



U.S. Citizenship
and Immigration
Services

#6

[REDACTED]

Date: **OCT 24 2012** Office: MONTERREY, MEXICO 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 Brew
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 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 his last departure from the United States. The record indicates that the applicant is married to a U.S. citizen and the father of three U.S. citizen children. He 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 his spouse and children.

The Field Office 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 Field Office Director*, dated March 17, 2011. The AAO notes that the Field Office Director also denied the applicant's Application for Permission to Reapply for Admission After Deportation or Removal (Form I-212) in the same decision, though no Notice of Appeal or Motion (Form I-290B) was filed for that application.

On appeal, the applicant, through counsel, claims that the applicant has established extreme hardship to his wife, who suffers from several serious medical conditions, and his children are suffering emotional trauma. *Form I-290B*, filed April 12, 2011. Counsel contends that the Field Office Director did not consider the hardship in the aggregate and ignored recent Board of Immigration Appeals (Board) decisions defining extreme hardship. *Id.* He submits one AAO decision and one Board decision in support of his claim. The AAO notes that both of the cases relied on by counsel are unpublished decisions and therefore not binding on any court or the AAO. While 8 C.F.R. § 103.3(c) provides that precedent decisions of the Secretary of Homeland Security, or specific officials of the Department of Homeland Security designated by the Secretary, with concurrence of the Attorney General, are binding on all USCIS employees in the administration of the Act, unpublished decisions are not similarly binding. Precedent decisions must be designated and published in bound volumes or as interim decisions. 8 C.F.R. § 103.10. The applicant also submits new evidence of hardship on appeal.

The record includes, but is not limited to, counsel's appeal brief, a statement from the applicant's wife, medical and psychological documentation for the applicant's wife and children, household and utility bills, financial documents, employment documents for the applicant, photographs, and documents pertaining to the applicant's removal proceeding. 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. Hardship to the applicant or his children 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 United States Citizenship and Immigration Services (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 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 on November 25, 1987, the applicant entered the United States without inspection. An immigration judge granted him voluntary departure on or before September 5, 1991; the applicant, however, did not comply with the order. In August 2010, the applicant departed the United States. The applicant accrued over one year of unlawful presence between April 1, 1997, and August 2010. 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 he seeks admission within ten years of his departure from the United States. The applicant does not contest his inadmissibility.

The record contains references to hardship the applicant's children would experience if the waiver application were denied. It is noted that Congress did not include hardship to an alien's child as a factor to be considered in assessing extreme hardship. In the present case, the applicant's spouse is the only

qualifying relative for the waiver under section 212(a)(9)(B)(v) of the Act, and hardship to the applicant's children will not be separately considered, except as it may affect the applicant's spouse.

In regards to the applicant's wife's hardship in relocating to Mexico, in a psychological evaluation dated October 5, 2010, [REDACTED] reports that the applicant's wife suffered trauma when she relocated to Mexico at an early age, without any Spanish "language or literacy abilities." Additionally, [REDACTED] states the applicant's wife's history of low skilled jobs and limited educational background would make it difficult for her to secure employment in Mexico. In his appeal brief dated April 22, 2011, counsel claims that the applicant has been unable to secure employment. Further, [REDACTED] reports that according to the applicant's wife, she will have no place to stay in Mexico, and they will have no health insurance. He diagnoses the applicant's wife with posttraumatic stress disorder "manifested in clinically severe depression and secondary anxiety," and somatization disorder; he claims that her mental health condition may worsen either in Mexico or in the United States separated from the applicant. Counsel also claims that the applicant's children will lose the educational opportunities they have in the United States. [REDACTED] further reports that the applicant's wife worries about the security situation in Mexico.

The AAO acknowledges that the applicant's wife is a U.S. citizen, and that relocation abroad would involve some hardship. However, even though the applicant's wife has resided in the United States for many years, she is a native of Mexico, and no evidence has been submitted showing that she does not speak Spanish, that she is unfamiliar with the culture in Mexico, or that she has no family ties there. Additionally, the record does not contain documentary evidence showing that the applicant's wife would be unable to obtain employment in Mexico. Regarding the applicant's wife's mental health condition, the applicant provided no evidence to show that his wife has to remain in the United States to receive treatment or that she cannot receive treatment in Mexico. Regarding the hardship that the applicant's children may experience in Mexico, they are not qualifying relatives under the Act, and the applicant has not shown that hardship to their children would elevate his wife's challenges to an extreme level. 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 his wife would suffer extreme hardship if she relocated to Mexico.

Regarding the hardship caused by their separation, in an affidavit dated October 5, 2010, the applicant's wife states she and their children are suffering mentally, physically, and emotionally without the applicant. She claims that their children have developed depression and anxiety, which affects her. In his statement dated October 4, 2010, licensed social worker [REDACTED] states the applicant's children are suffering extreme emotional trauma due to their separation from the applicant. He reports that the applicant's children have feelings of loss and abandonment, they are having difficulty learning, and the longer they are separated from the applicant, the more trauma they will experience. In a letter dated September 17, 2010, [REDACTED] states the applicant's children are showing signs of depression, and he believes their depression stems from the separation from the applicant. The applicant's wife states their daughter's attitude has changed; she does not play outside anymore, she feels unprotected, and she is distracted. Counsel also states the applicant's daughter is exhibiting self-mutilating behavior. [REDACTED] reports that according to the applicant's wife, their daughter bites herself to self-inflict pain. In an updated statement, [REDACTED] states the applicant's daughter is experiencing

symptoms similar to a posttraumatic stress disorder. The applicant's wife also states that their son is constantly asking about the whereabouts of the applicant, which is emotionally draining for her. She states their son is suffering from depression and is taking medication. [REDACTED] states that since the applicant left, the applicant's son is showing significant signs of depression. Documentation in the record establishes that the applicant's son is taking an antidepressant.

Additionally, the applicant's wife states their daughter suffers from asthma; however, she did not have an asthma attack for years. The asthma attacks resumed after the applicant, who used to give their daughter a morning medication while his wife was at work, left. In a letter dated November 2, 2010, [REDACTED] states the applicant's daughter's asthma appears to be worsening due to the emotional distress of being separated from the applicant.

The applicant's wife states that she is so depressed, she can barely function, and it is affecting her work. She states she suffers from depression, stress, insomnia, and asthma. Documentation in the record establishes that the applicant's wife has been prescribed medications to treat her conditions. Additionally, in a letter dated September 9, 2010, [REDACTED] diagnoses the applicant's wife with asthma, major depression, and insomnia. In an updated letter, [REDACTED] states the applicant's wife is being treated for depression and asthma "with permanent medications." [REDACTED] also diagnoses the applicant's wife with posttraumatic stress disorder and somatization disorder.

The AAO acknowledges that the applicant's wife is suffering emotional and medical hardship due to her separation from the applicant. The AAO finds that when the applicant's wife's emotional and medical issues are considered in combination with the hardships that usually result from separation of a spouse, and the effect of their children's hardship on the applicant's wife, the applicant has established that his wife is experiencing extreme hardship in the United States in his absence.

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 remain in the United States and thereby suffer extreme hardship as a consequence of separation can easily be made for purposes of the waiver even where there is no intention to separate in reality. *See Matter of Ige, supra* at 886. Furthermore, to separate and suffer extreme hardship, where relocating abroad with the applicant would not result in extreme hardship, is a matter of choice and not the result of inadmissibility. *Id., see also Matter of Pilch, supra* at 632-33. As the applicant has not demonstrated extreme hardship from relocation, we cannot find that refusal of admission would result in extreme hardship to the qualifying relative in this case.

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.