



U.S. Citizenship
and Immigration
Services

(b)(6)

DATE: JAN 14 2013

Office: MEXICO CITY

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), and Application for Permission to Reapply for Admission into the United States after Deportation or Removal under Section 212(a)(9)(A) of the Immigration and Nationality Act, 8 U.S.C. § 1182(a)(9)(A).

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 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,


for
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 under 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 his last departure from the United States, and section 212(a)(9)(A) of the Act, 8 U.S.C. § 1182(a)(9)(A), for seeking admission after previously being ordered removed. The applicant 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), and permission to reapply for admission pursuant to section 212(a)(9)(A) of the Act, 8 U.S.C. § 1182(a)(9)(A). His qualifying relative is his U.S. citizen spouse.

The Field Office Director concluded that the applicant had failed to demonstrate extreme hardship to his qualifying spouse and denied the application accordingly. *See Decision of Field Office Director*, dated December 7, 2011.

On appeal, counsel for the applicant asserts that the qualifying spouse has suffered extreme hardship since the applicant's removal. Counsel indicates that the qualifying spouse has experienced financial and emotional hardship and that she has struggled to continue her education, start a family, and care for her elderly mother. *See Counsel's Brief*.

The record contains, but is not limited to: statements from the applicant and his qualifying spouse; letters from the qualifying spouse's relatives; country conditions information; financial records; and medical records. Although counsel for the applicant indicated in the Form I-290B, Notice of Appeal or Motion, that she would file a brief within 30 days, no brief has been filed so the record will be considered complete. 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:

(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 2000 and remained in the country until he was removed in 2009. Therefore, the applicant accrued one year or more of unlawful presence and is inadmissible under section 212(a)(9)(B)(i)(II) of the Act for a period of 10 years from his departure from the United States. The applicant does not contest this finding of inadmissibility on appeal.

The applicant is eligible to apply for a waiver of this ground of inadmissibility under section 212(a)(9)(B)(v) of the Act as the spouse of a U.S. citizen. In order to qualify for this waiver, however, he must first prove that the refusal of his admission to the United States would result in extreme hardship to his qualifying relative. 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-Moralez*, 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 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 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-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. 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.

The qualifying spouse states that she has struggled to meet her financial obligations in the applicant’s absence. She claims that her income is insufficient to pay her bills and that she also sends money to the applicant in Mexico. The qualifying spouse also indicates that she misses the applicant and that it is difficult for her to be separated from him. She also states that she and the applicant would like to have children but that she has had trouble getting pregnant. Finally, she asserts that it is difficult for her to visit the applicant in Mexico due to the cost of travel and the high incidence of violence in that country.

Relatives of the qualifying spouse indicate in their letters that the qualifying spouse has appeared sad since the applicant was removed. They believe that the qualifying spouse would benefit from the applicant’s support in the United States. They also note that the qualifying spouse has struggled to meet her financial obligations without the applicant’s assistance. *See Letters from*

The qualifying spouse also indicates that she would suffer extreme hardship if she were to relocate to Mexico. She states that she is responsible for caring for her elderly mother, who lives with the qualifying spouse and who suffers from high blood pressure and high cholesterol. The qualifying spouse also worries that she would not find a job in Mexico and states that she would lose her employer-provided health insurance. She also states that she wants to study nursing but would be unable to do so if she moved to Mexico. Finally, the qualifying spouse fears that living in Mexico would be dangerous. The applicant also expresses concern that the qualifying spouse would suffer hardship if she were to relocate to Mexico. He states that his living conditions in Mexico are poor, that it is difficult to find a job, and that living in the city is dangerous.

The AAO finds that the applicant has failed to demonstrate that his qualifying spouse has suffered extreme hardship on separation from the applicant. While the record demonstrates that the qualifying spouse has struggled to meet her financial obligations, economic difficulty or the inability to maintain a certain standard of living does not qualify as extreme hardship. See *Matter of Cervantes-Gonzalez*, 22 I&N Dec. 560, 568 (BIA 1999). Although she also claims that she has struggled with infertility, the evidence in the record is insufficient to support her claim. The only document in the record which mentions this issue is a medical bill on which there is an illegible handwritten note containing the word "fertility." See [REDACTED] dated May 31, 2011. Finally, while the qualifying spouse misses the applicant and has felt sad in his absence, such emotional difficulty is a common result of removal or inadmissibility and typically does not reach the level of extreme hardship. See *Matter of Cervantes-Gonzalez*, 22 I&N Dec. at 568; *Matter of Pilch*, 21 I&N Dec. 627, 631 (BIA 1996).

Additionally, the AAO finds that the applicant has failed to show that his qualifying spouse would suffer extreme hardship upon relocation to Mexico. The record indicates that the applicant has been living in Mexico City, so it is reasonable to conclude that the qualifying spouse would join him there. There is no safety advisory in effect for Mexico City. See U.S. Department of State, *Travel Warning: Mexico*, dated November 20, 2012. Although the applicant submitted some articles regarding the safety situation in Mexico, none establish that the qualifying spouse would be in danger in Mexico City in particular. While the qualifying spouse also claims that she must care for her ailing mother in the United States, the qualifying spouse has ten other siblings in this country, four of whom live in the same city as the qualifying spouse and her mother. There is no indication that her siblings would be unable to take over the responsibility of assisting her mother. Furthermore, while the qualifying spouse was born in the United States and has close family ties here, she also has family ties in Mexico and is familiar with the Spanish language. Finally, while the qualifying spouse fears that she would have inferior employment and educational opportunities and a lower standard of living in Mexico, such factors are insufficient to create extreme hardship. *Matter of Pilch*, 21 I&N Dec. at 631 (BIA 1996).

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 a qualifying relative 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

(b)(6)

suffer extreme hardship, where remaining 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. *Matter of Pilch*, 21 I&N Dec. at 632-33. The AAO therefore finds that the applicant has failed to establish extreme hardship to his U.S. citizen spouse 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 an application for a waiver of grounds of inadmissibility, 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.

The AAO notes that the Director also denied the applicant's Form I-212, Application for Permission to Reapply for Admission into the United States After Deportation or Removal, in a decision dated December 7, 2011. *Matter of Martinez-Torres*, 10 I&N Dec. 776 (reg. Comm. 1964) held that an application for permission to reapply for admission is denied, in the exercise of discretion, to an alien who is mandatorily inadmissible to the United States under another section of the Act, and no purpose would be served in granting the application. As the applicant is inadmissible under section 212(a)(9)(B)(i)(II) of the Act no purpose would be served in granting the applicant's Form I-212.

ORDER: The appeal is dismissed. The waiver application is denied.