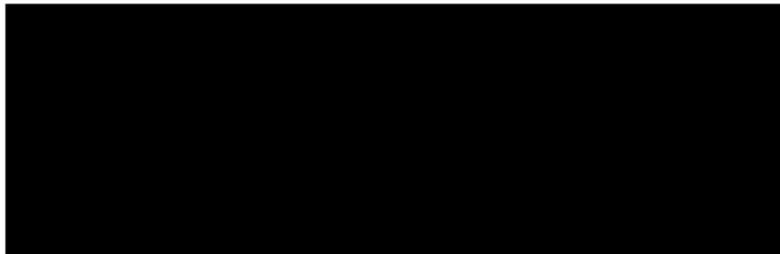


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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office
20 Massachusetts Avenue, NW, MS 2090
Washington, DC 20529-2090



**U.S. Citizenship
and Immigration
Services**



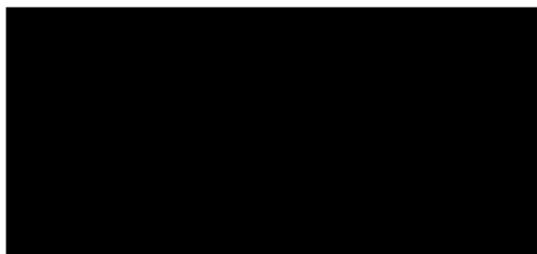
H6

DATE: **SEP 05 2012** OFFICE: CIUDAD JUAREZ, MEXICO FILE:

IN RE:

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 Form I-601, Application for Waiver of Grounds of Inadmissibility 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 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 admission within ten years of her departure from the country. The applicant's stepfather is a lawful permanent resident, and the applicant 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 family.

In a decision dated November 24, 2009, the director concluded the applicant had failed to establish that her stepfather would experience extreme hardship if she were denied admission into the United States. The waiver application was denied accordingly.

Through counsel, the applicant asserts on appeal that cumulative evidence establishes her stepfather will experience extreme emotional and financial hardship if she is denied admission into the United States. In support of these assertions, counsel submits letters from the applicant and her stepfather; medical records; financial documentation; documents establishing relationships, identity, and citizenship; academic information for the applicant's children; and country-conditions evidence. 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 some of the Spanish-language documents are not accompanied by certified English translations, they were not considered in the applicant's case. The entire remaining record was reviewed and considered in rendering a decision on the appeal.

Counsel also submits copies of previous AAO decisions. The AAO notes that only AAO decisions that are published and designated as precedents in accordance with the requirements discussed in 8 C.F.R. § 103.3(c) are binding on Service officers. The decisions submitted by counsel are unpublished and were not designated as precedent decisions. The findings made in the submitted AAO decisions, therefore, have no binding precedential value for purposes of the applicant's case.

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.

....

- (iii) No period of time in which an alien is under 18 years of age shall be taken into account in determining the period of unlawful presence in the United States under clause (i).

Inadmissibility under section 212(a)(9)(B)(i)(II) of the Act, which is triggered upon departure from the United States, remains in force until the alien has been absent from the United States for ten years.

In the present matter, the record reflects the applicant entered the United States unlawfully in 1999, and she remained in the country until returning to Mexico in June 2008. The applicant became eighteen years old on November 12, 2002. She was thus unlawfully present in the United States from November 12, 2002 until June 2008. She has remained outside of the United States for less than ten years. Accordingly, she is inadmissible under section 212(a)(9)(B)(i)(II) of the Act. Counsel does not contest the applicant's inadmissibility.

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.

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-Morales*, 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).

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 applicant's lawful permanent resident stepfather father is her qualifying relative under section 212(a)(9)(B)(v) of the Act. 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 children as a factor to be considered in assessing extreme hardship under section 212(a)(9)(B)(v) of the Act. Accordingly, hardship to the children will be considered only to the extent that it causes the applicant's stepfather to experience hardship.

The applicant's stepfather indicates in a letter that the applicant's two daughters initially lived with him after the applicant returned to Mexico, but because they missed the applicant and often became sick, he brought them to Mexico to be with the applicant. He helps the applicant financially, but he cannot cover everyone's expenses, including his own. In addition, he is not healthy, needs surgery, and cannot afford to pay for it. The applicant confirms that her daughters live with her in Mexico and that her daughters are often sick. She adds that her stepfather helps them financially, but "it is still not enough." Moreover, her stepfather needs surgery but she cannot help him.

Medical evidence reflects that in December 2007, the applicant's stepfather received emergency medical care in Mexico for abdominal pain, and that an ultrasound of his liver was taken. Medical evidence also reflects that one of the applicant's daughters has severe allergies and anemia; the other has anemia and recurring tonsillitis. The record includes prescription evidence for the applicant's stepfather and daughters.

Financial documentation reflects the applicant's stepfather receives \$454 a month in Social Security supplemental income payments. Country-conditions information discusses corruption, crime, human rights abuses and other general conditions in Mexico.

Upon review, the AAO finds that the evidence in the record, when considered in the aggregate, fails to establish that the applicant's stepfather would experience emotional, physical or financial hardship beyond that normally experienced upon removal or inadmissibility if the applicant is denied admission, and he continues to reside in the United States. The record lacks evidence of the applicant's stepfather's expenses and fails to corroborate assertions that he assists the applicant financially. The evidence also fails to establish that the applicant's stepfather is unable to pay for his own medical needs or that he is experiencing financial hardship due to the applicant's inadmissibility. In addition, the evidence fails to establish that the applicant's stepfather is unable to visit the applicant and her children in Mexico, or that he is experiencing emotional or other hardship based on his grandchildren's health and living situation in Mexico.

The cumulative evidence also fails to establish that the applicant's stepfather would experience emotional, financial or physical hardship that rises beyond the common results of removal or inadmissibility if he moved to Mexico. Medical evidence reflects the applicant's stepfather has sought and received medical care in Mexico. Moreover, the record lacks evidence establishing he would be unable to receive his Social Security income there. The country-conditions evidence submitted is general and fails to establish the applicant's stepfather would experience financial or emotional hardship beyond that normally experienced upon removal or inadmissibility, in Mexico. It is additionally noted that the Department of State lists no travel warnings for the state of Queretaro, where the applicant lives. See http://travel.state.gov/travel/cis_pa_tw/tw_5665.html.

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.