicant's spouse has likely incurred additional expenses as a result of the applicant's voluntary departure to Mexico, the evidence in the record does not establish separation-related economic difficulties beyond those ordinarily associated with a spouse's inadmissibility or removal.

The applicant's spouse states that he dreams about his wife and son every night, is not the same without them, and cannot work as he did before. He is missing so much of his child's growth and development and describes as painful hearing his son say "daddy come for us."

writes that the applicant's spouse is developing serious psychiatric symptoms including elements of major depression complicated by stress and anxiety. He asserts a presence of depressive symptoms including concentration difficulties at work, difficulties sleeping, and loss of appetite along with 40 pounds of weight. diagnoses the applicant's spouse with Major

Depression, Single Episode, Complicated by Anxiety and Stress. The applicant's spouse is not referred for treatment by [REDACTED] who instead suggests "that consideration be given to referring" him "to his primary care physician in order to explore the possibility of placing him on an antidepressant." [REDACTED] indicates that the applicant's spouse could also benefit from individual psychotherapy. The record contains no evidence indicating that the applicant's spouse has sought therapy, medication or other treatment for his symptoms of depression and anxiety. The applicant's spouse explains that he is also very fearful for his wife's and son's safety in Mexico. The record contains no documentary evidence addressing country conditions in Mexico. While the AAO recognizes that the applicant's spouse has suffered emotional challenges related to separation from the applicant during her temporary period of inadmissibility, the evidence in the record is insufficient to demonstrate that these challenges are beyond those ordinarily associated with the inadmissibility of one's spouse.

The AAO acknowledges that separation from the applicant has caused and may continue to cause various difficulties for the applicant's spouse. However, it finds the evidence in the record insufficient to demonstrate that the challenges encountered by the qualifying relative, when considered cumulatively, meet the extreme hardship standard.

Addressing relocation, the applicant's spouse explains that he has lived in the United States since he was a child, has worked very hard and just wants to live here together as a family again. He contends that a bright future would be practically impossible on a Mexican salary and that better job opportunities at much higher salaries are offered in the United States. No corroborating documentary evidence has been submitted. The applicant's spouse states that he is deeply worried that his son will soon start school in Mexico when he wishes instead that he would learn the language, history, culture and traditions of the United States. He adds that in the United States he does not have to be concerned about prevalent violence as in Mexico. As noted, the record contains no documentary evidence addressing country conditions in Mexico.

Counsel asserts that the applicant and her son are "suffering from significant health problems" in Mexico, and are "under the active care and treatment of their respective medical providers." [REDACTED] writes of the applicant that she "continues suffering from high blood pressure" and is taking Captopril, and of the applicant's son that he "has continued taking his treatment from vitamins and calcium, to maintain good weight." The evidence in the record is insufficient to demonstrate the severity of either condition and does not address how they impact the applicant's spouse's daily life.

The AAO has considered cumulatively all assertions of relocation-related hardship to the applicant's spouse including his adjustment to a country in which he has not lived for many years; his lengthy residence in the United States and family/community ties herein; his employment and employment-related health insurance in the United States; and his economic, employment, education, physical/medical, and safety concerns regarding Mexico. Considered in the aggregate, the AAO finds the evidence insufficient to demonstrate that the applicant's U.S. citizen spouse would suffer extreme hardship were he to relocate to Mexico to be with the applicant.

The applicant has, therefore, failed to demonstrate that the challenges her spouse faces are unusual or beyond the common results of removal or inadmissibility to the level of extreme hardship. Accordingly, the AAO finds that the applicant has failed to demonstrate extreme hardship to a qualifying relative. 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 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. 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.