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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: **SEP 19 2012**

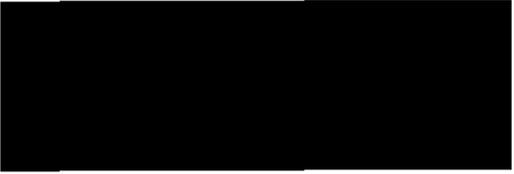
Office: MONTERREY, MEXICO

FILE:

IN RE: Applicant:

APPLICATION: Application for Waiver of Grounds of Inadmissibility pursuant to section 212(a)(9)(B)(v) of the Immigration and Nationality Act (the 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. The matter 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 Act for having been unlawfully present in the United States for more than one year. The applicant is married to a U.S. citizen and seeks a waiver of inadmissibility pursuant to section 212(a)(9)(B)(v) of the Act in order to reside with her husband and child in the United States.

The field office director found that the applicant failed to establish extreme hardship to a qualifying relative and found that the application should be denied as a matter of discretion. The field office director denied the application accordingly. *Decision of the Field Office Director*, dated October 13, 2010.

On appeal, counsel contends the applicant established extreme hardship, particularly considering that the applicant's husband is suffering from severe depression and anxiety that has resulted in physical problems and financial instability.

The record contains, *inter alia*: a copy of the marriage certificate of the applicant and her husband, [REDACTED] indicating they were married on January 23, 2007; a copy of the birth certificate of the couple's U.S. citizen son; two affidavits from [REDACTED] parents and sister; copies of bills, phone cards, and other financial documents; copies of prescriptions; two letters from a social worker; copies of the couple's child's medical records; a copy of the U.S. Department of State's Travel Warning for Mexico and other background materials; copies of photographs of the applicant and her family; a letter of support; and an approved Petition for Alien Relative (Form I-130). The entire record was reviewed and considered in rendering this decision on the appeal.

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

(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 [now the Secretary 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 Attorney General [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.

In this case, the record shows, and the applicant does not contest, that she entered the United States in July 2005 without inspection and remained until November 2009. The applicant accrued unlawful presence of over four years. She now seeks admission within ten years of her 2009 departure. Accordingly, she is 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 one year or more and seeking admission to the United States within ten years of her last departure.

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 this case, the applicant’s husband, [REDACTED] states that since his wife and three-year old son departed the United States, his life has been falling apart. He contends he has been suffering from severe depression, anxiety, irritability, frustration, and insomnia. According to [REDACTED], his physician has prescribed him an anti-depressant, as well as prescriptions for pain in his hand after he cut his finger at work because he was distracted, and has encouraged him to seek help from a psychologist. In addition, [REDACTED] states that his son is not able to acquire the same degree and level of healthcare, education, and other opportunities in Mexico compared to the United States, but that he is unable to keep his son with him without his wife’s help. He contends he fears for his wife’s and his son’s safety in Mexico and that it is impossible for him to continue financially supporting two households. Furthermore, [REDACTED] contends that relocating to Mexico to be with his wife would mean losing everything he has worked so hard for, including losing his home, friends, and family. He states he has lived in the United States all of his life and that it would be impossible for him to adapt to living in Mexico.

After a careful review of the record, there is insufficient evidence to show that [REDACTED] has suffered or will suffer extreme hardship if his wife’s waiver application were denied. Regarding the emotional hardship claim, the record contains copies of [REDACTED] prescriptions as well as two mental health assessments. According to the assessments, [REDACTED] is severely depressed and anxious as a result of worrying about the welfare of his wife and son in Mexico. Although the AAO is sympathetic to the family’s circumstances, and recognizes that the input of any medical professional is respected and valuable, the assessments do not show that the applicant’s situation is

unique or atypical compared to other individuals in similar circumstances. *See Perez v. INS*, 96 F.3d 390 (9th Cir. 1996) (holding that the common results of deportation are insufficient to prove extreme hardship and defining extreme hardship as hardship that was unusual or beyond that which would normally be expected). Similarly, the letters of support in the record from [REDACTED]'s parents and sister, which indicate that [REDACTED] is depressed, has difficulty sleeping, cannot focus at work, and has become more irritable because he is separated from his wife, do not describe hardship that is unusual or beyond that which would normally be expected after a spouse's separation. Although the record contains copies of prescriptions and return to work orders from [REDACTED]'s physician, there is no letter in plain language from his physician addressing his mental health issues or his hand injury. Regarding the financial hardship claim, although the AAO does not doubt that [REDACTED] will suffer some financial hardship supporting two households, there is insufficient evidence in the record to evaluate the extent of his hardship. Although the record contains copies of bills, a lease agreement, and copies of money transfers and calling cards, there is no evidence in the record addressing [REDACTED]'s income or wages, such as tax documents or copies of pay stubs. Even considering all of these factors cumulatively, there is insufficient evidence showing that the hardship [REDACTED] has experienced or will experience amounts to extreme hardship.

Furthermore, the record does not show that [REDACTED] would suffer extreme hardship if he relocated to Mexico to be with his wife. The record shows that [REDACTED] is currently thirty-two years old and according to the mental health assessment, works as a laborer. There is no evidence in the record suggesting he would be unable to find comparable employment in Mexico. Although the AAO recognizes [REDACTED] was born in the United States and contends he has lived his entire life in the United States, the record does not show that his adjustment to living in Mexico would be any more difficult than would normally be expected under the circumstances. Regarding [REDACTED]'s concerns about safety in Mexico, the AAO recognizes that the U.S. Department of State has issued a Travel Alert for parts of Mexico. However, according to the applicant's Biographic Information form (Form G-325A), she is living in [REDACTED], where both of her parents are also currently residing. The Travel Alert specifically states that there is no advisory in effect for [REDACTED]. Even considering all of the evidence cumulatively, the record does not show that [REDACTED] hardship would be extreme, or that his situation is unique or atypical compared to others in similar circumstances. *Perez v. INS, supra*.

A review of the documentation in the record fails to establish the existence of extreme hardship to the applicant's husband caused by the applicant's inadmissibility to the United States. Having found the applicant statutorily ineligible for relief, 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, 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.