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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 14 2012** Office: MEXICO CITY (CIUDAD JUAREZ) 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 law was inappropriately applied by us in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$630. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion must 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 record establishes that the applicant, a native and citizen of Mexico, entered the United States without authorization in August 2001 and lived here until February 2009, when he voluntarily departed. The applicant accrued unlawful presence beginning on his eighteenth birthday, July 4, 2004. As a result, he 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. The applicant does not contest this finding of inadmissibility. Rather, he is seeking a waiver of inadmissibility in order to reside in the United States with his U.S. citizen spouse.

The field office director concluded the applicant had failed to establish that extreme hardship would be imposed on a qualifying relative and, accordingly, denied the Application for Waiver of Ground of Inadmissibility (Form I-601). *Decision of the District Director*, April 30, 2010.

On appeal, the applicant asserts that USCIS failed to attribute proper weight to the evidence submitted and also provides new documentary evidence. In support of the appeal, counsel for the applicant submits a brief and documents, including pay stubs, W-2 forms, tax returns, and medical records. The record also contains a statement from the applicant's wife, a support letter, and medical test results. The entire record was reviewed and 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.

....

(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...

A waiver of inadmissibility under section 212(a)(9)(B)(v) 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 U.S. citizen 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 applicant has established extreme hardship to a qualifying relative. 22 I&N Dec. 560, 565 (BIA 1999). 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; the Board added that not all of these factors need be analyzed in any given case and emphasized that the list is 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, while 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, or cultural readjustment 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, although 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)); conversely, *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 case-by-case whether denial of admission would result in extreme hardship to a qualifying relative.

The applicant's wife contends she will suffer physical, emotional, and financial hardship if the applicant is unable to reside in the United States. She claims to have a heart murmur that can cause severe chest pain, which only her husband knows how to treat. Although the record contains a 2001 document mentioning a "trace tricuspid regurgitation," the applicant has provided no evidence explaining the seriousness, prognosis, or treatment of this condition, nor any medical update during the past decade. The emotional hardship claim focuses on the qualifying relative's assertion that she will find it difficult to be a single parent, to which counsel adds that she will be raising a sick child by herself. As evidence that her son has what counsel characterizes as severe birth defects, counsel provides a discharge summary reporting several tests conducted from December 16 – 28, 2008 immediately following his birth. The summary notes that the baby underwent a successful surgical procedure when six days old to correct a congenital defect involving the heart and his parents were allowed to take him home within a week of surgery. As with the qualifying relative's condition, the documents submitted were prepared for review by medical professionals and do not contain a clear explanation of the current medical condition of the applicant's now four year old son. Absent an explanation in plain language from the treating physician of the exact nature and severity of any condition and a description of any treatment or family assistance needed, the AAO is not in the position to reach conclusions concerning the severity of a medical condition or the treatment needed. Therefore, the evidence on record is insufficient to establish that either the applicant's wife or son suffers from the conditions claimed.

Regarding the financial hardship caused by the separation, the applicant's wife noted in her 2009 statement being dependent on her parents, living in their home, and receiving financial help from them; the record reflects that this living situation dates to at least January 23, 2008, when the qualifying relative petitioned her husband. As the applicant and his family had been living with his in-laws for at least one year before his departure, the evidence does not show the his wife and son were forced to move in with them due to the applicant's absence. The applicant's wife contends that her monthly expenses, including rent, exceed \$2,000, but submits no receipts, bills or other documentation of any payments made to substantiate this claim. Tax filings reflect that, while the applicant was the primary wage earner until departing, his wife more than doubled her income in the year he left. There is no indication that the applicant is unable to provide economic support from Mexico or that his wife receives support from her parents. The applicant's wife claims that her

husband's absence has delayed her career plans by preventing her from attending college, but the record fails to show that she had taken steps toward this goal in the years since her 2005 high school graduation. Therefore, the evidence falls short of establishing particularly harsh consequences beyond those commonly or typically associated with separation of husband and wife.

For all these reasons, the cumulative effect of the physical, emotional, and financial hardships the applicant's wife is experiencing due to her husband's inadmissibility does not rise to the level of extreme. The AAO concludes based on the evidence provided that, were his wife to remain in the United States without the applicant due to his inadmissibility, she would not suffer extreme hardship beyond those problems normally associated with family separation.

The qualifying relative contends that she would experience hardship if she relocated abroad to reside with the applicant. Regarding ties to the United States, the record shows the applicant's wife was born here, lives with her parents, and claims that her son and entire extended family is in the United States. Documentation shows her to be employed and working over 40 hours per week. However, there is scant evidence regarding her claimed U.S. family ties, support network, or educational plans. Similarly lacking is evidence that she and her son suffer serious medical conditions or that suitable medical care is unavailable where they would relocate. The applicant's wife also expresses concern about the security situation in Mexico and the risk to her son -- she notes the problem of violent crimes such as killings and kidnappings -- that is confirmed by U.S. government reporting. While the record is silent regarding relocation options, the most recent official travel warning specifically advises U.S. citizens to

defer non-essential travel to the areas of the state [of Aguascalientes] that border the state of Zacatecas. The security situation along the Zacatecas border continues to be unstable and gun battles between criminal groups and authorities occur. Concerns include roadblocks placed by individuals posing as police or military personnel and recent gun battles between rival TCOs [Transnational Criminal Organizations] involving automatic weapons.

*Travel Warning—Mexico*, U.S. Department of State, February 8, 2012.

There is evidence that the applicant's birthplace, the Aguascalientes town of [REDACTED] is located in a zone covered by the warning.

Regarding the impact on a qualifying relative of relocating abroad, despite lacking documentary evidence on many factors, the record reflects that the applicant's wife has greater ties to the United States than to Mexico, including family, employment, pre-existing relationship to medical providers, and access to quality health care. Conversely, many parts of Mexico have been deemed dangerous to U.S. citizens and rural medical care has been found not up to U.S. standards. Based on a totality of the circumstances, the AAO concludes the applicant has established that his wife would suffer extreme hardship were she to relocate abroad to reside with the applicant.

The documentation in the record, when considered in its totality, reflects that although the applicant has established that his wife would suffer extreme hardship were she to relocate abroad to reside with the applicant, it fails to establish that she would suffer extreme hardship were she to remain in the United States while the applicant resides abroad. The record demonstrates that the applicant's spouse faces no greater hardship than the unfortunate, but expected, disruptions, inconveniences, and difficulties arising whenever a spouse is removed from the United States or refused admission. Having found the applicant statutorily ineligible for relief, no purpose would be served in discussing whether the applicant merits a waiver as a matter of discretion.

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 relative in this case.

In proceedings for application for waiver of grounds of inadmissibility, the burden of establishing that the application merits approval remains entirely with the applicant. Section 291 of the Act, 8 U.S.C. § 1361. The applicant has not met that burden. Accordingly, this appeal will be dismissed.

**ORDER:** The appeal is dismissed. The waiver application is denied.