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

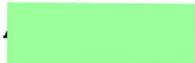


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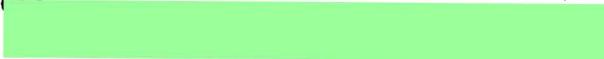
APR 17 2013

Office: ANAHEIM

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, 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 with the field office or service center that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$630. The specific requirements for filing such a request 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.


Ron Rosenberg
Acting Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the International Adjudications Support Branch on behalf of 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 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 10 years of her last departure from the United States. The applicant seeks a waiver of inadmissibility in order to reside in the United States with her lawful permanent resident mother.

The Field Office Director concluded that the applicant had failed to demonstrate extreme hardship to her mother and denied the application accordingly. *See Decision of Field Office Director*, dated July 28, 2012.

On appeal, counsel for the applicant asserts that the applicant's lawful permanent resident mother is experiencing extreme emotional and financial hardship in the applicant's absence.

The evidence includes, but is not limited to: statements from the applicant's mother; letters from two of the applicant's aunts; prescription information for the applicant's mother; financial records; and country conditions information. The entire record was reviewed and considered in rendering 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 Attorney General 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 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. No court shall have jurisdiction to review a decision or action by the Attorney General regarding a waiver under this clause.

In the present case, the record reflects that the applicant entered the United States without inspection in 1994, at the age of six or seven, and remained in the country until November 2008. The applicant accrued more than one year of unlawful presence between May 7, 2005, when she reached the age of 18, and November 2008, when she departed the United States. Therefore, she is inadmissible under section 212(a)(9)(B)(i) of the Act for a period of 10 years from her last departure. The applicant does not contest this finding of inadmissibility on appeal.

The applicant is eligible to apply for a waiver of inadmissibility under section 212(a)(9)(B)(v) of the Act as the daughter of a lawful permanent resident. In order to qualify for this waiver, however, she must first prove that the refusal of her admission to the United States would result in extreme hardship to her qualifying relative. Hardship to the applicant herself is not directly relevant under the statute and will be considered only insofar as it results in hardship to the applicant's mother. If extreme hardship to a qualifying relative is established, the applicant is statutorily eligible for a waiver, and USCIS then assesses whether a favorable exercise of discretion is warranted. *See Matter of Mendez-Morales*, 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 U.S. 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 v. INS*, 138 F.3d 1292, 1293 (9th Cir. 1998) (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.

On appeal, the applicant’s mother states that she has been suffering extreme emotional hardship due to her separation from the applicant and another daughter. She indicates that she has experienced symptoms of depression and anxiety since her daughters departed the United States because she misses them and is very concerned about their safety in Mexico. She claims that she feels “hopeless and helpless” and that she has “body aches and pains,” “pulsating headaches that do not go away,” and “crying spells.” Additionally, she states that she has lost her appetite and suffers from insomnia.

The applicant’s mother also claims that her depression has interfered with her ability to work. She states that she “wake[s] up restless in the mornings” and is sometimes late to work, and that she has trouble concentrating. She alleges that her supervisor has talked to her about her performance. She also fears that she will be hurt at work because she works with machinery and must be able to concentrate.

The applicant’s mother alleges that the applicant and her sister live alone in Mexico and receive temporary visits from their grandparents. When the grandparents are not visiting, the applicant’s mother pays a family friend to care for the applicant and her sister. The applicant’s mother states that she earns \$16,000 per year and has struggled to support herself while also supporting her daughters in Mexico.

According to the applicant's mother, she cannot relocate to Mexico because she has lived in the United States for a long time. She also fears that she would be unable to find work because "jobs are very scarce" in Mexico and "women are not considered useful in the work field." She alleges that she and her daughters would have no income and would become homeless because they have no close relatives in Mexico. Additionally, she claims that she and her daughters would be at risk of violence there.

The AAO finds that the applicant has failed to demonstrate that her mother will experience extreme hardship if their separation continues. The AAO acknowledges that the applicant's mother has received a prescription for antidepressant medication. However, the evidence is insufficient to demonstrate that her depression is severe or that it has interfered with her daily life. The applicant has not submitted a letter from her mother's doctor or other medical or psychological evidence, or any other documentation to corroborate her mother's claims regarding the severity of her mental health condition. The applicant's aunts state that the applicant's mother has been worried about her daughters, that she misses them and cries over them, and that she takes antidepressants. However, these statements are insufficient to show that the applicant's mother is experiencing emotional hardship beyond that which normally results from a long-term separation from a close family member. *See Matter of Cervantes-Gonzalez*, 22 I&N Dec. 560, 568 (BIA 1999).

Additionally, while the applicant's mother claims that she is struggling financially, the record indicates that she earned \$16,069 in 2011, and the record does not contain any information regarding her monthly expenses. Although the applicant's mother also states that she sends money to the applicant and her other daughter in Mexico, the record does not clearly support her claim. The applicant's mother's bank statement indicates that she has made transfers to another bank account, but it does not indicate the owner or location of that account. Additionally, while the record contains one Western Union receipt, the recipient listed is not the applicant or her sister. Furthermore, although the applicant's mother claims that she must support the applicant in Mexico and that she pays a friend to care for her, the applicant is 25 years old. It is therefore unclear why the applicant's mother must support her and arrange for her care.

The AAO also finds that the applicant has failed to show that her mother would experience extreme hardship if she were to relocate to Mexico. The applicant's mother is originally from Mexico and is familiar with the language and culture in that country. Additionally, while the applicant's mother claims that she would be unable to find work in Mexico, there is no support for that claim in the record. Finally, although the applicant's mother fears violence in Mexico, there is no indication that the applicant, the sister with whom she lives, or the relatives who visit them regularly have been in danger.

Even when considered in the aggregate, the evidence the applicant has presented does not establish that her mother would experience extreme hardship if the waiver application were denied. The AAO therefore finds that the applicant has failed to establish extreme hardship to her lawful permanent resident mother as required under section 212(a)(9)(B)(v) of the Act. 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.

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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. 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.