



U.S. Citizenship
and Immigration
Services



H6

NOV 06 2012

DATE: 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 (the 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 in accordance with the instructions on 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 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 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*. His parents are both lawful permanent residents, and he is seeking a waiver of inadmissibility in order to reside in the United States as the beneficiary of an approved Petition for Alien Relative (Form I-130).

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 Field Office Director, August 3, 2010.*

On appeal, the applicant's counsel contends that USCIS misapplied the legal standard for extreme hardship. Although counsel indicated he would submit additional evidence within 30 days of the appeal, *no new documents on appeal have been received*. The record on appeal includes documentation submitted with the waiver request. 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...

The applicant entered the United States without admission or parole in June 1999, seven years after approval of the Form I-130 filed for him by his father. He remained until November 2004, when he returned to Mexico to await processing of his immigrant visa. Having thereby incurred a ten-year bar on admission, he requires a waiver of inadmissibility to immigrate before November 2014.

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 children can be considered only insofar as it results in hardship to a qualifying relative. The applicant's parents are both qualifying relatives 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 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.

Regarding hardship from separation, the applicant contends he is suffering due to being unable to help his parents as he would like, and states his children have medical issues due to conditions in Mexico. Hardship to the applicant or his children is relevant only to the extent it causes hardship to a qualifying relative, but the record is insufficient to establish that either parent is suffering from his absence or from the situation of his children.

The applicant's father asserts that, due to a special relationship between him and his son, it is difficult emotionally for him to know that the applicant is without family support in Mexico. His father also claims to have several chronic medical problems. The record contains copies of medical records, including hand-written progress notes containing medical terminology and abbreviations that are not easily understood, and laboratory results. The documents submitted were prepared for review by medical professionals or are otherwise illegible or indiscernible and do not contain a clear explanation of the current medical condition of the applicant's father. 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. Moreover, there is nothing on record showing that the applicant has any training to assist his father and, while the record reflects that the applicant is the only one of seven children not living in the United States, it fails to establish the special relationship claimed or show why one of this qualifying relative's other children already living here cannot render assistance. Medical records for the applicant's mother are similarly insufficient to establish that the applicant's absence causes her any hardship.

Regarding financial hardship, the applicant has not shown that his absence imposes any economic burden on his parents. The record contains no documentary evidence of any financial contribution to his parents by the applicant while he lived in the United States or of economic support by his parents of him in Mexico. While the applicant's father suggests that his son's agricultural work earns income only during the growing season, and thus requires supplementation from family members in the United States, nothing on record details any such contributions. The record contains no documentation of the applicant's or his parents' expenses, either here or in Mexico. Evidence establishes only that the applicant's father is a 58 year-old whose long-term employment provides medical benefits and a steady income in the low \$30,000 range. The applicant has not shown that, without his U.S. presence, a qualifying relative is experiencing financial hardship.

The record does not show that the cumulative effect of the hardship the applicant's parents are experiencing due to their son's inadmissibility goes beyond the hardship normally imposed by the separation from a loved one. The AAO thus concludes that, based on the record evidence, were the applicant's parents to remain in the United States without the applicant due to his inadmissibility, they would not suffer extreme hardship.

Regarding relocation, the applicant asserts that his parents cannot move to Mexico without forfeiting their U.S. residency and medical benefits. Even without becoming U.S. citizens, the qualifying relatives may be able to relocate temporarily to Mexico, while maintaining their residency.¹ As noted previously, the applicant submitted copies of his parents' medical records, consisting of laboratory results and physician's "progress notes" for medical care. While significant conditions of health are relevant factors in establishing extreme hardship, the medical records provided are insufficient to establish the degree to which the applicant's parents suffer from the claimed conditions, the treatment required, or the unavailability of suitable medical care in the relocation country. There is no evidence establishing that the level of healthcare in Mexico will adversely affect either of the applicant's parents. The applicant's father contends that his job prospects in Mexico are poor, but provides no evidence substantiating his poor employment prospects in Mexico, or showing that he and his wife have looked for jobs there.

The record suggests that the applicant's parents have greater ties to the United States than to Mexico, including family and employment. Evidence shows that the applicant's father and mother have lived here, respectively, since 1989 and 1997, with six of their children also living here, but does not address ties remaining to their birth country. There is insufficient documentation for the AAO to conclude that moving will exceed mere inconvenience and have severe consequences for a qualifying relative. As the applicant has not shown that his parents would experience problems in Mexico, he has not proven a qualifying relative would suffer extreme hardship by relocating abroad.

Documentation in the record, when considered in its totality, reflects that the applicant has not established that either of his parents would suffer extreme hardship were the applicant unable to reside in the United States. The AAO recognizes that the applicant's parents will endure hardship as a result of separation from the applicant. However, their situation is typical of individuals separated as a result of removal and inadmissibility, and the AAO therefore finds that the applicant has failed to establish extreme hardship to a qualifying relative as required under the Act.

The record, reviewed in its entirety and in light of the *Cervantes-Gonzalez* factors, cited above, does not support a finding that the applicant's father or mother will face extreme hardship if the applicant is unable to reside in the United States. Rather, the record demonstrates that they will continue to face no greater hardship than the unfortunate, but expected, disruptions, inconveniences, and difficulties arising whenever a family member is removed from the United States and/or refused admission. Although the AAO is not insensitive to the applicant's parents' situation, the record does not establish that the hardship they face rises to the level of "extreme" as contemplated by statute and case law.

¹ The applicant's unlawful presence bar expires in November 2014. By appropriate application, his parents can remain abroad up to two years in order to remain with the applicant until he is no longer inadmissible.

In proceedings for application for waiver of grounds of inadmissibility, 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.