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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, DC 20529-2090



U.S. Citizenship
and Immigration
Services

DATE: **JAN 02 2013** Office: MONTERREY, MEXICO

FILE: [REDACTED]

IN RE: Applicant: [REDACTED]

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:
[REDACTED]

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 that any motion must 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 "Michael Shumway".

Ron Rosenberg
Acting Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Field Office Director, Monterrey, 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 (Act), 8 U.S.C. § 1182(a)(9)(B)(i)(II), as an alien seeking admission within 10 years of departure or removal after having been unlawfully present in the United States for one year or more. The applicant is the son of lawful permanent residents. He seeks a waiver of inadmissibility pursuant to sections 212(a)(9)(B)(v) of the Act, 8 U.S.C. §§ 1182(9)(B)(v), in conjunction with an immigrant visa application, in order to obtain admission to the United States as a lawful permanent resident.

The director found that the applicant had failed to establish that the bar to his admission would result in extreme hardship to the qualifying relatives, as required for a waiver under section 212(a)(9)(B)(v) of the Act, and denied the Form I-601, Application for Waiver of Grounds of Inadmissibility, accordingly. *Field Office Director's Decision*, dated November 10, 2010. The director alternatively denied the applicant's waiver application in the exercise of discretion, based on his criminal and immigration violations.

On appeal, counsel contends that the director erred in finding that the applicant had not demonstrated extreme hardship to his qualifying relatives, and that the discretionary denial of the waiver application was also in error because the positive factors in the applicant's case outweigh the adverse factors. *See Counsel's Brief*, dated December 7, 2010.

The record of evidence includes, but is not limited to, counsel's briefs; joint statement of the applicant's lawful permanent resident parents; applicant's birth certificate; medical records for the applicant's parents; the applicant's immigration court records; article on healthcare system in Mexico; and the applicant's criminal records. The entire record was reviewed and all relevant evidence considered in reaching a decision on the appeal.

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

(B) ALIENS UNLAWFULLY PRESENT.-

(i) In general.- Any alien (other than an alien lawfully admitted for permanent residence) who-

(I) was unlawfully present in the United States for a period of more than 180 days but less than 1 year, voluntarily departed the United States (whether or not pursuant to section 244(e) prior to the commencement of proceedings under section 235(b)(1) or section 240), and again seeks admission within 3 years of the date of such alien's departure or removal, or

(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.

- (ii) Construction of unlawful presence.- For purposes of this paragraph, an alien is deemed to be unlawfully present in the United States if the alien is present in the United States after the expiration of the period of stay authorized by the Attorney General or is present in the United States without being admitted or paroled.

- (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.

The record indicates that the applicant was last admitted to the United States on or about June 26, 1994 as a B-2 nonimmigrant visitor for an authorized period not to exceed July 3, 1994. *See Form I-444*. He violated the conditions of his admission and remained in the United States beyond the authorized period of stay. On February 23, 1999, the applicant was arrested following a domestic incident and charged with assault, wrongs to minors, and disturbing the peace. On February 24, 1999, the applicant was convicted of assault in violation of section 38-93 of the Colorado Revised Statutes (C.R.S.) and wrongs to minors in violation of C.R.S. § 34-46. He was sentenced to one year of probation and 221 days imprisonment of which 220 days were suspended.

A Notice to Appear, placing the applicant into removal proceedings, was filed with the Immigration Court on October 24, 2005. On July 25, 2007, the Immigration Judge denied the applicant's application for cancellation of removal¹ under section 240A(b)(1) of the Act, on the basis that he had failed to demonstrate exception and extremely unusual hardship to the qualifying relatives. The Immigration Judge did, however, grant the applicant voluntary departure. The applicant filed a timely appeal with the Board of Immigration Appeals, which affirmed the Immigration Judge's decision without opinion on March 31, 2008, and gave the applicant an additional 60 days within which to depart the United States. The record shows that the applicant complied with the voluntary departure order and departed the United States on or about May 29, 2008. *See Form G-146*.

As the applicant has not disputed inadmissibility under section 212(a)(9)(B)(i)(II), 8 U.S.C. § 1182(a)(9)(B)(i)(II), as an alien seeking admission within 10 years of departure or removal after having been unlawfully present in the United States for one year or more, from approximately July 1994 to May 29, 2008, and the record does not show that finding of inadmissibility to be in error, the AAO will not disturb the determination. The applicant seeks a waiver of his inadmissibility pursuant to section 212(a)(9)(B)(v) of the Act. The record establishes that the applicant's parents are lawful permanent residents and qualifying family members for purposes of his section 212(a)(9)(B)(v) waiver application.

¹ The Immigration Judge found that the applicant's 1999 convictions for assault and wrongs to minors were not crimes involving moral turpitude, and did not statutorily bar his cancellation relief. As the Attorney General's authority is binding, the AAO will not revisit the issue of whether the applicant's convictions are crimes involving moral turpitude.

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 (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 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.

Counsel contends that the evidence of record demonstrates that the applicant's parents would suffer extreme hardship as a result of separation from him. The record indicates that the applicant's lawful permanent resident father and mother are approximately 71 and 74 years old, respectively, and are disabled as a result of various health issues. An April 23, 2010 letter from their treating physician, [REDACTED] and attached medical records, indicate that the applicant's father, [REDACTED] suffers from chronic osteoarthritis, which resulted in total hip replacements on both his left and right sides. The applicant's mother, [REDACTED], also suffers from a number of chronic and debilitating health problems, including coronary artery disease, chronic obstructive pulmonary disease peripheral artery disease, hypertension, carotid stenosis and thoracic pseudoaneurysm, which is being monitored by vascular surgery. [REDACTED] indicates that the applicant's mother has already undergone multiple surgeries for her peripheral vascular disease and requires follow up with multiple specialists. She states that both of the applicant's parents are unable to work due to their chronic conditions and require assistance of caregivers for ambulation, care of their medications, and for transportation to their regular medical appointments.

The applicant's parents submitted a brief joint statement, dated January 16, 2010, in which they state that they had always depended on the applicant for financial and emotional support. They assert that the applicant had been very helpful when he was in Colorado, assisting them with household chores they could not physically handle, taking them to their medical appointments, caring for them post-surgery, checking on them frequently, and ensuring that they were taking their medications. They also state that the applicant helped them financially from time to time when he had been employed as an ironworker. His parents assert that if the applicant were permitted to return to the United States, he would continue to assist them as he did previously. We note that during his prior immigration court hearing, the applicant indicated that while he helped with little things, he did not help significantly with his parents' financial well-being. See *I.J. Dec.* at 6; *Transcript (Tr.)* at 53-57.

While we find that the record adequately demonstrates the applicant's parent's health issues, the applicant has failed to show the hardships that his parents would face as a result of their separation from him. The record indicates that the applicant has a sister in New Mexico, as well as two brothers, one a U.S. citizen and the other a lawful permanent resident, who reside in Colorado. We also note that the applicant's parents assert that they have a close family. In fact, the transcript of the applicant's removal proceedings show that the applicant's U.S. citizen brother in Denver, Colorado, also visits their parents, lives near them and helps them the same way the applicant has. See *I.J. Dec.* at 6-7; *Tr.* at 38-39, 59-60. The Immigration Judge specifically noted that the applicant's parents have other children who are able to make up for any hardships that may ensue upon separation from the applicant. *I.J.* at 7. The applicant has not shown otherwise. We note that the record contains no statements from the applicant's siblings, indicating that they are unable or unwilling to provide for their parents. The applicant's parents also do not make such a claim.

Moreover, the applicant had been outside the United States and separated from his parents for nearly four years in January 2010, when the latter submitted their joint statement. Yet, their statement fails to detail how they have managed their health and financial issues, or set forth the difficulties they have faced, during those four years as a result of the applicant's absence. We recognize that the applicant's parents would like to have their whole family reunited in the United States. It may also be that they would be better off, both emotionally and financially with the applicant in the United States, as is normally the case with most families in a similar situation. However, the applicant has failed to establish that his parents' separation from him has resulted in hardships that rise to the level of extreme hardship.

Having considered the evidence of record, the AAO finds that it does not demonstrate that the applicant's parents would experience extreme hardship as a result of separation from the applicant. While we acknowledge that the applicant's parents will undoubtedly suffer some hardship as a result of the ongoing separation, the record does not show that the hardship constitutes "significant hardship over and above the normal disruption of social and community ties" normally associated with deportation or refusal of admission. *Matter of O-J-O*, 21 I&N Dec. at 385.

Counsel also contends that the evidence establishes that the applicant's lawful resident parents would suffer extreme hardship as a result of relocation to Mexico. Counsel asserts that the applicant's parents would not receive adequate treatment for their serious medical issues and would endure financial hardship as they have no property and no retirement income in Mexico. She further asserts that due to their old age and ill health, they would be unable to obtain employment with the medical benefits they need. As corroboration, the applicant has submitted a number of untranslated² certifications that appear to indicate that the applicant's parents have no property in Mexico, as well as a news article about the healthcare system in Mexico.

We note, however, that the applicant's parents' do not state or suggest that they would consider relocating to Mexico to join the applicant, and their three other children reside in the United States and the fourth son³ is expected to join them in the United States. They also fail to address any hardship factors that they would face upon relocation. Without documentary evidence to support the claim, the assertions of counsel will not satisfy the applicant's burden of proof. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980). As such, on the record before the AAO, we cannot find that the applicant established that his parents would suffer extreme hardship upon relocation.

In this case, as the record does not establish that the hardships to the applicant's lawful permanent resident parents, considered in the aggregate, rise beyond the common results of removal or inadmissibility to the level of extreme hardship, the AAO finds that the applicant has failed to establish extreme hardship to his qualifying relatives as required under section 212(a)(9)(B)(v) of the Act. He, therefore, remains inadmissible to the United States under section 212(a)(9)(B)(i)(II) of the Act. Since the applicant failed to establish statutory eligibility for the waiver, the AAO finds that no

² The regulations at 8 C.F.R. § 103.2(b)(3) require that any document containing foreign language submitted to USCIS be accompanied by a full English language translation which the translator has certified as complete and accurate, and by the translator's certification that he or she is competent to translate from the foreign language into English.

³ See Counsel's Letter, dated May 28, 2010.

purpose would be served in considering whether the applicant merits the waiver in the exercise of discretion.

In proceedings for application 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. INA § 291, 8 U.S.C. § 1361. Here, the applicant has not met that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.