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



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



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DATE: **SEP 27 2012** OFFICE: MEXICO CITY, MEXICO

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:

SELF-REPRESENTED

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,

A handwritten signature in cursive script, appearing to read "Perry Rhew".

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The Form I-601, Application for Waiver of Inadmissibility (Form I-601) 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 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 remaining in the United States unlawfully for more than a year and seeking admission within ten years of her departure. The applicant is married to a U.S. citizen, and she seeks a waiver of inadmissibility under section 212(a)(9)(B)(v) of the Act, 8 U.S.C. § 212(a)(9)(B)(v), in order to reside in the United States with her U.S. citizen husband and children.

In a decision dated May 19, 2010, the director determined the applicant had failed to establish that her U.S. citizen husband would experience extreme hardship if she were denied admission into the United States. The Form I-601 waiver application was denied accordingly.

On appeal, the applicant asserts that her husband will experience extreme emotional and financial hardship if she is denied admission into the United States. In support of these assertions the applicant submits letters from her husband, friends and family, and her husband's place of employment. She also submits a psychological assessment, medical information, and academic information for her children.

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) Exceptions.-

(I) Minors.-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).

The record reflects the applicant entered the United States without inspection in 1998. She remained unlawfully in the United States until May 2009, when she traveled to Mexico. Inadmissibility under section 212(a)(9)(B)(i)(II) of the Act, which is triggered upon departure, remains in force until the alien has been absent from the United States for ten years. Here, the applicant was unlawfully present in the United States for over one year from September 1, 2000, when she turned eighteen, until May 2009. She has remained outside of the United States for less than ten years. She is

therefore inadmissible under section 212(a)(9)(B)(i)(II) of the Act. The applicant does not contest her inadmissibility under section 212(a)(9)(B)(i)(II) of the Act.

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 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. 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 U.S. citizen husband is her qualifying relative under section 212(a)(9)(B)(v) of the Act. The applicant refers to hardship her U.S. citizen children would experience if her waiver application is denied. It is noted, however, that Congress did not include hardship to an alien’s child as a factor to be considered in assessing extreme hardship under section 212(a)(9)(B)(v) of the Act. Hardship to the applicant’s children will therefore not be considered, except as it may affect the applicant’s qualifying family member.

The applicant’s husband states in letters that he and the applicant have been together for almost eleven years and they have two U.S. citizen children. The applicant was the primary caretaker for their children, taking them to school, conferences and medical appointments; she also took care of their house and cooked the family’s meals. The applicant’s husband works ten-hour days Mondays through Thursdays, and in the applicant’s absence he is unable to properly care for their children and give them the attention they need. Their daughter could not continue attending pre-school because no one was available to pick her up after the applicant returned to Mexico; their daughter cries almost daily because she misses the applicant. The applicant’s husband feels their family is falling apart, he gets headaches thinking about his family’s circumstances, and the emotional suffering of the applicant and their children is emotionally “killing” him.

The applicant’s mother states in a letter that she cannot care for the applicant’s children because she is a single mother and must care for her own children, and she notes the hardship the applicant’s husband is experiencing due to the applicant’s absence. The applicant’s husband’s supervisor also refers to hardships the applicant’s husband is experiencing due to the applicant’s absence; he considers the applicant’s husband a hard-working employee who “is always at work” except when he is caring for his children. The record also contains letters from friends attesting to the applicant’s good character and hardship her husband is experiencing in her absence.

Medical evidence reflects that their 12 year-old son received medical treatment for stress gastritis in July 2009, due to his mother's absence, and that he was referred for further evaluation for depression. An August 2009 psychological evaluation indicates his aunt is responsible for his treatment and reflects their son is "extremely" sad, misses and worries about his mother, has lost interest in all activities, cries daily, does poorly in school, and no longer plays with friends; the evaluator concludes that anti-depressant medication "may be necessary." Academic records reflect their son was referred for special-education services in reading comprehension, language skills and math calculations in March 2009.

Medical evidence also reflects that their daughter had an ear-infection related operation in December 2006, when she was age one. She was treated several times for ear infections in 2009, and she was prescribed medication for an ear infection in June 2009. The applicant brought their daughter to her medical appointments, and medical care was paid through Medicaid. Their daughter initially lived with the applicant in Mexico, but because she has frequent ear infections, she returned to the United States to live with the applicant's husband. Academic records reflect their daughter was referred for three months of special language and education services in October 2008. A letter from their daughter's pre-school reflects she attended the school between August 2008 and April 2009.

A licensed certified social worker diagnoses the applicant's husband with adjustment disorder, depression, and chronic anxiety due to the applicant's absence and his increased family and financial responsibilities. In her opinion the applicant's husband and children would experience extreme emotional and financial hardship in the United States and Mexico if the applicant's waiver application is denied.

Upon review, the AAO finds that the evidence in the record, when considered in the aggregate, establishes the applicant's husband would experience hardship that rises above the common results of removal or inadmissibility if the applicant were denied admission into the United States and he remains in the United States. The applicant's husband has been diagnosed with adjustment disorder and chronic anxiety due to the applicant's absence, and evidence demonstrates he is emotionally affected by their children's emotional reactions to the applicant's absence, their medical and educational circumstances, and his perception that he is unable to properly care for his family.

The AAO finds, however, that the evidence in the record, when considered in the aggregate, fails to establish the applicant's husband would experience hardship that rises beyond the common results of removal or inadmissibility if the applicant were denied admission and he relocated with his family to Mexico. The applicant's husband claims that relocation to Mexico is not an option because he is well-established in the United States, his children are U.S. citizens, and his employment and home are in this country. The applicant's husband does not otherwise address hardship he would experience in Mexico, and he provides no evidence to corroborate his assertions or to establish hardship beyond that normally experience upon relocation if he moved with his family to Mexico. It is noted that the social worker indicates the applicant's husband has lived in the United States since he was nine years old and has limited family ties there. She further speculates the applicant's husband would face financial hardship in Mexico due to the poor economy and his limited education and contacts, and that their children would experience extreme emotional and psychological hardship in Mexico. However, the record lacks country-conditions information, financial documents

or other evidence to corroborate her claims. Moreover, the record fails to demonstrate the applicant's family would be unable to obtain proper medical care or educational assistance in Mexico. It is noted that Department of State country-conditions information does not reflect safety concerns in Zapopan, Jalisco, where the applicant is from. See http://travel.state.gov/travel/cis_pa_tw/cis/cis_5665.html. Evidence in the record reflects further that the applicant's husband and children speak Spanish, and the applicant's husband is originally from Mexico; the evidence also fails to establish that family members in the United States would be unable to visit them in Mexico.

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. As the applicant has not demonstrated extreme hardship upon relocation, we cannot find that refusal of admission would result in extreme hardship to the qualifying relative in this case. Furthermore, because the applicant has not established extreme hardship to a qualifying family member upon relocation, no purpose would be served in determining whether the applicant merits a waiver as a matter of discretion.

In proceedings for an 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.