



U.S. Citizenship
and Immigration
Services

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[REDACTED]

DATE: NOV 15 2012 OFFICE: PHOENIX, AZ

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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 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,

Ron Rosenberg
Acting Chief, Administrative Appeals Office

DISCUSSION: The Form I-601, Application for Waiver of Ground of Inadmissibility (Form I-601) was denied by the Field Office Director, Phoenix, Arizona, 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 having been unlawfully present in the United States for more than one year and seeking readmission within ten years of her departure from the country. 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 section 212(a)(9)(B)(v) of the Act, 8 U.S.C. § 1182(a)(9)(B)(v), in order to live in the United States with her husband and children.

In a decision dated March 1, 2011, the director determined the applicant had failed to establish her U.S. citizen husband would experience extreme hardship if she were denied admission into the United States. The waiver application was denied accordingly.

Counsel asserts on appeal that the totality of hardship factors in the record establish the applicant's husband would experience extreme emotional, financial and professional hardship if the applicant's waiver application were denied. Counsel submits a brief but no supporting evidence on appeal. Previously submitted evidence includes letters written by the applicant's husband, children, and friends; employment evidence; financial documentation; birth certificates and photographs. The record also contains Spanish-language documentation.

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 evidence is not accompanied by certified English translations, it cannot be considered in the applicant's case. The entire 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.

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

Waiver.-The Attorney General [now, Secretary, Department 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.

The record reflects that the applicant was admitted into the United States with a B1/B2 visa/border crossing card, each time for a period of six months, in November 1998, August 2001, and on July 25, 2005. After her November 1998 admission, the applicant remained in the United States for almost two years, until September 2000. After her August 2001 admission, the applicant remained in the United States until July 2005, almost four years. The applicant has not departed the United States since her last admission into the United States.

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 not remained outside of the United States for ten years since her last departure. Accordingly, 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 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-Moralez*, 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).

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 v. I.N.S.*, 138 F.3d 1292, 1293 (9th Cir. 1998), (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 spouse is her qualifying relative under section 212(a)(9)(B)(v) of the Act. Reference is made to hardship the applicant's children will experience if the waiver application is denied. 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. Hardship to the applicant's children will therefore not be considered, except as it may affect the applicant's spouse.

The applicant's husband states in a letter that the applicant is "an amazing wife and mother"; he loves and needs her. He feels helpless and is "constantly stressed and depressed" over the applicant's situation. He struggles to stay focused and forgets to do things at work; his "life would be destroyed" if the applicant left the United States. He is the sole financial provider for the applicant, her three sons from a previous relationship and himself, and he indicates that moving to Mexico "is not an option" for him because he is a foster parent and has a steady job. He feels their U.S. citizen children will be safer in the United States and have better medical insurance and educational opportunities in the United States, and he worries he will be unable to support two households and pay his bills on his income. He also will be unable to visit the applicant due to his financial struggles and a work schedule that requires him to work between 12 to 14 hours a day.

Their sons state in letters that they need the applicant with them in the United States, and they are sad because their mother may move to Mexico.

Employment evidence reflects that the applicant's husband earns \$75 an hour working as a substitute teacher on an "as needed" basis, and federal tax evidence reflects his adjusted gross income during the 2009 tax year was \$6976. Financial evidence reflects the applicant's husband's home mortgage is \$605 a month and that the family pays a \$249 semi-annual car insurance premium for two cars.

Upon review, the AAO finds the evidence in the record fails to establish that the hardships faced by the applicant's husband, considered in the aggregate, rise beyond the common results of removal or inadmissibility to the level of extreme hardship if the applicant were denied admission and her husband remained in the United States. The record lacks documentary evidence to corroborate assertions that the applicant's husband is suffering from depression, or that he will experience emotional hardship beyond that normally experienced upon the removal of a family member if the applicant is not allowed to remain in the United States. The evidence also fails to establish the applicant's husband's work performance has declined due to the applicant's situation; that the applicant and their sons are financially reliant on him; that he would be unable to pay for his expenses if he remained in the United States; or that he would be unable to visit the applicant and their family in Mexico due to the expense and his inability to take time off from work.

The cumulative evidence in the record also 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 into the United States and he relocated to Mexico. The record contains no evidence to corroborate assertions that the applicant's husband is a foster parent in the United States. The evidence also fails to demonstrate close family ties in the United States, or that the applicant's husband would experience hardship based on separation from family members in the United States. In addition, employment evidence contained in the record fails to demonstrate the applicant's husband would leave a steady job in the United States, and the evidence does not address or establish the applicant and her husband would be unable to find work in Mexico. The applicant's husband asserts no other hardship concerns that he would face upon relocation to Mexico. It is further noted that the applicant's spouse is originally from Mexico, and is therefore familiar with the language and culture of the country. Moreover, although the AAO notes that

country-condition reports reflect security concerns in Sonora, Mexico, where the applicant is from [REDACTED], the applicant does not express security concerns upon relocation to Mexico, the record contains no evidence to indicate or establish such concerns, and country conditions without more, are insufficient to establish extreme hardship.

Upon review of the totality of the evidence, the AAO finds that the applicant failed to establish extreme hardship to his U.S. citizen spouse as required under section 212(i) 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(i) 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.