



**U.S. Citizenship
and Immigration
Services**

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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 son of a U.S. citizen father and a lawful permanent resident mother, and seeks a waiver of inadmissibility pursuant to section 212(a)(9)(B)(v) of the Act in order to reside with his 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 contends the applicant established extreme hardship, particularly considering his mother's severe depression and anxiety, and his father's health issues due to stress.

The record contains, *inter alia*: a letter from the applicant's parents, [REDACTED] and [REDACTED] a letter from [REDACTED] physician; copies of medical records; 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 counsel concedes, that the applicant entered the United States in August 2006 without inspection and remained until December 2008. The applicant accrued unlawful presence of over one year. He now seeks admission within ten years of his 2008 departure. Accordingly, he 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 one year or more and seeking admission to the United States within ten years of his 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 parents state that the applicant is their youngest son and they are very worried about him because he has lived in the United States since he was a minor and does not know anything about Mexico to be able to live there. They state they have nobody in Mexico to care for him. According to counsel, the applicant's parents are unable to return to Mexico due to their medical issues. Counsel also contends the applicant's parents have experienced financial hardship and have a deficit of approximately \$1,000 per month due to their son's departure.

After a careful review of the record, there is insufficient evidence to show that either of the applicant's parents has suffered or will suffer extreme hardship if their son's waiver application were denied. If the applicant's parents decide to stay in the United States, their situation is typical of individuals separated as a result of inadmissibility or exclusion and does not rise to the level of extreme hardship based on the record. Regarding [REDACTED] medical problems, the record contains a letter from her physician stating that she suffers from severe anxiety disorder and depression which could be dangerous for her. The physician states that she is dependent on another person for the daily and basic necessities to survive. According to the physician, she needs her youngest son to live with her because she is really sick. Although the AAO is sympathetic to the family's circumstances, and recognizes that the input of any medical professional is respected and valuable, the letter does not provide sufficient details about [REDACTED] mental health. For instance, the letter does not describe how she is limited in her daily activities and the record contains a certificate clearing her to return to school or work. There is no evidence in the record addressing who has been caring for [REDACTED] since the applicant's departure from the United States and there is no description addressing how they have been assisting in her survival. There is also no evidence addressing if the applicant has ever cared for [REDACTED] aside from a statement by counsel that she depended on him for transportation. To the extent the record contains copies of her medical records, the documents show only that she takes two prescription medications (one for anxiety) and that she was referred for an ultrasound and colonoscopy screening. There is no suggestion in the medical records that she requires her son's assistance in any way. Similarly, copies

of [REDACTED] medical records show only that he was referred to a gastroenterologist, that he takes one prescription medication, and that a chest X-ray showed no evidence of cardiopulmonary disease. There is no evidence [REDACTED] requires his son's assistance due to any medical issue. Regarding financial hardship, there are no financial documents in the record to support this claim. There is no documentation addressing wages and no documentation addressing the couple's regular, monthly expenses such as rent or mortgage. In sum, there is insufficient documentation in the record to 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 (9th 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). Even considering all of these factors cumulatively, there is insufficient evidence showing that the hardship either of the applicant's parents has experienced or will experience amounts to extreme hardship.

Furthermore, the record does not show that either of the applicant's parents would suffer extreme hardship if they returned to Mexico, where they were born, to be with their son. The AAO notes that according to counsel, the applicant has three siblings, all of whom are married and living in Mexico. Although counsel contends the applicant's parents cannot return to Mexico due to their health problems, the record does not indicate that either of the applicant's parents is undergoing regular monitoring or treatment due to any health condition. There is also no evidence in the record indicating that their health care needs cannot be adequately monitored or treated in Mexico. In sum, the record does not show that the applicant's parents' readjustment to living in Mexico would be any more difficult than would normally be expected. Even considering all of the evidence cumulatively, the record does not show that the applicant's parents' hardship would be extreme, or that their situation is unique or atypical compared to others in similar circumstances. *Perez v. INS, supra*.

A review of the documentation in the record fails to establish the existence of extreme hardship to either of the applicant's parents 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 he merits a waiver as a matter of discretion.

In proceedings for application for waiver of grounds of inadmissibility, 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.