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U.S. Department of Homeland Security  
U. S. Citizenship and Immigration Services  
Administrative Appeals Office (AAO)  
20 Massachusetts Ave., N.W., MS 2090  
Washington, DC 20529-2090

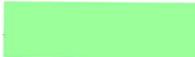


U.S. Citizenship  
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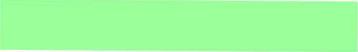


Date: **MAY 29 2013**

Office: MONTERREY, MEXICO

FILE: 

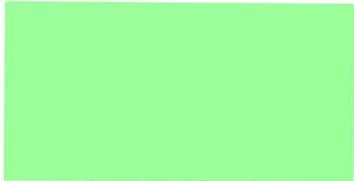
IN RE:

Applicant: 

APPLICATION:

Application for Waiver of Grounds of Inadmissibility under 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:



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 Field Office Director, Monterrey, Mexico. 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 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 again seeking admission within ten years of his last departure or removal from the United States. The record reflects that the applicant entered the United States in June 1994 as a B-2 nonimmigrant authorized to stay until July 1994. The applicant remained in the United States beyond that date and was placed in removal proceedings and applied for cancellation of removal. An Immigration Judge (IJ) denied the application for cancellation of removal but granted voluntary departure in 2007. On appeal the Board of Immigration Appeals affirmed the IJ decision in 2008 and the applicant departed the United States in May 2008. The applicant's parents are lawful permanent residents. He seeks a waiver of inadmissibility in order to reside in the United States.

The field office director found that the applicant failed to establish that his qualifying relative parents would experience extreme hardship as a consequence of his inadmissibility. The application was denied accordingly. The field officer director also denied the waiver application in the exercise of discretion based on the applicant's criminal and immigration violations. *See Decision of the Field Office Director* dated December 7, 2010. The AAO determined the record did not demonstrate that the applicant's parents would experience extreme hardship as a result of the applicant's inadmissibility and dismissed the appeal. *See decision of the AAO* dated January 2, 2013.

On motion counsel contends additional evidence supports a showing of extreme hardship to the qualifying relatives. On motion counsel submits affidavits from the applicant's father and siblings; a statement from a physician treating the applicant's mother; letters of support for the applicant; divorce documentation for a sibling of the applicant; and financial documentation for a sibling of the applicant. The record also contains a brief from counsel; a statement from the applicant's parents; immigration court records; medical documentation for the parents; and information on healthcare in Mexico. 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.

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 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 parents are the only qualifying relatives 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 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. *Salcido-Salcido v. INS*, 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.

As noted, the AAO determined that the applicant had not established that his qualifying relative parents would experience extreme hardship due to the applicant’s inadmissibility. The AAO noted that the applicant has siblings in the United States and had not shown they were unable or unwilling to provide for their parents and that statements from the parents had not detailed how they had managed health and financial issues or what difficulties they faced during the applicant’s absence. The AAO further found that the parents had not addressed any hardship they would face upon relocation to Mexico and there was no documentary evidence to support assertions of counsel that the applicant’s parents would suffer extreme hardship if they were to relocate.

On motion counsel contends that the applicant’s siblings are unable to care for their parents and that the parents have chronic health issues requiring continuing medical care. In his affidavit the applicant’s father states he depends on the applicant for financial and emotional support due to their financial and medical conditions and because their other children cannot assist them. He states he does not qualify for social security disability and receives only a pension from the state of Colorado and Supplemental Security Income. He states if they returned to Mexico he would not receive this income, would have no other source of income, and at his age he would be unable to find work. The applicant’s father states that while in the United States the applicant helped with chores the father is unable to accomplish because of physical limitations and also took them to medical appointments. He states that they wish to remain in Colorado to receive housing assistance from the City of Denver and medical care where they have long term relationships with providers. He states he would not be

able to pay for medical care in Mexico and that all their grandchildren live in the United States with no immediate family in Mexico to assist financially or with housing.

A letter from the physician for the applicant's mother indicates she is treated for a medical history including coronary artery disease, hyperlipidemia, COPD, osteoarthritis, diabetes, and hypertension, and takes numerous medications. A previous statement from the same physician indicated the father had both hips replaced and the mother has chronic and debilitating medical problems. She further noted that both parents often require the assistance of other caregivers for ambulation, transportation, and care of medications. She states both are unable to work and that the conditions are chronic.

In an affidavit a brother of the applicant states the parents have always depended on the applicant financially and emotionally. He states the father has health problems, receives limited income and housing assistance in the United States, and that at his age could not find employment in Mexico. The brother further states that he has three young children and is attempting to avoid foreclosure of his own home, making him unable to assist his parents financially or by taking them to medical appointments. He contends that as the applicant's children are now grown and do not need to be financially supported, the applicant will be able to assist the parents. He asserts the parents are vulnerable due to their inability to work, their age, and serious ongoing medical conditions. The affidavit from another brother states that he is divorced and living with two children while working full time, and is thus unable to assist their parents by taking them to medical appointments, paying for prescriptions, or doing errands. He notes that the applicant's three children are now grown so the applicant would have the time and finances to assist the parents. In her affidavit the applicant's sister states she that she lives in New Mexico and is unable to help their parents financially.

The AAO finds the applicant has established that his qualifying relative parents would experience extreme hardship if they were to relocate to Mexico. The record supports that the parents have ongoing health issues for which they require regular medical appointments, are treated by the same physician with whom they have an established relationship, and if relocated to Mexico likely would experience inadequate healthcare. Given that the applicant's parents have been lawful residents since 1995, have the majority of their extended family in the United States, and would lose pension and housing assistance while likely receiving no income in Mexico given their ages and health conditions, the record establishes that the parents would experience extreme hardship if they relocated to Mexico to reside with the applicant.

The AAO finds, however, that the record fails to establish that the qualifying parents would suffer extreme hardship as a consequence of being separated from the applicant. Counsel, the applicant's parents, and the applicant's siblings assert the parents have always depended on the applicant for financial and emotional support and now only receive a state pension and city financial housing assistance. However, no documentation has been submitted establishing the parent's current income, expenses, assets, and liabilities or their overall financial situation, or showing the applicant's contributions before he departed the United States, to establish that without his physical presence the applicant's parents 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).

Counsel, the applicant's parents, and the applicant's siblings also state the parents depend on the applicant to take them to medical appointments and do chores, and that the applicant's siblings are unable to do so. The record establishes that the applicant's parents have significant health concerns. However, given that the parents have adult children as well as adult grandchildren residing near them, the record does not establish that without the applicant's presence in the United States the parents would be unable to attend medical appointments or have daily needs met. In this case, the record does not contain sufficient evidence to show that the hardships faced by the qualifying relatives, considered in the aggregate, rise beyond the common results of removal or inadmissibility to the level of extreme hardship.

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 relatives in this case.

The record, reviewed in its entirety and in light of the *Cervantes-Gonzalez* factors, cited above, does not support a finding that the applicant's lawful resident parents will face extreme hardship if the applicant is unable to reside in the United States. Rather, the record demonstrates that they will face no greater hardship than the unfortunate, but expected disruptions, inconveniences, and difficulties arising whenever a family member is removed from the United States and/or refused admission. Although the AAO is not insensitive to the parent's situation, the record does not establish that the hardship they face rises to the level of "extreme" as contemplated by statute and case law.

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.

**ORDER:** The motion is granted and the underlying application remains denied.