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



H6

DATE: **JUN 18 2012**

Office: MONTERREY, MX

FILE: [REDACTED]

IN RE: [REDACTED]

APPLICATION: Application for Waiver of Grounds of Inadmissibility under sections 212(a)(9)(B)(v) and 212(i) of the Immigration and Nationality Act, 8 U.S.C. §§1182(a)(9)(B)(v) and 1182(i).

ON BEHALF OF APPLICANT:  
[REDACTED]

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 Form I-601, Application for Waiver of Grounds of Inadmissibility 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 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 being unlawfully present in the U.S. for more than one year and seeking readmission within ten years of her departure, and section 212(a)(6)(C)(i) of the Act, 8 U.S.C. § 1182(a)(6)(C)(i), for procuring admission into the country by willfully misrepresenting a material fact. The applicant is married to a U.S. citizen, and she is the beneficiary of an approved Form I-130, Petition for Alien Relative (Form I-130). She seeks a waiver of inadmissibility pursuant to sections 212(a)(9)(B)(v) and 212(i) of the Act, 8 U.S.C. §§1182(a)(9)(B)(v) and 1182(i), in order to live in the U.S. with her spouse and family.

In a decision dated June 10, 2010, the director concluded that the applicant failed to establish her U.S. citizen spouse would experience extreme hardship if she were denied admission into the United States. The director also determined the applicant did not merit a favorable exercise of discretion. The waiver application was denied accordingly.

Through counsel, the applicant on appeal asserts that discretion should be exercised in her case, and that her husband will experience extreme emotional and financial hardship if she is denied admission into the United States. In support of these assertions, counsel submits letters written by the applicant's husband, friends and family members; financial documents; evidence relating to their sons' academic performance and behavior; and articles about the impact of immigration enforcement-related family separation on children. The record also contains letters written in Spanish.

8 C.F.R. § 103.2(b)(3) provides that:

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.

Because the Spanish-language letters are not accompanied by certified English translations, they cannot be considered in the applicant's case. The remaining record was reviewed and considered in rendering a decision on the appeal

Section 212(a)(9)(B) of the Act provides in pertinent part:

- (i) [A]ny 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 [now Secretary of Homeland Security, "Secretary"] or is present in the United States without being admitted or paroled.

The record reflects the applicant entered the United States without inspection or admission in August 1999, and she remained unlawfully in the country until May 2004. The applicant reentered the country by presenting a visa that did not belong to her in June 2004. She remained unlawfully in the United States until she returned to Mexico pursuant to a voluntary-departure order on October 30, 2008.

Inadmissibility under section 212(a)(9)(B)(i)(II) of the Act, which is triggered upon departure, remains in force until the alien has been absent from the United States for ten years. In the present matter, the applicant has remained outside of the country for less than ten years. Because the applicant was unlawfully present in the United States for more than one year, and she is seeking readmission into the country within ten years of her removal, she is inadmissible under section 212(a)(9)(B)(i)(II) of the Act. Counsel does not contest the applicant's inadmissibility under section 212(a)(9)(B)(i)(II) of the Act.

Section 212(a)(9)(B)(v) of the Act provides:

Waiver.-The [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 [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. No court shall have jurisdiction to review a decision or action by the [Secretary] regarding a waiver under this clause.

Section 212(a)(6)(C) of the Act provides, in pertinent part that:

(i) Any alien who, by fraud or willfully misrepresenting a material fact, seeks to procure (or has sought to procure or has procured) a visa, other documentation, or admission into the United States or other benefit provided under this Act is inadmissible.

The applicant entered the United States in June 2004 by presenting a visa that did not belong to her. The applicant is therefore inadmissible pursuant to section 212(a)(6)(C)(i) of the Act, for

procuring admission into the United States by willfully misrepresenting a material fact. Counsel does not contest the applicant's inadmissibility under section 212(a)(6)(C)(i) of the Act.

Section 212(i) of the Act states:

The [Secretary] may, in the discretion of the [Secretary], waive the application of clause (i) of subsection (a)(6)(C) in the case of an alien who is the spouse, 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 [Secretary] that the refusal of admission to the United States of such immigrant alien would result in extreme hardship to the citizen or lawfully resident spouse or parent of such an alien.

Section 212(a)(9)(B)(v) and section 212(i) of the Act provide that a waiver of the bar to admission is dependent first upon a showing that the bar imposes an extreme hardship on a qualifying family member. Once extreme hardship is established, it is but one favorable factor to be considered in the determination of whether the Secretary should exercise discretion. *Matter of Mendez*, 21 I&N Dec. 296 (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*, 22 I&N Dec. 560, 565 (BIA 1999), the Board provided a list of factors it deemed relevant in determining whether an alien has established extreme hardship to a qualifying relative. 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).

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 applicant’s U.S. citizen spouse is her qualifying relative under section 212(a)(9)(B)(v) and section 212(i) of the Act. The record contains references to hardships the applicant’s children would experience if the waiver application were denied. It is noted that Congress did not include hardship to an alien’s child as a factor to be considered in assessing extreme hardship under section 212(a)(9)(B)(v) of the Act. Accordingly, hardship to the children will be considered only to the extent that it causes the applicant’s spouse to experience hardship.

The applicant’s husband states that he lives with his 15 year-old son from a previous relationship and the applicant’s four children; two are adults. He is an independent truck driver and works away from home about six days a week, and he relied on the applicant to care for their children. His son is dependent on him, because his biological mother “has drifted out” of his life; the applicant and her children are good influences on his son; the children’s grades have declined since the applicant’s departure; and he worries that his family members would negatively influence his son if he lived with them. In addition, the applicant’s husband relies on the applicant’s financial assistance to help pay their bills, he now sleeps in his truck when he works to ease financial costs, and he believes his blood pressure is high due in part to the financial strain caused by the applicant’s departure. The applicant’s husband indicates that he and the children do not speak Spanish, he has no specialized skills or education, he has been to Mexico and he knows

it is “desperately poor”, and it is unlikely he would find work in Mexico given his age and the economic crisis there. He also worries his son would not do well in Mexico.

The record contains home mortgage and bill information in the applicant’s name, reflecting a \$969 monthly mortgage, and utility-disconnection notices prompted by missed payments.

Their youngest son writes that his step-father is never home because of his work, he misses his mother and needs her to take care of him, and he may need to repeat the third grade. The record also contains a letter from their 15 year-old son’s biological mother stating the applicant has taken good care of her son since 2005, is a caring person, and helps support the family financially. Letters from friends attest to the applicant’s good character and state that she is a good mother, her family needs her, and she works hard for her family.

Upon review, the AAO finds the evidence in the record, when considered in the aggregate, establishes the applicant’s husband would experience hardship that rises above the common results of removal or inadmissibility if the applicant were denied admission into the United States and he relocated to Mexico to be with her. The applicant’s husband does not speak Spanish and has no ties to Mexico. He also has no specialized skills or education, is over 60, and he worries he would be unable to find work in Mexico. Although Department of State country-conditions reports do not reflect travel or safety advisories in the state of Guanajuato, where the applicant is from, safety advisories for many Mexican states could affect the applicant’s husband if he did find a truck driving job in Mexico. See [http://travel.state.gov/travel/cis\\_pa\\_tw/cis/cis\\_5665.html](http://travel.state.gov/travel/cis_pa_tw/cis/cis_5665.html). In addition, the applicant’s husband worries about the negative effect moving to Mexico would have on their 15 year-old son, who has lived with him since 2005, has never been outside of the United States, does not speak Spanish, and struggles with motivation.

The AAO finds, however, that the evidence in the record, when considered in the aggregate, fails to establish the applicant’s husband would experience hardship that rises beyond the common results of removal or inadmissibility if the applicant were denied admission and he remained in the United States. The home-mortgage and utility-disconnection evidence in the record is in the applicant’s name and fails, on its own, to corroborate assertions that the applicant’s husband is experiencing financial hardship related to the applicant’s absence. The record lacks income evidence for the applicant or her husband, and the record lacks evidence to corroborate assertions that the applicant’s husband financially supports their family. The evidence also fails to demonstrate that the hardship experienced by their children has caused the applicant’s husband to experience hardship that could be considered 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 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(s) in this case. Furthermore, because 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 an application for waiver of grounds of inadmissibility under section 212(a)(9)(B)(v) and section 212(i) 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.