



U.S. Citizenship  
and Immigration  
Services



76

DATE: OCT 22 2012

OFFICE: MONTERREY

FILE: [REDACTED]

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:



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, Monterrey, Mexico, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant 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 more than one year and seeking readmission within ten years of her last departure from the United States. The applicant is a beneficiary of an approved Petition for Alien Relative, as a spouse of a U.S. citizen, who seeks a waiver of inadmissibility in order to reside in the United States with her U.S. citizen spouse.

The Field Office Director concluded that the record failed to establish the existence of extreme hardship for a qualifying relative. The Field Officer Director denied the application accordingly. *See Decision of the Field Office Director*, dated February 24, 2011.

On appeal, counsel for the applicant asserts that the applicant has demonstrated extreme hardship to a qualifying relative upon both separation and relocation and that not all the positive factors in the applicant's favor were considered.

In support of the waiver application and appeal, the applicant submitted a affidavit statement from counsel, affidavits from her spouse, medical documents concerning her spouse, letters of support, financial documentation, family photographs, a psychological evaluation of the applicant's spouse, and background information concerning Mexico. The entire record was reviewed and considered in rendering a decision on the appeal.

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

**(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 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 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 regarding a waiver under this clause.

The applicant is a native and citizen of Mexico who claims to have entered the United States without admission or parole in 1992. The applicant filed a Form I-485, Application to Register Permanent Residence or Adjust Status on October 16, 1998. This application was denied due to abandonment on June 24, 2004. The applicant was placed into immigration proceedings and filed a second Form I-485 before an immigration judge, dated March 25, 2008. The applicant withdrew that application and was granted voluntary departure by an immigration judge on October 3, 2008. The applicant departed from the United States pursuant to voluntary departure on January 20, 2009. The applicant accrued unlawful presence in the United States from April 1, 1997, effective date of the unlawful presence provisions, until the filing of her first Form I-485 on October 16, 1998. The applicant also accrued unlawful presence from June 24, 2004, the date of the denial of her Form I-485, until the filing of her second Form I-485 in immigration court. Accordingly, she accrued over one year of unlawful presence in the United States, and she is inadmissible under section 212(a)(9)(B)(i)(II) of the Act. The applicant does not contest her inadmissibility on appeal.

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.

The record reflects that the applicant is a 49 year-old native and citizen of Mexico. The applicant’s spouse is a 57 year-old native of Guatemala and citizen of the United States. The applicant is currently residing in Ciudad Juarez, Mexico and her spouse is currently residing in Phoenix, Arizona.

The applicant’s spouse asserts that he is depressed due to separation from his wife and needs her to take care of him in the United States. The applicant’s spouse contends that both he and the applicant have nobody to care for them and that he worries for her safety in Mexico. The record contains a psychological evaluation of the applicant’s spouse stating that he is suffering from nightmare disorder, transient tic disorder, acute stress disorder, and panic attack without agoraphobia. The applicant’s spouse reported difficulty sleeping, feeling depression, anxiety, a lack of motivation and inability to concentrate. It is noted that the psychological evaluation of the applicant’s spouse does not contain any recommendations concerning medication or further evaluation/treatment.

The record also contains a letter from the applicant's spouse's physician stating that the applicant's spouse is being treated for the chronic conditions of diabetes mellitus II, hyperlipidemia, gastroesophageal reflux disease, and anxiety. The physician's letter states that the applicant's spouse's ailments are fairly well controlled, but the applicant's spouse needs support to stay on a balanced diet. The psychological evaluation in the record indicates that the applicant's spouse reported not eating regularly and mainly subsisting on fast food. There is no indication that the applicant's spouse would be unable to independently purchase food that would allow him to stay within the strictures of his recommended diet. It is acknowledged that separation from a spouse nearly always creates a level of hardship for both parties and the record demonstrates that the applicant's spouse is suffering some level of emotional hardship in the absence of his spouse. However, the record does not demonstrate that his emotional hardship is so serious that it, for example, interferes with his ability to continue maintaining a business or otherwise carry out his daily activities.

The applicant's spouse asserts that he is experiencing an extreme financial burden because he is maintaining two households while the applicant resides in Mexico. The record contains evidence of money transfers from the applicant's spouse to the applicant and the applicant's spouse asserts that he visits his wife in Mexico every three to four weeks. However, there is no indication that the applicant's spouse is unable to maintain his financial responsibilities in the absence of the applicant. There is insufficient evidence in the record to find that the applicant's spouse is suffering from a level of financial hardship beyond the common results of separation from a spouse.

Although the depth of concern and anxiety over the applicant's immigration status is neither doubted nor minimized, the fact remains that Congress provided for a waiver of inadmissibility only under limited circumstances. While the prospect of separation or involuntary relocation nearly always results in considerable hardship to individuals and families, in specifically limiting the availability of a waiver of inadmissibility to cases of "extreme hardship," Congress did not intend that a waiver be granted in every case where a qualifying relationship exists.

The applicant's spouse asserts that he cannot relocate to Mexico to reside with the applicant because he has never resided in Mexico and would leave behind his business and home in the United States. The applicant's spouse also asserts that he would not be able to receive treatment for his medical conditions and he would fear for his safety in Mexico. The record contains supporting documentation concerning the applicant's spouse's mortgage payments and ownership of a landscaping business in the United States. The record also contains letters concerning the ongoing treatment received by the applicant's spouse for his medical ailments. It is also noted that the applicant is currently residing in Ciudad Juarez, Mexico. The Department of State recently issued travel warnings concerning the Ciudad Juarez area:

You should defer non-essential travel to the state of Chihuahua. The situation in the state of Chihuahua, specifically Ciudad Juarez, is of special concern. Ciudad Juarez has one of the highest murder rates in Mexico. The

Mexican government reports that more than 3,100 people were killed in Ciudad Juarez in 2010 and 1,933 were killed in 2011.

*Travel Warning-Mexico, U.S. Department of State*, dated February 8, 2012. In this case, the record contains sufficient evidence to show that the hardships faced by the qualifying relative, in the aggregate, would rise to the level of extreme hardship if he relocated to Mexico.

The record, however, does not contain sufficient evidence to show that the hardships faced by the qualifying relative upon separation, considered in the aggregate, rise beyond the common results of removal or inadmissibility to the level of extreme hardship. U.S. court decisions have repeatedly held that the common results of removal are insufficient to prove extreme hardship. *See Hassan v. INS*, 927 F.2d 465, 468 (9th Cir. 1991), *Perez v. INS*, 96 F.3d 390 (9th Cir. 1996); *Matter of Pilch*, 21 I&N Dec. 627 (BIA 1996) (holding that emotional hardship caused by severing family and community ties is a common result of deportation and does not constitute extreme hardship); *Matter of Shaughnessy*, 12 I&N Dec. 810 (BIA 1968) (holding that separation of family members and financial difficulties alone do not establish extreme hardship). “[O]nly in cases of great actual or prospective injury . . . will the bar be removed.” *Matter of Ngai*, 19 I&N Dec. 245, 246 (BIA 1984).

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.

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. As the applicant has not established extreme hardship to a qualifying family member, no purpose would be served in balancing positive and negative factors to determine whether the applicant merits this 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.