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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**



H6

Date: **JUN 13 2012** Office: MEXICO CITY FILE:

IN RE: Applicant:

APPLICATION: Application for Waiver of Grounds of Inadmissibility pursuant to section 212(a)(9)(B)(v) of the Immigration and Nationality Act (the 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. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

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 Act for having been unlawfully present in the United States for more than one year. The applicant is the daughter of lawful permanent resident parents and seeks a waiver of inadmissibility pursuant to section 212(a)(9)(B)(v) of the Act in order to reside with her parents in the United States.

The field office director found that the applicant failed to establish extreme hardship to a qualifying relative and denied the application accordingly. *Decision of the Field Office Director*, dated March 31, 2010.

On appeal, counsel submits additional evidence of hardship, including a letter from the applicant's father, a psychological evaluation, and copies of medical records.

The record contains, *inter alia*: a copy of the birth certificate of the applicant's U.S. citizen son; an affidavit and a letter from the applicant's father, [REDACTED]; a psychological evaluation of [REDACTED]; copies of [REDACTED] prescriptions; a letter from the applicant's son's physician; articles addressing violence and crime in Ciudad Juarez and Michoacan; and an approved Petition for Alien Relative (Form I-130). The entire record was reviewed and considered in rendering this decision on the appeal.

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.

....

(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

Attorney General [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.

In this case, the record shows, and the applicant does not contest, that she entered the United States in March 2002 without inspection and remained until her departure in January 2008. The applicant accrued unlawful presence of over five years. Therefore, she 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 of more than one year and seeking admission to the United States within ten years of her last departure.

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.

In this case, the applicant's father, [REDACTED] states that since his daughter's departure, his home has been in shambles. He contends he and his wife are depressed and that they are worried about their daughter's and grandson's safety in Michoacan, where she is staying with friends of the family. He states his daughter is a single parent and that she is a hard working woman. According to [REDACTED] his grandson has been getting sick since the first moment they arrived in Mexico. He also states that he and his wife are now under the care of a psychologist and that they are taking anti-depressants. In addition, [REDACTED] states he is now unemployed because his boss told him he has been distracted and taking too much time off from work. He states his expenses have doubled now that he is also responsible for his daughter's expenses in Mexico. Furthermore, [REDACTED] states he cannot join his daughter in Mexico because the living conditions are very poor and his wife and their other children live in the United States. He also contends he would be unable to find a job in Mexico due to his age.

After a careful review of the record, the AAO finds that if [REDACTED] moved back to Mexico, where he was born, to avoid the hardship of separation from his daughter, he would experience extreme hardship. The record contains a copy of [REDACTED] permanent resident card, showing that he has been a lawful permanent resident of the United States since December 1, 1990. Copies of the permanent resident cards of the applicant's mother, brother, and sister are also in the record, corroborating [REDACTED] claim that his entire family has adjusted their status except for his daughter, the applicant. The record also contains a letter from a psychologist who conducted a Psychological Evaluation of [REDACTED]. As [REDACTED] contends, the record shows he and his wife have sought the help of a psychologist and the record contains copies of prescriptions showing they were prescribed a medication that is used to treat seizures and panic disorder. Relocating to Mexico would disrupt the continuity of his health care. The AAO also acknowledges [REDACTED] fears about returning to Mexico due to safety concerns. The AAO takes administrative notice of the most recent Travel Warning from the U.S. Department of State urging U.S. citizens to exercise extreme caution in Michoacan, where the applicant

and her parents were born, due to gun battles and incidents of violence. *U.S. Department of State, Travel Warning, Mexico*, dated February 8, 2012. Considering these unique circumstances cumulatively, the AAO finds that the hardship Mr. Fierros would experience if he returned to Mexico is extreme, going beyond those hardships ordinarily associated with inadmissibility.

Nonetheless, both [REDACTED] have the option of staying in the United States and the record does not show that either of them would suffer extreme hardship if they remained in the United States without their daughter. Although the AAO is sympathetic to the family's circumstances, the record does not show that the applicant's situation is unique or atypical compared to other individuals in similar circumstances. *See Perez v. INS*, 96 F.3d 390 (9<sup>th</sup> Cir. 1996) (holding that the common results of deportation are insufficient to prove extreme hardship and defining extreme hardship as hardship that was unusual or beyond that which would normally be expected). Although the record contains a letter from a psychologist diagnosing both [REDACTED] with Generalized Anxiety Disorder and Depression, the letter describes symptoms typical of individuals separated from family as a result of deportation or inadmissibility, such as difficulty sleeping and eating, difficulty concentrating, irritability, anxiety, and depression. The letter does not show that either [REDACTED] emotional hardship is beyond what would normally be expected under the circumstances. Regarding [REDACTED] claim that the applicant's son has been ill in Mexico, the record contains documentation from health care professionals in Mexico that state that the applicant's two year old son has been ill on several occasions due to pharyngitis, tonsillitis, gastro-intestinal diseases, dehydration, and "nasopharynx turisillitis." Nonetheless, the applicant's child is not a qualifying relative under the Act. The record does not show that any hardship the applicant's son has experienced causes extreme hardship to either [REDACTED] the only qualifying relatives in this case. To the extent [REDACTED] makes a financial hardship claim, there is no evidence in the record addressing his or his wife's income or wages, or addressing their regular, monthly expenses such as rent or mortgage. Even considering all of these factors cumulatively, there is insufficient evidence showing that the hardship [REDACTED] would experience amounts to extreme hardship.

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 in 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 relatives in this case.

A review of the documentation in the record fails to establish the existence of extreme hardship to the applicant's mother or father caused by the applicant's inadmissibility to the United States. 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)(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.