



(b)(6)

[Redacted]

DATE: **JUL 08 2013** Office: DENVER 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 (the 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 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,

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Ron Rosenberg
Acting Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Acting Field Office Director, Denver, Colorado, and it 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 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. She is seeking a waiver of inadmissibility in order to remain in the United States as the beneficiary of the approved Petition for Alien Relative (Form I-130) filed by her daughter.

The acting field office director concluded the applicant had failed to establish that extreme hardship would be imposed on a qualifying relative and, accordingly, denied the Application for Waiver of Ground of Inadmissibility (Form I-601). *Decision of the Acting Field Office Director*, September 25, 2012.

On appeal, the applicant provides new documents, including a psychological evaluation and a letter in Spanish without translation. The record contains documentation, including but not limited to: a hardship statement; a medical letter and treatment records; marriage, birth, and naturalization certificates; identity documents, including copies of a U.S. visa, green cards, and driver's licenses; social security and employment authorization cards; support statements; and employment letters.

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

(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 [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....

The record indicates the applicant used her visitor's visa to procure admission to the United States on November 20, 2004 and was admitted until May 19, 2005, but overstayed until November 29, 2006, when she departed. She returned two weeks later using her visa and has remained here since

that time. The acting field office director therefore found her inadmissible for having accrued unlawful presence of one year or more.

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 or her children can be considered only insofar as it results in hardship to a qualifying relative. The applicant's lawful permanent resident husband is the only qualifying relative 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).

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 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 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.

Regarding hardship from separation, the qualifying relative and his wife contend the applicant's absence will cause him both physical and emotional hardship. A psychological evaluation diagnoses the applicant's husband with clinical depression based on observed tearfulness and symptoms that included insomnia, headaches, chest pain, back aches, weight loss, lack of energy, and feelings of despair. Noting that the applicant and her husband had never been separated¹ during over 30 years of marriage and that he was dependent on his wife to help him manage his Type 2 diabetes, the psychotherapist advised a course of psychotherapy and concluded that he would find it difficult to live here without his wife. See *Psychotherapeutic Evaluation*, October 11, 2012. Documentation establishes that the applicant and her husband married on December 31, 1981, have five children (ages 11, 15, 23, 24, and 30), and that he is under medical care as an insulin dependent diabetic. The record reflects that the qualifying relative's compliance with treatment for his diabetes has been inconsistent and that the medical provider has worked to have the applicant help keep her husband's symptoms under control, but does not indicate whether the attempt has been successful or show if he has undertaken treatment recommended by the psychotherapist.

We note that, as the qualifying relative's two youngest children are both U.S citizens entitled to remain here, accompanying their mother abroad would represent a matter of parental choice. There is no evidence that his wife's departure would require these two minor children to leave their father's household, no evidence that remaining without their mother would represent a hardship to them, and thus no evidence of any circumstances that might impose a specific hardship on their father. The observations of the qualifying relative regarding his children noted in the psychotherapist's report are not corroborated by the evidence on record. Further, the record reflects that the eldest daughter, age 24, claims the youngest of the applicant's children as a dependent on her federal tax return, indicating having assumed financial responsibility for her sibling. While the applicant's husband asserts his wife takes care of all five children, including taking them to school, the record contains

¹ The AAO notes, however, that the applicant has not shown her husband accompanied her during her five documented B2 visits to the United States and, in fact, had they travelled together, he would have been subject to the same unlawful presence inadmissibility as his wife when he sought to adjust status on his daughter's immigrant petition.

no evidence that any of their three adult children are dependent on their parents. Neither the whereabouts nor the immigration status of their eldest child are matters of record in this case. There is no indication that the qualifying relative would be unable to afford to travel to visit his wife to ease the pain of separation. These circumstances represent the normal and usual consequence of the inadmissibility and removal of a family member and, without further evidence, fail to establish hardship rising to the level of "extreme."

Regarding financial hardship, the record reflects the applicant's husband told the psychotherapist that he is struggling to pay his bills. While he asserts in his own statement that his wife helps financially, the record contains no documentation of the qualifying relative's expenses or earnings, or of the applicant's contribution to household income.² Absent this supporting evidence, there is no indication from which we might conclude that the qualifying relative would experience economic difficulties or be unable to pay his debts if the applicant were to depart the country, or that his wife would be unable to support herself abroad and thus impose a financial burden. While we are sensitive to the effects of the applicant's departure on her husband, the applicant has provided no evidence that her absence will cause him economic problems. 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)).

Documentation on record, when considered in its totality, does not show that the applicant's husband will suffer extreme hardship due to the applicant's inability to reside in the United States. The AAO recognizes that the qualifying relative will endure some hardship as a result of separation from the applicant, and may have to take responsibility for his medical condition or seek help from one of his adult children living with him. However, the situation of the applicant and her husband is typical of individuals separated as a result of removal or inadmissibility, and the AAO therefore finds that the applicant has failed to establish extreme hardship to a qualifying relative under the Act.

Regarding relocation, there is a similar lack of documentary evidence to support an extreme hardship finding. While the psychotherapist reports that the applicant's husband is worried about safety issues in Mexico, the qualifying relative himself has not expressed such concerns on the record. Although official U.S. government reporting and country condition information reflect that personal safety is an issue in parts of Mexico, see *Travel Warning—Mexico*, U.S. Department of State (DOS), November 20, 2012, the record does not indicate that the applicant would settle in an area covered by the warning.

The psychotherapist also states that the applicant's husband feels that he would not find in his native Mexico a job that would permit him to support his family. However, he fails to show that he has explored job prospects there, that his wife would be unable to help by working, or that his children are financially dependent on him. As previously noted, the three eldest children are adults ranging in age from 23 to 30 and one of these actually claims the youngest sibling as a dependent on her tax return. The applicant has not substantiated any job-related claims with documentary evidence,

² While the record contains April 2012 letters confirming that both were employed, only the applicant's letter states a wage rate.

except to show that he is employed. *See Employment Letter*, April 25, 2012. The totality of this evidence fails to show that departing the United States will adversely impact the applicant's husband to such an extent that the resulting hardship would be "extreme." The AAO thus concludes that, were the applicant unable to reside in the United States due to her inadmissibility, she has not met her burden of establishing that a qualifying relative would suffer extreme hardship if he moved abroad to live with the applicant.

The documentation on record, when considered in aggregate, reflects that the applicant has not established her husband will suffer extreme hardship if she is unable to live in the United States. The AAO recognizes that the applicant's husband will endure hardship as a result of the applicant's inability to immigrate. However, his situation is typical of individuals affected by removal or inadmissibility, and the AAO thus finds that the applicant has failed to establish extreme hardship to her husband as required under the Act.

In proceedings for application for 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.

ORDER: The appeal is dismissed.