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



U.S. Citizenship
and Immigration
Services

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[REDACTED]

DATE: **MAR 12 2012**

OFFICE: BOISE, IDAHO

[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:

[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 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, Boise, Idaho, 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 pursuant to section 212(a)(9)(B)(i)(II) of the Immigration and Nationality Act (INA or the Act), 8 U.S.C. § 1182(a)(9)(B)(i)(II), for having been unlawfully present in the United States for one year or more and seeking readmission within 10 years of his last departure from the United States. The applicant seeks a waiver of inadmissibility under INA § 212(a)(9)(B)(v), 8 U.S.C. § 1182(a)(9)(B)(v) in order to reside in the United States with his U.S. citizen spouse.

In a decision dated November 2, 2011, the Field Office Director concluded that the required standard of proof of extreme hardship to a qualifying relative was not met and denied the application for a waiver of inadmissibility accordingly.

On appeal, counsel for the applicant does not contest the applicant's inadmissibility, but states that the Field Office Director misapplied the extreme hardship standard and that the applicant's spouse will in fact suffer from extreme hardship.

In support of the waiver application, the record includes, but is not limited to: a brief from the applicant's counsel; biographical information for the applicant, his spouse, and their daughter; documentation of the applicant and his spouse's employment and federal income tax returns; documentation concerning the applicant's criminal history; an affidavit from the applicant's spouse; country conditions information concerning Mexico; a report on single mothers; and documentation concerning the applicant's immigration history.

The AAO conducts appellate review on a *de novo* basis. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). The entire record was reviewed and considered in rendering a decision on the appeal.

The applicant is inadmissible under INA § 212(a)(9)(B)(i)(II) for having been unlawfully present in the United States for one year or more.

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

(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.

(v) Waiver.-The Attorney General 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 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 Attorney General regarding a waiver under this clause.

The applicant reports that he initially entered the United States in January 1992. Between 1992 and June 2003, when the applicant reports that he entered the United States without inspection near Douglas, Arizona¹, the applicant entered and departed the United States on numerous occasions, at times in accordance with an H2B visa, but on more than one occasion, was apprehended and given voluntary return to Mexico. The applicant was subsequently placed into removal proceedings on August 21, 2007, after being convicted of Attempted Possession of a Forgery/Writing Device in the Fourth District Court in Juab County, Utah.² He then departed the United States pursuant to advance parole in connection with his application for adjustment of status and was paroled into the United States on December 19, 2009. The applicant is presently in removal proceedings. The record makes clear that the applicant accrued over one year of unlawful presence between his unlawful entry in 2003 and his departure pursuant to advance parole on December 9, 2009. As such, the applicant is inadmissible to the United States under section 212(a)(9)(B)(i)(II) of the Act for a period of 10 years from his departure from the United States. The applicant does not contest this finding of inadmissibility on appeal.

The applicant is eligible to apply for a waiver of this ground of inadmissibility under INA § 212(a)(9)(B)(v), as the spouse of a U.S. citizen. In order to qualify for this waiver, however, he must first prove that the refusal of his admission to the United States would result in extreme hardship to his qualifying relative. If extreme hardship to a qualifying relative is established, the

¹ The record of the applicant's entries and departures to and from the United States between April 1, 1997, the date the statutory provisions on unlawful presence went into effect, and his unlawful entry in 2003, is not complete and many of the documents submitted by applicant's counsel in this regard are illegible. It is not possible to determine based on the evidence submitted that the applicant accrued over one year of unlawful presence, in the aggregate, before his unlawful entry in 2003, and consequently triggered inadmissibility under INA §212(a)(9)(C). The burden of proof in these proceedings is on the applicant, but because the applicant is clearly inadmissible under INA § 212(a)(9)(B)(i)(II) and has not met the required standard for a waiver of inadmissibility under INA § 212(a)(9)(B)(v), we do not need to reach a decision on that ground of inadmissibility at this time.

² The applicant's conviction falls under the petty offense exception to inadmissibility at INA § 212(a)(2)(A)(ii)(II). The AAO notes that the record indicates that the applicant was also convicted of Driving Under the Influence in the Municipal Court of Twin Peaks, CA on July, 11, 2004.

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).

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 of Immigration Appeals (BIA or 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 deportation, 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, 885 (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.*

We observe that 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). All hardships must be considered in determining whether the combination of hardships takes the case beyond the consequences ordinarily associated with removal or inadmissibility. *Matter of O-J-O-*, 21 I&N Dec. at 383.

On appeal, counsel for the applicant states that the applicant's U.S. citizen spouse will suffer extreme hardship if he is not admitted to the United States. The primary hardships claimed to the qualifying relative due to separation from the applicant are financial hardship and hardship due to the demands of raising children as a single mother. In regards to the financial hardship to the applicant's spouse, the spouse provided an affidavit where she stated that since suffering from cervical cancer in 2009, she has completely relied on the applicant for financial support. The applicant's spouse in her affidavit provided a list of the family's monthly expenses, totaling \$1665. Not only has the applicant's spouse not provided any documentary evidence of those expenses, but she has not shown that she is not able to obtain employment to cover those expenses or reduce those expenses in the applicant's absence. Although the income tax returns submitted by the applicant make clear that the applicant has been the primary breadwinner for his spouse and at least the two children listed as dependents on those returns, there is no evidence in the record to show that the applicant's spouse is not able to assume that role in the applicant's absence. The applicant's spouse did not provide any documentary evidence of her medical condition or any explanation why she is unable to work due to that condition, especially where she states in her affidavit that her condition was "successfully treated."

The applicant's spouse states that staying home with her daughters and being there for them when they come home from school is very important to her as a reason why she is unable to work outside the home. Moreover, she states that if she were to work outside the home she would work as a bartender where she, in the past, earned \$7.25 an hour plus tips. The applicant's spouse did not indicate what her final take home income would be, including tips, if she were to work full-time. Additionally, the applicant's youngest daughter is 8 years old, and reasonably requires care after school and during periods when school is not in session, but there is no indication in the record of the age of the applicant's stepdaughters. The AAO notes that no biographical information such as birth certificates were provided for the applicant's stepchildren and no school or medical records were provided for any of the children.

The applicant's spouse's divorce decree from her prior marriage illustrates that for the child that was born in that marriage, the applicant's spouse was to receive child support. In fact, the divorce decree makes clear that Idaho law obligates support under Code § 32-1204. The applicant's spouse has not explained why she doesn't receive child support or why she will not in the future. The applicant's spouse also has not indicated whether her older daughters are of the age where they could help care for their younger sister, nor has she documented that the cost of afterschool or summer care would be prohibitive. Moreover, the applicant's spouse in her affidavit states that she lives near her mother and sister. No evidence was provided to illustrate that the applicant's spouse's mother and sister are unable or unwilling to assist her financially or provide care for her children in the applicant's absence.

In regards to the emotional hardship that the applicant's spouse would suffer as a single parent in the applicant's absence, the applicant's spouse states that she and her daughters rely on applicant heavily for emotional support. She states that the stress of working full-time or overtime, moving into her sister's house, and losing her independence would cause her a great deal of hardship. The AAO recognizes that the applicant would suffer hardship if she were no longer able to rely on the applicant's income, but the inability to maintain one's present standard of living is considered a common result of inadmissibility on qualifying family members. *See Matter of Pilch*, 21 I&N at 632. The applicant's spouse has not provided any evidence of support, beyond financial support, that the applicant provides to her and her daughters. The applicant's spouse states that she is concerned that her daughters will no longer have a father figure in their lives, but she has not presented any details or evidence of the role that the applicant presently plays in her children's lives. There is no evidence in the record that the emotional hardship that the applicant's spouse would experience upon separation from the applicant would be beyond what is normally experienced by families dealing with removal or inadmissibility. *Matter of O-J-O-*, 21 I&N Dec. at 383.

As to whether the applicant's spouse would suffer extreme hardship if she were to relocate to Mexico to reside with the applicant, the applicant's spouse states that because of the security risks in Mexico, particularly in Michoacán where the applicant is from, that she will not relocate there. To support this statement, the applicant has submitted news articles and reports on the violence in Mexico, in general, and in Michoacán, in particular. The AAO also takes administrative note of the revised travel warning for Mexico recently issued by the U.S. Department of State. *See U.S. Department of State, Bureau of Consular Affairs, Travel Warning, Mexico*, dated February 8, 2012. In regards to the violence in the state of [REDACTED], the Travel Warning states that "non-essential travel to the state of [REDACTED] should be deferred, except in regards to the cities of [REDACTED], where it is advised that caution should be exercised. While we acknowledge these conditions, it is not clear from the record that the applicant and his spouse would be compelled to live in more dangerous areas, or what hardship they might endure if they choose to reside elsewhere in Mexico. Although the applicant's counsel states on appeal that the applicant's recent travel to Mexico does not reflect the dangers that his spouse and children would face there upon relocation, the record contains also letter granting the applicant permission to take his daughter to Mexico from November 23, 2007 until February 1, 2008. Although, the record does not make clear whether the applicant's daughter traveled to Mexico during that period, it does illustrate that his spouse provided permission for her to make the trip. Moreover, the applicant has not presented any evidence that his spouse or stepchildren suffer from any serious medical conditions or for other reasons would be unable to relocate to Mexico. The applicant's spouse indicated that she suffered from cervical cancer in 2009, but that her condition was completely treated. The applicant has also not presented any evidence that custody orders prevent his spouse from removing his stepchildren from the United States. Additionally, the applicant's spouse states that the applicant would not earn enough income in Mexico to support her and her children in the United States, but she does not provide any explanation or evidence to substantiate this assertion. As such, it is not possible to make the determination based on the evidence of record that the applicant's spouse would suffer extreme hardship if she were to relocate to Mexico.

When considered in the aggregate, the record does not reflect that that the hardship that the applicant's spouse rises to the level of extreme beyond the common results of inadmissibility. See *Hassan v. INS*, 927 F.2d 465, 468 (9th Cir. 1991); *Perez*, 96 F.3d at 392 (defining "extreme hardship" as hardship that was unusual or beyond that which would normally be expected upon deportation); *Matter of Pilch*, 21 I&N Dec. at 631. The AAO therefore finds that the applicant has failed to establish extreme hardship to a qualifying relative under required under INA § 212(a)(9)(B)(v). Having found the applicant ineligible for relief under section INA § 212(a)(9)(B)(v), no purpose would be served in discussing whether the applicant merits a waiver as a matter of discretion.

In proceedings for an application for waiver of grounds of inadmissibility under section INA § 212(a)(9)(B)(v), the burden of proving eligibility remains entirely with the applicant. 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.