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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals
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Washington, D.C. 20529-2090
**U.S. Citizenship
and Immigration
Services**



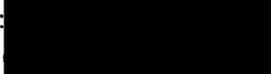
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DATE: **MAY 21 2012**

OFFICE: 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 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, Ciudad Juarez, Mexico, and 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 a citizen of Mexico who was found to be inadmissible to the United States pursuant to section 212(a)(9)(B)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(9)(B)(i), for having been unlawfully present in the United States for more than one year and seeking admission within 10 years of his last departure from the United States. The applicant is the spouse of a U.S. Citizen and is the beneficiary of an approved Petition for Alien Relative (Form I-130). The applicant, through counsel, does not contest this finding of inadmissibility. Rather, he seeks a waiver of inadmissibility pursuant to section 212(a)(9)(B)(v) of the Act, 8 U.S.C. § 1182(a)(9)(B)(v), in order to reside with his wife and child in the United States.

The Field Office Director concluded that the applicant failed to establish that extreme hardship would be imposed on a qualifying relative and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) accordingly. *See Decision of the Field Office Director*, dated September 30, 2009.

On appeal, counsel asserts that the denial of the applicant's waiver application was erroneous as the United States Citizenship and Immigration Services (USCIS) failed to provide any specific explanation why the applicant's supporting evidentiary documentation did not demonstrate extreme hardship. Counsel also asserts that USCIS violated its own procedures by failing to issue a request for additional evidence¹ before denying the applicant's waiver application and deviating from the adjudication standard for determining extreme hardship. Additionally, counsel asserts that USCIS used improper authority to determine whether hardship exists in the aggregate and erred by denying the waiver request as a matter of discretion. *See Notice of Appeal or Motion* (Form I-290B), dated October 30, 2009.

The record includes, but is not limited to: briefs from counsel; a letter of support from the applicant's spouse; and identity, medical, employment, and accident-related documents. The entire record was reviewed and considered in rendering a decision on the appeal.

Section 212(a)(9) 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-

¹ The AAO notes that if the initial evidence submitted with the petition does not establish eligibility, USCIS may deny the petition without requesting additional evidence. 8 C.F.R. §103.2(b)(8)(ii). Accordingly, the Field Office Director appropriately denied the Form I-601 without first requesting additional evidence.

...

(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. No court shall have jurisdiction to review a decision or action by the Attorney General [Secretary] regarding a waiver under this clause.

The record establishes that the applicant entered the United States without inspection by U.S. immigration officials in or around February 1999 and remained until in or around July 2007, when he voluntarily departed to Mexico. The applicant accrued unlawful presence from February 1999 until July 2007, a period in excess of one year. As the applicant is seeking admission within 10 years of departure, he is inadmissible pursuant to section 212(a)(9)(B)(i)(II) of the Act.

A waiver of inadmissibility under section 212(a)(9)(B)(v) of the Act 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 the applicant's child can be considered only insofar as it results in hardship to a qualifying relative. The applicant's wife 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 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 contends that the applicant's spouse would suffer extreme medical, emotional, and financial hardship as a result of separation from the applicant because the spouse's physical and psychological states are fragile as she is taking medication for anemia and has difficulty

concentrating, eating, and sleeping; she has been diagnosed with depression and Dysthmic Disorder; and her conditions would become aggravated from continued separation. The spouse's treating physician indicates that the spouse is currently being medicated for depression for which the death of her father and the lack of support from the applicant are contributing factors. And, her mental health professional discusses the diagnosis of Dysthmic Disorder; how she is struggling at work and in jeopardy of losing her job; and the possibility of her symptoms escalating because of continued separation. Additionally, the spouse describes her relationship with the applicant; the activities that they would do with one another prior to his return to Mexico and how he provides her emotional support. She also discusses the physical and mental toll that she has experienced as she drives every weekend with their daughter to be with him. She further discusses that the applicant received a job offer from [REDACTED] to work in the United States, and how the declination of the job offer would result in a significant loss of income for the family. And, she discusses how he has been unable to receive a job offer with a comparable wage in Mexico.

The AAO notes that the applicant's spouse has been diagnosed with depression and Dysthmic Disorder, and because of these conditions, may experience some emotional hardship in the applicant's absence. The mental health documentation provided is dated more than one year prior to appeal submission. No documentation has been submitted on appeal by counsel establishing the applicant's spouse's current mental health situation. The AAO is thus unable to conclude that the record establishes that the applicant's spouse's hardship would go beyond the norm. Moreover, the AAO notes that the record does not include any evidence of the applicant's diagnosis of anemia. 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.

Additionally, the AAO notes that the applicant's spouse has been employed as a nanny for two households, and that the applicant received a job offer to work in the United States as a Crew Supervisor at \$13.50/hour with benefits, including medical insurance and a cellular phone. However, there is no specific evidence in the record of the spouse's financial obligations or that she would be unable to support herself in the applicant's absence. Moreover, there is no evidence in the record concerning employment or labor conditions in Mexico and the applicant's inability to contribute to his and the spouse's households.

The AAO notes the concerns regarding the applicant's spouse's emotional, physical, and financial hardship that she has experienced in the applicant's absence, but finds that even when this hardship is considered in the aggregate, the record fails to establish that the applicant's spouse would suffer extreme hardship as a result of separation from the applicant.

Counsel also contends that the applicant's spouse would suffer extreme hardship if the spouse were to relocate to Mexico because she has strong family ties in the United States; has not lived outside the United States since she was five months old; she is worried about her daughter's health condition and educational opportunities; and she would have to incur the costs of moving, finding

a home, and comparable employment. The spouse further discusses the emotional ties that she has with her mother and siblings, and the impact that they have on her mental health.

The record is sufficient to establish that the applicant's spouse would suffer hardship if she were to relocate to Mexico with the applicant. The spouse has lived in the United States since in or around 1981; has strong emotional ties with her siblings and mother, all of whom are U.S. citizens or Lawful Permanent Residents; and does not maintain familial ties in Mexico. In the aggregate, the AAO finds that the applicant's spouse would suffer extreme hardship if she were to relocate to Mexico because of her length of residence and strong family and social ties to the United States; her lack of family ties to Mexico; her mental health condition and the need for ongoing treatment, considered along with the normal hardships associated with relocation.

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 this case, the record does not contain sufficient evidence to show that the hardship faced by the qualifying relative, considered in the aggregate, rises beyond the common results of removal or inadmissibility to the level of extreme hardship. The AAO therefore finds that the applicant has failed to establish extreme hardship to his United States Citizen spouse as required under section 212(a)(9)(B)(v) of the Act. As 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 application for waiver of grounds of inadmissibility under section 212(a)(9)(B)(v) of the Act, 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.