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



U.S. Citizenship  
and Immigration  
Services



H6

DATE: JUL 27 2012 Office: MONTERREY, MEXICO

FILE: [REDACTED]

IN RE: [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:

SELF REPRESENTED

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,

A handwritten signature in black ink that reads "Perry Rhew".

Perry Rhew  
Chief, Administrative Appeals Office

**DISCUSSION:** The waiver application was denied by the Field Office Director, Monterrey, Mexico and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a 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 admission within 10 years of her last departure. The applicant is the spouse of a U.S. citizen. She seeks a waiver under 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 and children.

The director concluded that the applicant had failed to establish that the bar to her admission would impose extreme hardship on a qualifying relative and denied the application accordingly. *See Decision of Field Office Director*, dated July 12, 2010.

On appeal, the applicant's spouse states that he disagrees with the director's determination that the applicant had not established extreme hardship to him. He submits additional hardship evidence. *See Statement of the Applicant's Spouse*, attached to Form I-290B, Notice of Appeal or Motion, dated August 2, 2010.

The evidence of record includes, but is not limited to: statements from the applicant's spouse and family members, police reports, family photographs, a mortgage statement, medical documents for the applicant's daughter, copies of relationship and identification documents, and documents in Spanish.

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.

As such, the Spanish-language documents without English translations cannot be considered in analyzing this case. However, the rest of the record was reviewed and all relevant evidence was considered in reaching a decision on the appeal.

Section 212(a)(9) states 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.

(ii) Construction of unlawful presence.- For purposes of this paragraph, an alien is deemed to be unlawfully present in the United States if the alien is present in the United States after the expiration of the period of stay authorized by the Attorney General or is present in the United States without being admitted or paroled.

The record reflects that the applicant entered the United States in November 2003 without inspection and remained in the United States until July 2009, when she voluntarily departed the United States. Based on the applicant's history, the AAO finds that the applicant accrued over one year of unlawful presence. As the applicant accrued unlawful presence of more than one year and is seeking admission within 10 years of her 2009 departure, she is inadmissible to the United States pursuant to section 212(a)(9)(B)(i)(II) of the Act. The applicant does not contest her inadmissibility.

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 other family members can be considered only insofar as it results in hardship to a 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-Moralez*, 21 I&N Dec. 296, 301 (BIA 1996).

In the present case, the record reflects that the applicant is married to a U.S. citizen. The applicant's spouse meets the definition of a qualifying relative. The applicant's children are not

qualifying relatives for purposes of the waiver sought and, therefore, any hardship they might experience as a result of the applicant's inadmissibility will be considered only to the extent it results in hardship to 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, 631-32 (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, "[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., In re 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 AAO now turns to the question of whether the applicant in the present case has established that a qualifying relative would experience extreme hardship as a result of her inadmissibility.

On appeal, the applicant's spouse states that being separated from the applicant has been very difficult not only for him but also for their five children. He states that he and his children are "depressed," "not eating... [and] sleeping well." The two youngest children live in Mexico with the applicant. The other three children from his previous marriage have had to live with his brother, because of the applicant's spouse's work schedule. He owns three fishing boats and goes out to sea two weeks at a time, and his schedule while assisting with the Gulf of Mexico oil-spill cleanup is 24 hours a day for several months. He states that the applicant and their two children in Mexico are "suffering because of the conditions of the environment" in which they live. They contract "stomach and intestinal viruses" because of the "unpurified water from a well." According to the applicant's spouse, the nearest medical facility is two and a half hours away. There are no running water, electricity, or window screens in their house. He would "wish no human would have to suffer" as the applicant and their children suffer in Mexico. The record contains photographs depicting the substandard living conditions of the applicant and their children. He is "saddened" that his daughter, who lives in Mexico with the applicant, should be in pre-kindergarten and will not be able to attend school in the United States. The applicant's spouse also states that his daughters who live in the United States need the applicant. He states that his older daughter would not have been subjected to attempted sexual abuse by a family friend if the applicant had been with the children. The record contains a police report of the incident, which occurred on April 6, 2008, while the applicant still was in the United States.

The applicant's older stepdaughter states that she has postponed going to college, because she must work and take care of the house and her father. Therefore, she is "very stressed" and she would not "be able to handle college." She states that she and her sister stay with her aunt when her father works, because her mother is "unstable." However, staying with her aunt is "very hard" because her aunt has three children, and her house is not big, and the applicant's stepdaughter is "tired of living out of a bag." She states that after the attempted sexual assault incident occurred, the applicant stayed with her and comforted her. She is also concerned about her siblings in

Mexico. She states that her brother has asthma and was hospitalized for two weeks. The town has dirt roads which contribute to his breathing problems. Their house has no running clean water, and they bathe in a river.

A letter from the applicant's sister-in-law indicates that she cares for the applicant's younger stepdaughter, who lives with her "most of the time." She has three children of her own, however, and caring for the child "has become increasingly difficult." She also states that the child was referred to a school counselor because she was "showing signs of depression and her academic progress was declining." She states that the applicant would be able to provide a stable environment for the child.

Having reviewed the preceding evidence, the AAO finds that the applicant's spouse would experience extreme hardship if the waiver application is denied and he relocates to Mexico. In reaching this conclusion, we note that the applicant's spouse has three children in the United States from his previous marriage, and one of them is a minor. We recognize that relocating to Mexico would disrupt the applicant's spouse's employment and would interfere with his financial responsibility to his minor child from his previous marriage. The applicant's spouse has close family ties in the United States and receives support and assistance in caring for his children.

The record, however, does not establish that the applicant's spouse would experience extreme hardship if he remains in the United States. The AAO acknowledges that the applicant and his spouse have a loving relationship, and nothing in this decision should be interpreted as suggesting otherwise. However, the record does not demonstrate that the applicant's spouse is experiencing extreme hardship resulting from their separation. The applicant submitted no financial evidence to show that her spouse is having difficulty maintaining two households. Without supporting evidence, the AAO cannot conclude that the applicant's spouse is experiencing financial hardship on separation. The applicant's spouse refers to the applicant's and their children's hardship in Mexico, however, the record does not demonstrate the hardship experienced by the applicant's spouse resulting from his children's hardship is extreme. The applicant failed to submit documentary evidence to support statements that her spouse is depressed or has physical symptoms associated with it. The record also lacks supporting documentary evidence showing that the applicant's spouse's younger daughter in the United States is experiencing depression and its effect on the applicant's spouse. The applicant's spouse believes the attempted sexual assault that his daughter experienced could have been prevented if the applicant was with her. The record, however, indicates that the applicant was in the United States at the time of the incident. The assertions of the applicant's spouse are relevant evidence and have been considered. However, absent supporting documentation, these assertions are insufficient proof of hardship. *See Matter of Kwan*, 14 I&N Dec. 175 (BIA 1972) ("Information in an affidavit should not be disregarded simply because it appears to be hearsay; in administrative proceedings, that fact merely affects the weight to be afforded it."). Going on record without supporting documentary evidence generally is not sufficient for purposes of meeting the burden of proof in these proceedings. *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)). Considered in the aggregate, the hardship experienced by the applicant's spouse resulting from their separation does not rise to the level of extreme.

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 relocate and thereby suffer extreme hardship can easily be made for purposes of the waiver even where there is no actual intention to relocate. *Cf. Matter of Ige*, 20 I&N Dec. 880, 886 (BIA 1994). Furthermore, to relocate and suffer extreme hardship, where remaining the United States and being separated from the applicant would not result in extreme hardship, is a matter of choice and not the result of inadmissibility. *Id.*, also *cf. Matter of Pilch*, 21 I&N Dec. 627, 632-33 (BIA 1996). As the applicant has not demonstrated extreme hardship from separation, we cannot find that refusal of admission would result in extreme hardship to the qualifying relative in this case.

The applicant has not established statutory eligibility for a waiver of her inadmissibility under section 212(a)(9)(B)(v) of the Act. As the applicant has not established extreme hardship to her qualifying family member if he lived in the United States, 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. *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.