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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: Office: CIUDAD JUAREZ, MEXICO

FILE: [REDACTED]

MAR 21 2012

IN RE: Applicant: [REDACTED]

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

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, Ciudad Juarez, Mexico. The matter 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 (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 and seeking readmission within ten years of her last departure from the United States. The applicant's spouse and child are U.S. citizens and she seeks a waiver of inadmissibility in order to reside in the United States.

The field office director found that the applicant had failed to establish extreme hardship to a qualifying relative and the application was denied accordingly. *Decision of the Field Office Director*, dated November 4, 2009.

On appeal, counsel asserts that the field officer director did not consider all of the hardship factors, used an incorrect standard of review and placed inordinate weight on the applicant's immigration violation. *Form I-290B*, dated November 20, 2009.

The record includes, but is not limited to, the applicant and her spouse's statements, statements from family and friends, photographs, financial records and counselor's evaluations. The entire record was reviewed and considered in rendering a decision on the appeal.

The record reflects that the applicant entered the United States without inspection in 2002, and departed the United States in July 2008. The applicant accrued unlawful presence during this entire period of time. The applicant 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 readmission within ten years of her July 2008 departure from the United States.

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

(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 [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 [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 section 212(a)(9)(B)(v) waiver of the bar to admission resulting from section 212(a)(9)(B)(i)(II) of the Act is dependent first upon a showing that the bar imposes an extreme hardship to the U.S. citizen or lawfully resident spouse or parent of the applicant. Hardship to the applicant or her child is not considered in section 212(a)(9)(B)(v) waiver proceedings unless it causes hardship to a qualifying relative, in this case the applicant's spouse. Once extreme hardship is established, it is but one favorable factor to be considered in the determination of whether the Secretary should exercise discretion. *See 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*, 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.

Counsel states that the applicant’s spouse entered the United States at an early age; he is totally assimilated; he is employed by a trucking company; and he has family, insurance, community and property ties to the United States. The record includes an employer letter for the applicant’s spouse.

The applicant’s spouse states that there is a lack of good jobs, medical care and good schools in Mexico; he has a good job in the United States; he can afford to take his family to the best doctors; paying the bills would be an issue; and it is not safe in Mexico. The AAO notes the February 8, 2012 U.S. Department of State travel warning for Mexico.

The applicant’s spouse’s counselor states that the applicant does not know anyone in Mexico and cannot find employment there; and she and the applicant can find good doctors in the United States and would dislike looking for them in Mexico as they are not in the system anymore.

Counsel states that the applicant was the sole caretaker of her spouse’s mother. The record includes a medical letter reflecting that the applicant’s spouse’s mother has multiple medical problems and needs careful and constant attention.

The record reflects that the applicant’s spouse may experience difficulty in Mexico. However, the record does not include supporting documentary evidence reflecting that he cannot obtain suitable employment in Mexico, or of the lack of medical care available. The record is not clear as to the extent of his family ties in the United States or in Mexico, and whether anyone else could care for his mother. In addition, the record reflects that the applicant’s spouse was born and apparently

raised in Mexico. The record is not clear as to whether the applicant's spouse would reside in a dangerous part of Mexico. The record lacks sufficient documentary evidence of emotional, financial, medical or other types of hardship that, in their totality, establish that the applicant's spouse would suffer extreme hardship upon relocating to Mexico.

Counsel states that the applicant's spouse would be financially and emotionally affected without the applicant; and due to the nature of his employment, he is not in a position to care for his child. The AAO notes that the applicant's spouse works for a trucking company.

The applicant's spouse states that he does everything with the applicant; they take their daughter to the park; child care is too expensive; the applicant takes care of the house; he will not have any desire to go home without the applicant and their daughter; he has been depressed in the past; he will miss talking with the applicant and their peaceful time when their daughter is sleeping; he is not eating or sleeping well and cries in silence; he does not want to miss his daughter's milestones; sometimes he thinks that life is not worth living without his family; and it is not safe for them in Mexico.

In his most recent statement, the applicant's spouse states that he had to go to the doctor because he feels useless and alone without his family; his work is suffering because he cannot concentrate; and he has gone to a counselor.

In a letter dated July 11, 2008, the applicant's spouse's counselor states that the applicant helps with cleaning, caring for her and her spouse's daughter, shopping and cooking; the applicant's spouse has been depressed and anxious; their daughter has been cranky and irritated due to feeling the tension; their daughter would miss the applicant's spouse, friends and familiar surroundings if she moved to Mexico; their daughter is close to both the applicant and her spouse; her spouse will have to put their daughter in a child-care facility; her spouse loves the applicant very much and would have to work double to support her and visit her; and her spouse cannot cook and the applicant is worried that he may get sick from eating out.

In an updated letter dated September 30, 2008, the applicant's spouse's counselor states that the applicant's spouse was prescribed medication for depression and panic attacks; he gets up at night and cannot sleep; he is neglecting the house, is not going out, his eating pattern is erratic, avoids going to church and thinks he would be better off dead; his physician agrees with the diagnosis of generalized anxiety and depression; his extended family is not around much; he is in danger of having a nervous breakdown. The record includes a prescription note for the applicant's spouse. The record includes statement from friends of the applicant's spouse detailing the emotional hardship that he is experiencing.

As mentioned, counsel states that the applicant was the sole caretaker of her spouse's mother. The record includes a medical letter reflecting that the applicant's spouse's mother has multiple medical problems and needs careful and constant attention.

The record reflects that the applicant's spouse is currently separated from both his daughter and the applicant. It reflects that he has been prescribed medication for depression and panic attacks, he is experiencing significant emotional hardship and he is danger of having a nervous breakdown. The record is not clear as to the nature of his mother's medical conditions, the amount and type of care needed or whether someone else could help care for his mother. However, considering the hardship factors mentioned, and the normal results of separation, the AAO finds that the applicant's spouse would suffer extreme hardship if he remained in the United States.

Although the applicant has demonstrated that the qualifying relative would experience extreme hardship if separated from the applicant, 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. The AAO has long interpreted the waiver provisions of the Act to require a showing of extreme hardship in both possible scenarios, as a claim that a qualifying relative will remain in the United States and thereby suffer extreme hardship as a consequence of separation can easily be made for purposes of the waiver even where there is no intention to separate in reality. *See Matter of Ige*, 20 I&N Dec. 880, 886 (BIA 1994). Furthermore, to separate and suffer extreme hardship, where relocating abroad with the applicant would not result in extreme hardship, is a matter of choice and not the result of inadmissibility. *Id.*, *see also Matter of Pilch*, 21 I&N Dec. 627, 632-33 (BIA 1996). As the applicant has not demonstrated extreme hardship from relocation, we cannot find that refusal of admission would result in extreme hardship to the qualifying relative in this case. 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) 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.