



U.S. Citizenship
and Immigration
Services

(b)(6)

DATE: JAN 30 2013 OFFICE: CIUDAD JUAREZ
(NEBRASKA SERVICE CENTER)

IN RE:

APPLICATION: Application for Waiver of Grounds of Inadmissibility under Section 212(a)(9)(B)(v)
of the Immigration and Nationality Act (the 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 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,

A handwritten signature in black ink that reads "Ron Rosenberg".

Ron Rosenberg
Acting Chief, Administrative Appeals Office

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DISCUSSION: The waiver application was denied by the Nebraska Service Center on behalf of the Field Office Director, Ciudad Juarez, Mexico, and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native and a citizen of Mexico who was found to be inadmissible to the United States pursuant to section 212(a)(9)(B)(i)(II) of 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 admission within 10 years of her last departure.¹ The applicant is the spouse of a legal permanent resident of the United States and the beneficiary of an approved Petition for Alien Relative (Form I-130). She seeks a waiver under section 212(a)(9)(B)(v) of the Act, 8 U.S.C. § 1182(a)(9)(B)(v), in order to reside in the United States with her spouse.

The director concluded that the applicant had failed to establish that the bar to her admission would impose extreme hardship on a qualifying relative and denied the Form I-601, Application for Waiver of Grounds of Inadmissibility (Form I-601), accordingly. *See Field Office Director's Decision*, dated November 8, 2011.

On appeal, the applicant's spouse asks for a reconsideration of the applicant's case and provides new evidence of hardship. *See Form I-290B, Notice of Appeal or Motion*, dated November 22, 2011.

The record contains, but is not limited to: Form I-290B; Form I-601; Form, I-130; statements by the applicant and her spouse; the applicant's spouse's employment documentation; receipts, expenses and financial documentation; birth certificates; Spanish-language newspaper articles; and photographs. The entire record was reviewed and considered in rendering a decision on the appeal.

8 C.F.R. § 103.2(b)(3) states:

(3) Translations. Any document containing foreign language submitted to USCIS shall 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.

The Spanish-language documents without English translations cannot be considered in analyzing this case. However, the rest of the record was reviewed and all relevant evidence was considered in reaching a decision on appeal.

¹ The director addresses section 212(a)(9)(A) as an applicable inadmissibility provision in her decision, but she does not appear to find the applicant inadmissible under this section of the Act. Because the record does not reflect that the applicant was ordered removed, the AAO finds that the applicant is not inadmissible under section 212(a)(9)(A) of the Act and does not require permission to reapply for admission.

Section 212(a)(9) states 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.

The record reflects that the applicant entered the United States without inspection in July 2003 and remained until November 2010, when she voluntarily departed. The AAO finds that the applicant accrued unlawful presence of more than one year and because she is seeking admission within 10 years of her departure, she is inadmissible to the United States pursuant to section 212(a)(9)(B)(i)(II) of the Act. The applicant does not contest her inadmissibility.

Section 212(a)(9)(B)(v) of the Act provides for a waiver of section 212(a)(9)(B)(i) inadmissibility as follows:

The Attorney General [now Secretary of Homeland Security] 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 . . . 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.

A waiver of inadmissibility under section 212(a)(9)(B)(v) of the Act is dependent first upon a showing that the bar imposes an extreme hardship on a qualifying family member, which includes the U.S. citizen or lawful permanent resident spouse or parent of the applicant. Hardship to the applicant and her children can be considered only insofar as it results in hardship to a qualifying relative. In the present case, the applicant's spouse is the only 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-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*, 22 I&N Dec. 560, 565 (BIA 1999), the Board provided a list of factors it deemed relevant in determining whether an alien has established extreme hardship to a qualifying relative. The factors include the presence of a lawful

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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).

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. 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 applicant's 59 year-old spouse is a native of Mexico and lawful permanent resident of the United States since 1996. He married the applicant in March 2007. The applicant's spouse states that they were very happy when they lived together and married because they love each other. He states that it is difficult for him to support two households, his own and the applicant's in Mexico. He maintains that the applicant lives in Michoacán and cannot work because of the danger and violence there. He says that the applicant sometimes cries on the phone because of the killings she sees on the street. He worries about her safety and has her call him regularly, which is expensive. He submits evidence of remittances to the applicant totaling [REDACTED] sent between March and October 2011, an average of approximately [REDACTED] per month. The applicant's spouse also submits tax and wage documents showing that in 2009, his income totaled [REDACTED]. In October 2010 his weekly income was [REDACTED] per month; in October 2011 his weekly income was [REDACTED] per week, or [REDACTED] per month. A receipt of [REDACTED] paid for rent in October 2011 was also submitted as evidence of the applicant's spouse's expenses.

The AAO has considered cumulatively all assertions of separation-related hardship, including the emotional impact and the financial strain on the applicant's spouse. However, the applicant has not shown that her husband would suffer extreme hardship that is distinguishable from hardship typically faced by the spouses of those deemed inadmissible. Furthermore, the evidence in the record is insufficient to demonstrate that the hardship experienced by the qualifying relative, when considered cumulatively, is extreme.

Addressing the hardship that the applicant's spouse would experience if he were to relocate to Mexico, the applicant's spouse indicates that he has been a permanent resident of the United States since 1996, when he was 43 years-old. He states that he cannot move to Mexico because maintaining his permanent residency in the United States requires him to remain in the United States for the majority of the year. He also worries about the danger and violence in Mexico.

The U.S. State Department's current *Mexico Travel Warning*, dated November 20, 2012, states that crime and violence are serious problems throughout the country and can occur anywhere. The report states that Transnational Criminal Organizations ("TCOs") "are engaged in a violent struggle to control drug-trafficking routes and other criminal activity," and U.S. citizens "should defer non-essential travel to the state of Michoacán Attacks on Mexican government officials, law enforcement and military personnel, and other incidents of TCO-related violence, have occurred throughout Michoacán."

The AAO has considered cumulatively all assertions of relocation-related hardship to the applicant's spouse, including his adjustment to a country in which he has not resided for 17 years; his loss of permanent-resident status and employment in the United States; and his confirmed safety-related concerns about living in Michoacán. Considered in the aggregate, the AAO finds the evidence sufficient to demonstrate that the applicant's spouse would suffer extreme hardship were he to relocate to Mexico to be with the applicant.

Although the applicant has demonstrated that her qualifying relative spouse would experience extreme hardship if he were to relocate to Mexico to join her, we can find extreme hardship warranting a waiver of inadmissibility only where an applicant has shown extreme hardship to a qualifying relative in the scenario of relocation *and* the scenario of separation. The AAO has long interpreted the waiver provisions of the Act to require a showing of extreme hardship in both possible scenarios, as 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 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. 627, 632-33 (BIA 1996). 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 relative in this case.

In proceedings for application for waiver of grounds of inadmissibility under section 212(i) 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. 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. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.