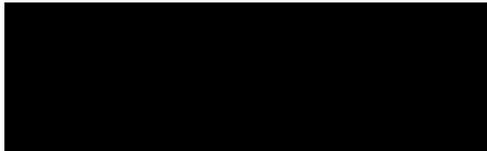


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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090
U.S. Citizenship
and Immigration
Services



H6

Date: Office: MEXICO CITY (ANAHEIM) FILE:

IN RE: Applicant:

SEP 12 2012

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:



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 District Director, Mexico City, 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 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 U.S. citizen child. 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 and child.

The District 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 District Director*, dated November 18, 2009.

On appeal, the applicant, through counsel, claims that she is eligible for a waiver of inadmissibility. *Form I-290B, Notice of Appeal or Motion*, filed December 21, 2009. The applicant submits new evidence of hardship on appeal.

The record includes, but is not limited to, counsel's appeal statement, statements from the applicant's husband, letters of support, a psychological evaluation for the applicant's husband, medical documents for the applicant's husband and daughter, and employment documents for the applicant's husband. 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 her child can be considered only insofar as it results in hardship to a qualifying relative. The applicant's husband 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 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 January 2005, the applicant entered the United States without inspection. In February 2006, the applicant departed the United States. The applicant accrued over one year of unlawful presence between January 2005 and February 2006. 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 ten years of her departure from the United States. The applicant does not contest her inadmissibility.

The record contains references to hardship the applicant's child 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 child will not be separately considered, except as it may affect the applicant's spouse.

In an affidavit dated January 15, 2010, the applicant's husband states he has lived in the United States since he was a child. He states it will be difficult to move to Mexico because he does not think he can find a job to support his family. Additionally, he claims he wants their daughter to attend school in the United States and receive medical treatment in the United States. In a psychological evaluation dated December 16, 2009, [REDACTED] reports that the applicant's daughter suffered from several medical conditions in Mexico. Medical documents in the record establish that in 2006, the applicant's daughter suffered from eczema while she was in Mexico; however, she was receiving treatment. Additionally, [REDACTED] reports that the applicant's husband has to remain in the United States to continue his medical treatment. Medical documentation in the record establishes that in May 2008, the applicant's husband suffered from left epididymitis. [REDACTED] also diagnosed the applicant's husband with generalized anxiety disorder and depression.

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. Regarding the applicant's husband's and daughter's medical conditions, the applicant provided no evidence to corroborate her husband's and [REDACTED] assertion that they have to remain in the United States to receive treatment. Additionally, no updated medical documentation has been submitted establishing that the applicant's husband continues to suffer from any medical condition. Regarding the hardship that the applicant's daughter may experience in Mexico, she is not a qualifying relative under the Act, and the applicant has not shown that hardship to their daughter would elevate her husband'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 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. In counsel's statement on appeal dated January 15, 2010, he states that the applicant's husband is suffering physically and emotionally. The applicant's husband states he is suffering from depression and has to attend therapy. Counsel also claims that through the separation from the applicant, her husband is experiencing "abdominal physical reactions," and his mental health is "deteriorating rapidly." The applicant's husband states he feels sad, depressed, he has headaches, he does not want to eat, and he is losing weight. As noted above, documentation establishes that in May 2008, the applicant's husband suffered from left epididymitis, and he has been diagnosed with generalized anxiety disorder and depression. Additionally, [REDACTED] states the applicant's husband is a reliable employee, but lately his "work and attendance have been a problem," and his attitude has changed.

[REDACTED] reports that the applicant's daughter now resides in the United States with her father, which has forced him to become a single father. The applicant's husband states it will be impossible to care for his daughter and continue working. Additionally, he claims that he sends money to the applicant in Mexico. He claims that their daughter is suffering emotionally and she does not understand why her parents are separated. Additionally, [REDACTED] reports that the applicant's daughter continues to suffer from the same medical conditions that afflicted her in Mexico. As noted above, in 2006, the applicant's daughter suffered from eczema while in Mexico.

The AAO acknowledges that the applicant's husband is suffering some 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. With respect to the applicant's spouse's medical hardship, although the record establishes that he suffers from left epididymitis, other than counsel's statement, no medical documents have been submitted establishing that he suffers from abdominal issues. Without supporting evidence, the assertions of counsel will not satisfy the applicant's burden of proof. The unsupported assertions of counsel do not

constitute evidence. See *Matter of Obaigbena*, 19 I&N Dec. 533, 534 n.2 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1, 3 n.2 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980). Though statements in the record refer to financial difficulties, the record does not contain evidence establishing that the applicant's husband is suffering financial hardship. Additionally, the applicant has not distinguished her husband's financial challenges from those commonly experienced when a family member remains in the United States. The AAO also notes that the applicant's daughter may be suffering some hardship in being separated from the applicant; however, the applicant has not shown that their daughter's hardship has elevated her husband's challenges to an extreme level. 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.