



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

(b)(6)

Date: **JUN 24 2013**

Office: PHOENIX

IN RE:

Applicant:

APPLICATION:

Application for Waiver of Grounds of Inadmissibility under section 212(a)(9)(B) of the Immigration and Nationality Act, 8 U.S.C. § 1182(a)(9)(B)

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, Phoenix, Arizona. An appeal of the denial was dismissed by the Administrative Appeals Office (AAO). The matter is now before the AAO on motion. The motion will be granted and the underlying application remains denied.

The record establishes that 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. The record reflects that the applicant entered the United States in April 2001 with a Border Crossing Card allowing a maximum period of stay of six months, but the applicant remained until departing September 2008, thus accruing more than one year of unlawful presence. The applicant does not contest this finding of inadmissibility. Rather, she seeks a waiver of inadmissibility in order to reside in the United States with her U.S. citizen spouse and child.

The field office director concluded that the applicant had failed to establish that extreme hardship would be imposed on a qualifying relative and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) accordingly. *Decision of the Field Office Director*, dated February 7, 2011.

On appeal, the AAO determined that the applicant had failed to establish that extreme hardship would be imposed on a qualifying relative. The appeal was subsequently dismissed. *Decision of the AAO*, dated October 17, 2012.

In support of the motion counsel submits a brief; financial documents for the applicant's spouse; duplicates of medical documents submitted to the AAO with the 2011 appeal; a statement from the applicant's daughter; and the daughter's birth certificate and school documentation. The record also contains a statement from the applicant's spouse; a previous statement from the applicant's daughter; and letters of support from family members. The entire record was reviewed and considered in rendering this decision.

Section 212(a)(9)(B) of the Act provides, 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.

...

(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.

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. The applicant's U.S. citizen spouse is the only qualifying relative in this case. Hardship to the applicant or the child can be considered only insofar as it results in hardship to a 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 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*, 138 F.3d at 1293 (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 AAO determined on appeal that extreme hardship had not been established if the applicant’s spouse were to remain in the United States while the applicant relocated abroad due to her inadmissibility or if the applicant’s spouse were to relocate abroad to reside with the applicant. The AAO found that evidence did not demonstrate that the spouse’s health would be affected by separation from the applicant or that the applicant contributes financially to the household so that her spouse would experience financial hardship if he remains in the United States while the applicant resides in Mexico. The AAO found the record lacked documentary evidence to corroborate assertions that the applicant’s spouse would experience emotional hardship beyond that normally experienced upon inadmissibility or removal of a family member if her spouse remained in the United States. The AAO further found no evidence to show that the applicant’s spouse would experience medical hardship if he relocated to Mexico, and that no other hardship claims if he relocated to Mexico were asserted.

On motion counsel asserts that the applicant’s spouse is elderly, physically limited, and relies on the applicant as she ensures he takes prescribed medications, accompanies him on doctor visits, and assures he follows a special care plan and diet. Counsel asserts the spouse has no other family in the

United States to properly care for him as his U.S. citizen daughter is a minor. Counsel asserts the applicant must care for her daughter and provide educational support and give guidance as the spouse is physically unable to do so and that with their purchase of a home the applicant has assumed daily chores because her spouse cannot. Counsel asserts that the applicant's spouse cannot relocate to Mexico due to his health condition as he had a heart attack in 2009 with three subsequent open heart surgeries and needs follow up care with his physicians for which he relies on government-provided insurance. Counsel states the applicant's spouse is retired with limited social security income and would lack employment opportunity in Mexico, where he would face a lack of economic support and family ties and would thus be unable to provide for his family. Counsel further asserts the applicant's daughter is unable to relocate to Mexico because of schooling and fear for her safety.

In her statement the applicant's daughter states she cannot imagine living without the applicant providing support for her and her father. The applicant's spouse states that the applicant brought happiness to his life and that they are a close family that leans on each other for comfort and support. He states that he had a heart attack in November 2009 and that the applicant has been by his side since, making sure he takes his medication and preparing meals to keep him healthy.

The AAO finds that the record fails to establish that the applicant's qualifying spouse will suffer extreme hardship as a consequence of being separated from the applicant. Counsel and the applicant's spouse assert the spouse needs the applicant with him because of his health condition. In support of these assertions counsel submitted copies of previously-submitted medical records for the applicant's spouse from 2009 through 2010. A brief letter from a physician dated August 28, 2010, states that the applicant's spouse has a history of acute coronary syndrome, was under no acute distress, and was to be followed by his cardiologist periodically, but provides no further detail about his condition. No updated documentation was submitted on motion and the most recent medical documentation is dated prior to the date of the decision by the field office director. The records consist of copies of medical records, including notes containing medical terminology and abbreviations that are not easily understood, with laboratory and test results and physician's notes from November 2009 through December 2010. The documents submitted do not contain a clear explanation of the current medical condition of the applicant's spouse. Absent an explanation in plain language from the treating physician of the exact nature and severity of any current condition and a description of any treatment or family assistance needed, the AAO is not in the position to reach conclusions concerning the severity of a medical condition or the treatment needed, and whether it requires the applicant's physical presence in the United States. Further, the record has not established that the applicant's spouse would be unable to follow prescriptions, adhere to diet plans, or attend medical appointments without the applicant's presence, particularly given that the record reflects other family members live in the same area.

The applicant's spouse states that the applicant brought happiness and the family leans on each other for support, but the applicant failed to provide any detail or supporting evidence explaining the exact nature of the qualifying spouse's emotional hardships and how such emotional hardships are outside the ordinary consequences of removal. Going on record without supporting documentary evidence generally is not sufficient for purposes of meeting the burden of proof in these proceedings. See

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)).

No documentation has been submitted showing any financial contributions by the applicant to establish that without her physical presence in the United States her spouse will experience financial hardship. Further, courts considering the impact of financial detriment on a finding of extreme hardship have repeatedly held that, while it must be considered in the overall determination, "[e]conomic disadvantage alone does not constitute "extreme hardship." *Ramirez-Durazo v. INS*, 794 F.2d 491, 497 (9th Cir. 1986).

The AAO recognizes that the applicant's spouse will endure hardship as a result of separation from the applicant. However, his situation if he remains in the United States is typical to individuals separated as a result of removal and does not rise to the level of extreme hardship based on the record. The difficulties that the applicant's spouse would face as a result of his separation from the applicant, even when considered in the aggregate, do not rise to the level of extreme as contemplated by statute and case law.

The AAO also finds the record fails to establish that the applicant's spouse will experience extreme hardship if he were to relocate to Mexico. Counsel asserts the applicant's spouse cannot relocate to Mexico due to his health condition. Significant conditions of health, particularly when tied to an unavailability of suitable medical care in the country to which the qualifying relative would relocate, are relevant factors in establishing extreme hardship. The evidence on the record is insufficient to establish, however, that the applicant's spouse suffers from such a condition and no documentation has been submitted to establish a lack of medical care in Mexico for the spouse's needs. Although counsel and the applicant's spouse assert the unlikelihood the spouse could find employment in Mexico given his age and health, the social security income to which he is entitled would be available to him while in Mexico, alleviating the need to find employment. Further, it has not been established that the applicant would be unable to secure employment in Mexico to contribute to supporting her spouse and herself.

The record contains references to hardship the applicant's child would experience if the waiver application were denied. It is noted that Congress did not include hardship to an alien's children 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 spouse is the only qualifying relative for the waiver under section 212(a)(9)(B)(v) of the Act, and hardship to the applicant's child will not be separately considered, except as it may affect the applicant's spouse. In the present case the applicant has not presented persuasive argument that any hardship to her daughter would cause extreme hardship to her spouse.

As such, on motion the AAO concludes that it has not been established the applicant's spouse will experience extreme hardship were he to remain in the United States while the applicant relocates abroad due to her inadmissibility, or if he were to relocate to Mexico to reside with the applicant.

The record, reviewed in its entirety, does not support a finding that the applicant's spouse will face extreme hardship if the applicant is unable to reside in the United States. Rather, the record

demonstrates that he will face no greater hardship than the unfortunate, but expected disruptions, inconveniences, and difficulties arising whenever a spouse is removed from the United States or is refused admission. There is no documentation establishing that the applicant's spouse's hardships are any different from other families separated as a result of immigration violations. Although the AAO is not insensitive to the applicant's spouse's situation, the record does not establish that the hardships he would face rise to the level of "extreme" as contemplated by statute and case law. Having found the applicant statutorily ineligible for relief, no purpose would be served in discussing whether the applicant merits a waiver as a matter of discretion.

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. Accordingly, the motion will be granted and the underlying application remains denied.

ORDER: The motion to reopen will be granted and the underlying application remains denied.