



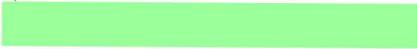
(b)(6)



DATE: **MAR 28 2013**

Office: CIUDAD JUAREZ

FILE: 

IN RE: Applicant: 

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:

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 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 request 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,

f. Ron Rosenberg  
Acting Chief, Administrative Appeals Office

(b)(6)

**DISCUSSION:** The waiver application was denied by the Field Office Director, Ciudad Juarez, 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 (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. The applicant seeks a waiver of inadmissibility in order to reside in the United States with his U.S. citizen father.

The Field Office Director concluded that the applicant had failed to demonstrate extreme hardship to his U.S. citizen father and denied the application accordingly. *See Decision of Field Office Director*, dated April 20, 2012.

On appeal, the applicant's father asserts that he is suffering extreme emotional and financial hardship due to his separation from the applicant. He also contends that he would experience extreme hardship if he were to relocate to Mexico.

The evidence includes, but is not limited to: statements from the applicant's father; letters from the applicant's mother, cousin, and uncle; two psychological evaluations regarding the applicant's father; financial records; money transfer receipts; and country conditions information. The record also contains two Spanish-language letters from a doctor. These documents cannot be considered because they are not accompanied by certified English translations, as required by 8 C.F.R. § 103.2(b)(3). With the exception of the two untranslated letters, the entire record was reviewed and considered in rendering a decision on the appeal.

Section 212(a)(9) 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 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 February 2006 and remained in the country unlawfully until he returned to Mexico pursuant to a voluntary departure order on May 2, 2011. The applicant accrued more than one year of unlawful presence between December 8, 2007, the date he turned 18, and his departure in May 2011. Therefore, the applicant is inadmissible under section 212(a)(9)(B)(i) of the Act for a period of 10 years from his last departure. The applicant does not contest this finding of inadmissibility on appeal.

The applicant is eligible to apply for a waiver of inadmissibility under section 212(a)(9)(B)(v) of the Act as the son 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. Hardship to the applicant himself is not directly relevant under the statute and will be considered only insofar as it results in hardship to his father. 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 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.

On appeal, the applicant’s father asserts that separation from the applicant has been extremely difficult for him. He explains that the denial of the applicant’s permanent residence has been “a bad nightmare” and that the entire family feels that they are being punished. He asserts that the family is very close and that they miss the applicant, and that they are concerned about the applicant’s safety while he lives alone in Mexico. The applicant’s father states that since the applicant’s departure, he has felt depressed and desperate, is having trouble sleeping, and worries constantly that the applicant will be a victim of violence in Mexico. As a result, he needs “tranquilizers to be able to continue with this anguish” and has sought the help of a psychologist because he feels that he is “going crazy.” He contends that despite always considering himself to

be healthy, he is now “in a deep depression that [he] never in [his] life had experienced” and that he must “take antidepressants to be able to get up every morning and go to work.” He asserts that despite needing psychological treatment earlier, he was previously unable to afford it. The applicant’s father also contends that his wife, the applicant’s mother, is suffering depression and extreme sadness due to the applicant’s absence and that all of the applicant’s siblings miss him.

The applicant’s father also contends that he is suffering economic hardship because he must support his family in the United States while also sending money to the applicant in Mexico. He asserts that he is currently unemployed, so he is struggling to meet his financial obligations and is “feeling desperate thinking that [he] won[’]t be able to cover [his] most basic needs.” He states that his monthly expenses for housing and utilities total approximately \$1,205. He alleges that the applicant has been unable to find a job in Mexico, so he has had to borrow money from relatives in order to support the applicant. Additionally, the applicant’s father alleges that his other children have had to contribute more to the family’s expenses due to the difficulty of paying the bills while sending money to the applicant.

The applicant’s father also states that it would be unsafe for him to live in Mexico. He notes that rates of violence in Mexico are high and that the U.S. Department of State has discouraged travel to that country. He feels that he would be in great danger in Mexico. He also alleges that he would be unable to obtain affordable medical care in Mexico and that he would be unable to find work there.

The AAO finds that the applicant’s father would experience extreme hardship if he were to relocate to Mexico. Although the applicant’s father is originally from Mexico, he has been a permanent resident of the United States since 1990 and a naturalized citizen since 2008. Readjusting to life in Mexico after such a long period of residence in the United States would be difficult for the applicant’s father. He also has close family ties in this country, including his wife, seven of his eight children, his brother, and a nephew, and he asserts that he has no remaining close family in Mexico. The record demonstrates that the applicant’s father is very close to his family, so separation from them would cause him significant hardship.

However, the AAO cannot find that the applicant’s father will suffer extreme hardship if he continues to be separated from the applicant. Although the applicant’s father claims that he is unemployed, the record contains pay stubs indicating that he was employed as of May 11, 2012, one week before USCIS received his statement on appeal. The second psychological evaluation in the record, dated three days prior to USCIS’s receipt of the appeal, also states that the applicant’s father “has a well-paying and stable job in the United States.” *See Evaluation Report*, [REDACTED], dated May 15, 2012. Additionally, while the applicant’s father states that he struggles to meet his basic financial obligations, the record does not support his claim. He asserts that his monthly expenses total approximately \$1,205 and his pay stubs indicate that his income is between \$530 and \$704 per week, after deductions for taxes and Social Security, for a total of approximately \$2,500 per month. Furthermore, while the record demonstrates that the applicant’s father sends approximately \$100 per month to the applicant in

Mexico, the evidence does not establish that he cannot afford to do so. Also, the applicant is currently 23 years old and all but one of his siblings are adults ages 28 or older, so it is not clear why the applicant's father is responsible for financially supporting all of his children.

Additionally, while the AAO recognizes that the applicant's father is very concerned about the applicant's safety and that he deeply misses the applicant, the record does not support a finding that he is suffering extreme emotional hardship. First, despite the applicant's father's claim that he is relying on antidepressant medication to function, there is no support for that claim in the record. The psychological evaluations do not recommend medication, nor does the record contain copies of prescriptions. Furthermore, the psychological evaluations mainly describe the types of emotional difficulties that would normally be expected to result from an extended separation from a close family member. *See Matter of Cervantes-Gonzalez*, 22 I&N Dec. 560, 567-68 (BIA 1999).

The first psychological evaluation regarding the applicant's father was based on a single interview. It indicates that he "has long nights of insomnia" because he is "very stressed" about the applicant's immigration situation. *See Evaluation Report*, [REDACTED], dated October 15, 2011. The evaluation states that the applicant's father is suffering from clinical depression and generalized anxiety disorder with related symptoms of "chest pain, headaches, insomnia, and diminished appetite." *Id.* The evaluation concludes that if the applicant and his father "are separated permanently, this family will have to adapt to a new lifestyle which will inevitably bring feelings of anger, frustration, sadness, and stress." *Id.*

The second psychological evaluation, conducted seven months after the first, is based on a 40-minute telephone interview with the applicant's father, who was residing with the applicant in Mexico at the time. The psychiatrist notes that although she recommended therapy for the applicant's father in her first evaluation, he was unable to afford it. The evaluation also states that the applicant's immigration situation is "becoming more and more difficult, stressful and upsetting" for the applicant's father and that his concern for the applicant's safety led him to live temporarily with the applicant in Guanajuato, Mexico. *See Evaluation Report*, [REDACTED], dated May 15, 2012. The evaluation indicates that the applicant's father sounded "extremely desperate and terrified" over the phone due to violence that had been occurring in Guanajuato and that he continued to suffer from insomnia. In conclusion, the evaluation recommends that the applicant's father obtain therapy "to deal with his emotional problems." *Id.*

The AAO acknowledges that the applicant's father is close to the applicant, that he is very upset about the applicant's separation from the family, and that he worries about his safety. However, the evidence of record does not establish that his depression or anxiety is so severe that it has required him to seek ongoing treatment, interfered with his ability to work or support his family, prevented him from fulfilling his daily responsibilities, or caused physical illness. Further, the AAO notes that although the U.S. Department of State has issued a travel warning for many parts of Mexico due to narcotics-related violence, no such advisory is in effect for the state of Guanajuato. Therefore, the AAO finds that the applicant has failed to show that his father is

suffering extreme emotional hardship due to their separation or that he will suffer such hardship if the waiver application is denied.

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 suffer extreme hardship, where remaining in 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 father as required under section 212(a)(9)(B)(v) of the Act.

In proceedings for an application for 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. 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.