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



U.S. Citizenship
and Immigration
Services

DATE: **APR 23 2013** OFFICE: ANAHEIM

FILE: [REDACTED]

IN RE: Applicant: [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 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 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 black ink that reads "Ron Rosenberg".

Ron Rosenberg
Acting Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the International Adjudications Support Branch, Anaheim, California, 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 one year or more and seeking admission within 10 years of his last departure from the United States. The applicant is the son of a lawful permanent resident and the stepson of a U.S. citizen, and he is the beneficiary of an approved Petition for Alien Relative (Form I-130) filed by his stepfather. The applicant does not contest this finding of inadmissibility. Rather, he 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 with his parents and siblings in the United States.

The International Adjudications Support Branch concluded the applicant failed to establish extreme hardship would be imposed on a qualifying relative and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) accordingly.¹ *See Decision on Behalf of the Field Office Director*, dated April 24, 2012.

On appeal, the applicant contends the U.S. Citizenship and Immigration Services (USCIS) abused its discretion and erred in denying his waiver application as it did not consider all of the factors in his case. The applicant also contends the evidentiary documentation submitted in support of his appeal demonstrates his mother would suffer extreme hardship if his waiver application were not granted. *See Form I-290B, Notice of Appeal or Motion*, dated May 20, 2012.

The record includes, but is not limited to correspondence and letters of support, as well as identity, medical, employment, financial, and academic documents. 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-

...

¹ The AAO notes the International Adjudications Support Branch's decision refers to the applicant's U.S. citizen stepfather as his only qualifying relative, and it does not identify the applicant's lawful permanent resident mother as an additional qualifying relative. However, the AAO finds the failure to identify the applicant's lawful permanent resident mother as an additional qualifying relative to be harmless error as the record reflects that the International Adjudications Support Branch considered hardship to the applicant's mother in its decision.

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(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).

...

(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. No court shall have jurisdiction to review a decision or action by the Attorney General [Secretary] regarding a waiver under this clause.

The record establishes the applicant initially entered the United States without inspection by immigration officials around 1994 and remained until around July 1997. The record also establishes the applicant subsequently entered the United States without inspection by immigration officials about December 30, 1999 and remained until he voluntarily left about March 2, 2010. The record reflects the applicant has remained outside the United States to date. The record further establishes the applicant turned 18 years of age on December 30, 2006. Thereby, the applicant accrued unlawful presence from December 30, 2006 until March 2, 2010, a period in excess of one year. As the applicant is seeking admission within 10 years of departure, he is inadmissible pursuant to section 212(a)(9)(B)(i)(II) of the Act.

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, his siblings, and grandparents can be considered only insofar as it results in hardship to a qualifying relative. The applicant's lawful permanent resident mother and U.S. citizen stepfather are the only demonstrated qualifying relatives in this case. 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).

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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 (the BIA) 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 BIA 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 BIA 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; *In re 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 BIA 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., *In re Bing Chih Kao and Mei Tsui Lin*, 23 I&N Dec. 45, 51 (BIA 2001) (distinguishing *In re 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. I.N.S.*, 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.

The applicant's mother contends: she finds the question concerning the hardship she has been experiencing since the applicant has been in Mexico offensive, because he is a part of her and she feels that her heart has been "ripped from [her] chest"; she was a single mother when he was born and promised that she would always do the best for him and protect him until the day she died; she misses him very much, and she worries about his safety given the dangerous environment in Mexico; she has been very depressed and saddened because she cannot understand why he is not allowed to return to the only place and way of life he can remember; she came to the United States to give her children every opportunity for a better life, and this has been taken away from him as he was just starting to "sort out his adult life"; and she has to be medicated for depression, anxiety, sleeplessness, and tension just to function. The applicant's stepfather also indicates: he has been married to the applicant's mother for 10 years, she is sad all the time, and she has sought medical advice and has been prescribed medication for depression and anxiety, but she has been unable to see a doctor because money is "so tight"; the applicant's mother is worried about the violent crime and drug activity to which the applicant is exposed, and they want the best for him; the applicant's mother is the sole provider as he has been unable to go back to work; they lost their home, and he lost his job in September 2011; he is worried he will die before bringing the applicant back to his family; the family needs the applicant back in their lives, as he is loved by everybody and sadly missed; and there are numerous job opportunities for the whole family where they currently live, and the applicant would have opportunities to "work, go to college, [and obtain] a better paying job" in the future. Additionally, the applicant's parents' family and friends indicate the applicant's mother has lost a lot of weight due to her worries for the applicant and absence from him.

Although the applicant's parents may be experiencing hardship in the applicant's absence, the AAO finds the record does not establish the hardship goes beyond what is normally experienced by qualifying relatives of inadmissible individuals. The AAO notes the record does not include any evidence of the applicant's mother's mental health conditions and treatment other than what has been self-reported. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)). Absent an explanation in plain language from the treating mental health professional of the nature and severity of any condition and a description of any treatment or family assistance needed, the AAO is not in the position to reach conclusions concerning the severity of a mental health condition or the treatment needed.

Also, the AAO notes the record includes sufficient evidence the applicant's stepfather is currently being treated for the following diagnosed conditions: anxiety, benign essential hypertension, chest pain, coagulation, deep venous thrombosis, and restless leg syndrome. *See Medical Reports*, dated December 21, 2011 and January 20, 2012. However, the AAO notes the record does not include evidence showing that the applicant's presence would be advantageous in his stepfather's treatment. The AAO is thus unable to conclude the applicant's parents' emotional and medical hardship would go beyond the normal consequences of inadmissibility.

Additionally, the AAO finds the record establishes the applicant's stepfather has been in arrears for medical bills, resulting in some collection notices, and he and the applicant's mother experienced the seizure of real property. *See billing statements; see also Notice of Seizure*. However, the AAO notes the record does not include evidence of the applicant's mother's employment and earnings. Moreover, the record does not include evidence of labor or employment conditions in Mexico, indicating the applicant's inability to contribute to the maintenance of his and his parents' households. The AAO is thus unable to conclude the record establishes the applicant's parents' financial hardship would go beyond the normal consequences of inadmissibility.

The AAO notes the concerns regarding the applicant's parents' hardship, but finds even when evidence of this hardship is considered in the aggregate, the record fails to establish they would suffer extreme hardship as a result of separation from the applicant.

The applicant's stepfather contends he and the applicant's mother would suffer extreme hardship upon relocating to Mexico to be with the applicant as they have other children in school and cannot move, and there are no job opportunities in their field of work. The applicant's brother indicates there are not many promising opportunities in Mexico, and he worries about the applicant, given the "senseless violence . . . along the [M]exican border."

The AAO notes the applicant's mother is a national of Mexico, and the record does not indicate the extent to which she maintains familial and social ties or her employment prospects there. However, the record reflects she has resided continuously in the United States, where she maintains lawful permanent resident status, since about February 1995. Also, the record indicates the applicant's stepfather has resided continuously in the United States, where he maintains close family and social ties. Further, the U.S. Department of State has issued a travel warning for Chihuahua, Mexico: "The situation in the state of Chihuahua, specifically Ciudad Juarez and Chihuahua City, is of special concern. . . . Although there has been a further decline in homicides in 2012, Ciudad Juarez still has one of the highest homicide rates in Mexico. Chihuahua City has seen an increase in violent crime in previous years. . . . U.S. citizens have been victims of narcotics-related violence." *Travel Warning, Mexico*, issued November 20, 2012. The AAO finds, considering the evidence of hardship in the aggregate, the applicant's parents would suffer extreme hardship upon relocation to 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. A claim that qualifying relatives will relocate and thereby suffer extreme hardship can easily be made for purposes of the waiver even where there is no actual intention to relocate. *Cf. Matter of Ige*, 20 I&N Dec. 880, 886 (BIA 1994). Furthermore, to relocate and suffer extreme hardship, where remaining in the United States and being separated from the applicant would not result in extreme hardship, is a matter of choice and not the result of inadmissibility. *Id.*, also *cf. In re Pilch*, 21 I&N Dec. at 632-33. As the applicant has not demonstrated extreme hardship from separation, we cannot find that refusal of admission would result in extreme hardship to the qualifying relatives in this case.

In this case, the record does not contain sufficient evidence to show that the hardship faced by the qualifying relatives, considered in the aggregate, rises beyond the common results of removal or inadmissibility to the level of extreme hardship. The AAO therefore finds the applicant has failed to establish extreme hardship to his lawful permanent resident parent and U.S. citizen stepparent 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.

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. 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.