



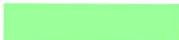
**U.S. Citizenship
and Immigration
Services**

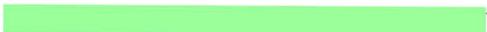
(b)(6)



DATE: FEB 14 2013

OFFICE: MEXICO CITY, MEXICO

FILE: 

IN RE: 

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:

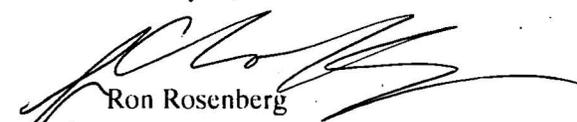


INSTRUCTIONS:

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,


Ron Rosenberg
Acting Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Field Office 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 having been unlawfully present in the United States for more than one year, and again seeking admission within 10 years of the date of the applicant's departure. The applicant is the son of a lawful permanent resident and is the beneficiary of an approved Petition for Alien Relative. He seeks a waiver of inadmissibility pursuant to section 212(a)(9)(B)(v) of the Act in order to return to the United States to live with his lawful permanent resident father.

In a decision dated March 7, 2012 denying the Form I-601, Application for Waiver of Grounds of Inadmissibility, the Field Office Director concluded that the applicant was inadmissible under section 212(a)(9)(B)(i)(II) of the Act and had failed to establish that the bar to admission would impose extreme hardship on his lawful permanent resident father, the qualifying relative. *See Field Office Director's Decision*, dated March 7, 2012.

On appeal, counsel submits a hardship affidavit from the applicant's father, medical records for the applicant's father, an employment verification letter for the applicant's father, financial and tax documents, and articles and excerpts from the internet regarding country conditions in Mexico. The record also includes, but is not limited to, prior hardship statements from the applicant's father and the applicant, medical records, and identification documents.

The AAO conducts appellate review on a *de novo* basis. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). The entire record was reviewed and considered in rendering a decision on the appeal.

The Field Office Director determined that the applicant was inadmissible under section 212(a)(9) of the Act, which provides, in pertinent part that:

(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.

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- (v) Waiver.-The [Secretary of Homeland Security (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. No court shall have jurisdiction to review a decision or action by the [Secretary] regarding a waiver under this clause.

On his Form I-601, the applicant stated that he entered the United States without inspection in March 2003 and resided in this country until his departure in December 2010. *See Form I-601, Application for Waiver of Grounds of Inadmissibility*, dated May 4, 2011. The applicant turned 18 years old on October 14, 2005 and thereafter accrued unlawful presence until his departure from the United States. The applicant is therefore inadmissible under section 212(a)(9)(B)(i)(II) of the Act for having been unlawfully present in the United States for more than one year, and again seeking admission within 10 years of the date of the applicant's departure. Inadmissibility is not contested on appeal. The applicant's qualifying relative for a waiver of this inadmissibility is his lawful permanent resident father.

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. *See Matter of Mendez*, 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*, the Board of Immigration Appeals 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-I-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. I.N.S.*, 138 F.3d 1292 (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 record contains references to hardship the applicant’s sibling would experience if the waiver application were denied. It is noted that Congress did not include hardship to an alien’s sibling as a factor to be considered in assessing extreme hardship under section 212(a)(9)(B)(v) of the Act. In the present case, the applicant’s father is the only qualifying relative for the waiver under section 212(a)(9)(B)(v) of the Act, and hardship to the applicant’s sibling will not be separately considered, except as it may affect the applicant’s qualifying relative.

On appeal, the applicant’s father states that he will suffer extreme emotional, financial and medical hardship upon separation from the applicant. The record, in the aggregate, does not

establish that the applicant's father will suffer extreme hardship upon separation from the applicant.

Regarding emotional hardship, the applicant's father states that he misses his son and is worried about his son's safety in Mexico. In support of this claim of emotional hardship, the applicant's father submits various articles and excerpts from the internet in Spanish regarding recent violence in [REDACTED] Mexico. The titles and sources of these articles and excerpts from the internet are not identified and the evidence is insufficient to establish that the country conditions in [REDACTED] Mexico are so violent as to pose a credible danger to the applicant. The record also contains no supporting evidence of any resultant impact on the applicant's father's emotional well-being or mental health which would show that separation has caused him extreme emotional hardship.

Regarding financial and medical hardship, the applicant's father states that he is aging, suffers from several medical conditions and is no longer able to work full-time in his current manual labor position because of physical strain on his body. The applicant's father further states he needs the financial support of the applicant to help support the nine members of his family so that he can recover from his medical conditions. The applicant states that it is difficult to find work in Mexico. In support of these claims of financial and medical hardship, the applicant's father submits various medical records showing that he has received treatment for hypertension, joint pain, and crural hernia in 2004. The medical records further show that the applicant's father has moderate degenerative disc disease in his back and mild patellofemoral joint DJD in his right knee. The medical records do not explain the impact of these conditions on the applicant's father's ability to work on a full-time basis. The record contains tax and financial documents that show the applicant's father had not reduced his working hours or the income he earned from 2009 to 2011. The record also does not contain evidence of his household size of nine family members, and total expenses and income for his household to support his claim of financial hardship. The record does not contain evidence showing the type of financial support the applicant provided his father in the past while he resided in the United States or the applicant's inability to provide financial support from Mexico. The record also does not establish the inability of the applicant's father to rely on other family members for any needed financial support.

The record lacks sufficient evidence demonstrating that the emotional, financial, medical or other impacts of separation on the applicant's father are in the aggregate above and beyond the hardships normally experienced, such that the applicant's father would experience extreme hardship if the waiver application is denied and he remains separated from the applicant.

The record also does not establish that the applicant's father will suffer extreme hardship upon relocation to his native Mexico. A May 8, 2012 letter from Dr. [REDACTED] notes that he advised the applicant's father not to travel long distances due to his elevated blood pressure and joint pain, but neither the applicant nor the applicant's father discuss extreme hardship to the applicant's father upon relocation to Mexico. The record, in the aggregate, is insufficient to show that the applicant's father will suffer extreme hardship upon relocation to Mexico.

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Page 6

The applicant has failed to establish extreme hardship to his lawful permanent resident parent, 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 a 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.