



U.S. Citizenship
and Immigration
Services

HG

[REDACTED]

Date: **OCT 05 2012** Office: VERMONT SERVICE CENTER FILE: [REDACTED]

IN RE: Applicant: [REDACTED]

APPLICATIONS: 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,

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Center Director, Vermont Service Center, 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 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 record indicates that the applicant is married to a U.S. citizen and the mother of a stepchild. She is the beneficiary of an approved Petition for Alien Relative (Form I-130). The applicant 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 in the United States with her spouse.

The Center Director found that the applicant had failed to establish that extreme hardship would be imposed on the applicant's qualifying relative and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) accordingly. *Decision of the Center Director*, dated August 19, 2010.

On appeal, the applicant, through counsel, contends that the Center Director "erred and abused discretion" in denying the applicant's waiver application. *Form I-290B, Notice of Appeal or Motion*, filed September 16, 2010. Counsel claims that the applicant's husband will suffer extreme hardship if the applicant's waiver application is not granted. *Id.* Additionally, counsel states that the applicant's husband has resided in the United States for a long time, and he has family ties and is employed in the United States. *Id.* Counsel also submits new evidence of hardship on appeal.

The record includes, but is not limited to, counsel's appeal brief, statements from the applicant's husband, medical and psychological documents for the applicant's husband, employment documents for the applicant's husband, household and utility bills, and country-conditions documents for Mexico. The entire record was reviewed and considered in arriving at 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-

....

- (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 [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 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. If extreme hardship to a qualifying relative is established, the applicant is statutorily eligible for a waiver, and United States Citizenship and Immigration Service (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 (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.

In the present application, the record indicates that in July 2008, the applicant entered the United States without inspection. In August 2009, the applicant departed the United States. The applicant accrued over one year of unlawful presence between July 2008 and August 2009. The applicant is, therefore, 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 she seeks admission within 10 years of her departure from the United States. The applicant does not contest her inadmissibility.

In a psychological evaluation dated September 21, 2010, the applicant’s husband reported to [REDACTED] that life in Mexico is extremely difficult. In his affidavit dated October 10, 2010, the applicant’s husband believes that they could not find employment in Mexico to pay their living expenses, and [REDACTED] reports that the applicant has been unable to find employment in Mexico. The applicant’s husband states the applicant resides with her mother in Mexico, but his mother-in-law cannot afford to support them if he joins the applicant in Mexico. The applicant’s husband states he has been employed by the same company for over twelve years, and earns \$43,700 a year. In his appeal brief dated October 11, 2010, counsel states that based on the applicant’s husband’s age, limited education, and unfamiliarity with the job market in Mexico, he would be unable to find comparable employment. Additionally, the applicant’s husband states there is a high unemployment rate in Mexico. The applicant’s husband also states healthcare in the United States is superior to healthcare in Mexico. Medical documentation in the record establishes that the applicant’s husband suffers from anxiety, hypogonadism, insomnia, and hyperlipidemia. The applicant’s husband indicates that his health insurance covers his medical conditions; however, if he moved to Mexico, he would lose his health insurance. Further, the applicant’s husband states he lives near his brothers in Utah.

Counsel states that violence is increasing in Mexico. The AAO notes that on February 8, 2012, the Department of State issued a travel warning to U.S. citizens about the security situation in Mexico. The warning states that “the Mexican government has been engaged in an extensive effort to counter

[Transnational Criminal Organizations (TCO)] which engage in narcotics trafficking and other unlawful activities throughout Mexico.... As a result, crime and violence are serious problems throughout the country and can occur anywhere.”

The AAO acknowledges that the applicant’s husband is a U.S. citizen, and that relocation abroad would involve some hardship. However, no evidence has been submitted showing that the applicant’s husband does not speak Spanish, that he is unfamiliar with the culture in Mexico, or that he has no family ties there. Additionally, the record does not contain documentary evidence showing that the applicant’s husband would be unable to obtain employment in Mexico that would allow him to use the skills he has acquired in the United States. Further, though counsel’s security concerns about Mexico are corroborated by country-conditions documents, these documents alone do not support a finding of extreme hardship to the applicant’s husband should he join the applicant in Mexico. Regarding the applicant’s husband’s medical conditions, the record does not contain evidence establishing that he cannot receive medical treatment in Mexico for his medical conditions or that he has to remain in the United States to receive treatment. Additionally, no statement has been provided by a medical professional explaining the seriousness of the applicant’s husband’s medical conditions. Therefore, based on the record before it, the AAO finds that, considering the potential hardships in the aggregate, the applicant has failed to establish that her husband would suffer extreme hardship if he relocated to Mexico.

In addition, the record fails to establish extreme hardship to the applicant’s husband if he remains in the United States. The applicant’s husband states that the applicant does not work and he is the sole income provider for the family. He states that with his odd hours at work, he cannot take care of all the household responsibilities. As noted above, the applicant’s husband states he earns \$43,700 a year. [REDACTED] reports that the applicant’s husband has a lot of debt and responsibilities in the United States. The applicant’s husband states he is making payments on a car, boat, and credit cards. Additionally, [REDACTED] reports that the applicant’s husband sends money to the applicant in Mexico since she has been unable to find employment. The applicant’s husband states he often has difficulty concentrating, including at his job, and he is afraid that he will be terminated. In a letter dated September 17, 2010, [REDACTED] a human resources manager, states the applicant’s husband has been employed with their company since 1998, and he is respected by his fellow employees and managers. [REDACTED] states the applicant’s husband currently earns vacation time but if he exceeds his vacation time, it could affect his compensation or employment status.

The applicant’s husband states he fears for the applicant’s safety in Mexico, and he is suffering from stress, anxiety, and depression. He also states that he takes sleeping pills to help him sleep. [REDACTED] states that the applicant’s husband suffered considerable emotional trauma as a child, and standardized testing indicates that he suffers from posttraumatic stress disorder (PTSD). However, he developed “emotional stability” with the applicant, but since the applicant returned to Mexico, his PTSD has gotten worse. The applicant’s husband claims that he had suicidal thoughts in the past; however, [REDACTED] reports that he denies current suicidal ideation. The applicant’s husband also states that he drinks alcohol in excess to help deal with his depression. Additionally, as noted above, the applicant’s husband suffers from anxiety, hypogonadism, insomnia, and hyperlipidemia. The applicant’s husband also states they

want to start a family but have been dealing with infertility problems. He states that they consulted a doctor and started infertility treatments, but while separated, they cannot continue the treatments.

The AAO acknowledges that the applicant's husband may be suffering emotional difficulties in being separated from the applicant. While it is understood that the separation of spouses often results in significant psychological challenges, the applicant has not distinguished her husband's emotional hardship upon separation from that which is typically faced by the spouses of those deemed inadmissible. Though the applicant's husband refers to financial difficulties, the record does not contain evidence establishing that he is unable to support himself in the applicant's absence. Additionally, the applicant has not distinguished her husband's financial challenges from those commonly experienced when a family member remains in the United States. Based on the record before it, the AAO finds that the applicant has failed to establish that her husband would suffer extreme hardship if her waiver application is denied and he remains in the United States.

In this case, the record does not contain sufficient evidence to show that the hardships faced by the qualifying relative, considered in the aggregate, rise 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 her U.S. citizen spouse as required under section 212(a)(9)(B)(v) of the Act. Having found the applicant statutorily ineligible for relief, the AAO finds 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)(v) 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.