



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

(b)(6)

DATE: **MAY 06 2013**

Office: ANAHEIM

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:

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

Ron Rosenberg
Acting Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the International Adjudications Support Branch on behalf of the Field Office Director, Ciudad Juarez, Mexico, 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 immigrate to the United States as the beneficiary of the approved Petition for Alien Relative (Form I-130) filed by her daughter.

The 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 Field Office Director*, July 10, 2012.

On appeal, the applicant claims through her father that the field office director erred in finding that she had failed to show a qualifying relative is experiencing extreme hardship due to the waiver denial. No new evidence is submitted on appeal. The record on appeal consists of an updated statement of the applicant's father (included on the Form I-290B), as well as of evidence previously considered by the field office director, including hardship and support statements; a medical history letter and medical information; a psychological evaluation; and country condition information.

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 applicant entered the United States without inspection or parole on September 15, 1985 and returned to Mexico on September 6, 2011 to consular process for an immigrant visa. The field office director found that she had thereby accrued unlawful presence of one year or more and is thus inadmissible until September 2021.

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 father 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-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 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, there is no documentary evidence that the applicant's father has incurred physical or emotional hardship from his daughter's absence beyond the normal and typical impact of separation from a loved one. The psychological evaluation of the qualifying relative's granddaughter does not address the impact of the absence of her mother (the applicant) on her grandfather, and therefore fails to provide evidence regarding his claimed stress or other hardship to a qualifying relative. Although the qualifying relative contends his daughter's inability to immigrate is difficult for him, there is nothing on record to substantiate that her absence has caused any harm. He claims to need someone to help him on a daily basis, but the applicant does not show either that she provided assistance or why another of his relatives cannot fulfill this role. The medical evidence consists of a physician assistant's letter listing several medical conditions for which the applicant's father takes medication and receives monitoring several times yearly, but giving no indication of their seriousness or prognosis, and a series of summaries of office visits and test results. The applicant also submitted general information on diabetes and other medical conditions from web-based sources. Absent an explanation in plain language from the treating physician of the exact nature and severity of any 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. We note that there is no statement from a treatment provider supporting the qualifying relative's claim that his diabetes is severe, his hypertension levels dangerously high, or he follows a restricted diet. The record fails to establish that the applicant helps him with his diet or plays a role in maintaining his health, and does not support the qualifying relative's claim that his medical problems prevent him from visiting his daughter in Mexico.

Regarding financial hardship, the applicant provides no documentation to support her father's claim to be receiving at least \$250 monthly from her to help buy his medicines. This is the only statement regarding financial matters, and it is unsubstantiated. There is no evidence of the applicant's or her father's employment history, earnings history, daily living expenses here or in Mexico, or anything showing the applicant's departure either deprived her father of financial support or imposed on him costs of supporting her abroad. The applicant has thus made no showing that her absence has caused her father any 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 father is suffering 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, but notes that his many relatives here comprise an extensive support network. His situation is thus typical of individuals separated as a result of removal or inadmissibility, and the AAO therefore finds that the applicant has failed to establish hardship to a qualifying relative that rises to the level of "extreme" under the Act.

The applicant's 71-year-old father claims to be unable to relocate to Mexico without incurring hardship due to his health problems. While the record fails to show that necessary treatment for his medical conditions is unavailable there or that he would be unable to continue his current regimen, it does reflect that the qualifying relative has been a lawful permanent resident since 1985, nearly two dozen of his relatives live in California, and moving abroad would thus entail loss of proximity to many family members. Regarding his safety concerns, official U.S. government reporting establishes that the applicant lives in a dangerous area while awaiting immigration processing. According to the most recent State Department advisory, travel to both her current residence in Culiacan, Sinaloa, and her birthplace in neighboring Durango state is dangerous due to the activity of drug cartels. *See Travel Warning—Mexico*, U.S. Department of State, November 20, 2012 ("[S]ince 2006 more homicides have occurred in [...] Culiacan than in any other city in Mexico," besides Ciudad Juarez). The AAO thus concludes that, were the applicant unable to reside in the United States due to her inadmissibility, the record establishes a qualifying relative would suffer extreme hardship if he relocated to live with the applicant.

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. 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, 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.