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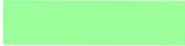


U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090
**U.S. Citizenship
and Immigration
Services**

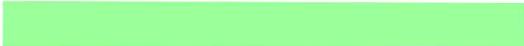


Date: **OCT 22 2013**

Office: ANAHEIM, CA

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 (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 (AAO) in your case.

This is a non-precedent decision. The AAO does not announce new constructions of law nor establish agency policy through non-precedent decisions. If you believe the AAO incorrectly applied current law or policy to your case or if you seek to present new facts for consideration, you may file a motion to reconsider or a motion to reopen, respectively. Any motion must be filed on a Notice of Appeal or Motion (Form I-290B) within 33 days of the date of this decision. **Please review the Form I-290B instructions at <http://www.uscis.gov/forms> for the latest information on fee, filing location, and other requirements. See also 8 C.F.R. § 103.5. Do not file a motion directly with the AAO.**

Thank you,

A handwritten signature in black ink that reads "Ron Rosenberg".

Ron Rosenberg
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. The matter 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 for having been unlawfully present in the United States for more than one year. The applicant is engaged to a U.S. citizen and seeks a waiver of inadmissibility pursuant to section 212(a)(9)(B)(v) of the Act in order to reside with his fiancée in the United States.

The field office director found that the applicant failed to establish extreme hardship to a qualifying relative and denied the application accordingly.

On appeal, the applicant's fiancée, Ms. [REDACTED] states the field office director erred in denying her fiancée's waiver application and submits additional evidence of hardship.

The record contains: a letter from the applicant; letters from Ms. [REDACTED]; documents from Ms. [REDACTED]'s college; copies of Ms. [REDACTED]'s bills; letters from Ms. [REDACTED]'s mother and siblings; letters of support; copies of prescription medications; a psychological evaluation; a copy of the U.S. Department of State's Travel Warning for Mexico and other background materials; photographs of the applicant and his fiancé; and an approved Petition for Alien Fiancé (Form I-129F). The entire record was reviewed and considered in rendering this decision on the appeal.

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.

In this case, the record shows, and the applicant concedes, that he entered the United States without inspection in 2007 and remained until 2009. The applicant accrued unlawful presence of more than one year. He now seeks admission within ten years of his 2009 departure. Accordingly, he is inadmissible to the United States under section 212(a)(9)(B)(i)(II) of the Act for being unlawfully present in the United States for a period of one year or more and seeking admission within ten years of his departure.

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.

In this case, the applicant's fiancée, Ms. [REDACTED] states that she began dating the applicant in April 2009, a few months before he returned to Mexico. According to Ms. [REDACTED] they have been able to maintain a long-distance relationship and she has visited her fiancé in Mexico numerous times. She contends she is a full-time college student and dreams of becoming a doctor. She states it has been very hard to concentrate on her studies because she is separated from her fiancé and she struggles to continue with the drive she needs for school. Ms. [REDACTED] also states that she has been experiencing anxiety and depression as a result of being separated from her fiancé. In addition, she contends she has had some accounts go into collections and that her fiancé would help her pay for her education. Furthermore, Ms. [REDACTED] states she would be unable to study or work if she relocated to Mexico to be with her fiancé and that her standard of living would drop significantly. She states she would be unable to fulfill her current financial obligations and would be faced with extreme poverty. She also contends that her entire family resides in the United States and that she is very close to them. She states that she and two siblings continue to live with their parents and that another sibling lives within driving distance. Ms. [REDACTED] states that she has never been apart from her family and that the thought of moving away from them is unbearable. Moreover, according to Ms. [REDACTED] her mother has been diagnosed with high blood pressure for which she takes medication. Ms. [REDACTED] also contends she fears living in Mexico which has become a very dangerous place to live, particularly in Sinaloa, where her fiancé lives and where he has been victimized three times.

After a careful review of the record, the AAO finds that if Ms. [REDACTED] relocated to Mexico to avoid the hardship of separation, she would experience extreme hardship. The AAO acknowledges her contention that her entire family resides in the United States, that she is very close to them, and that she has never been apart from them as she continues to live with her parents and two siblings. The AAO recognizes that returning to Mexico, where she was born, would separate Ms. [REDACTED] from her family. In addition, the record contains documentation from Ms. [REDACTED]'s college, corroborating her claim that she is a full-time college student, and the AAO acknowledges her hopes of becoming a doctor. Moreover, the AAO takes administrative notice of the U.S. Department of State's Travel Warning for Mexico, urging U.S. citizens to defer non-essential travel to the state of Sinaloa, where the applicant was born and is currently living. *U.S. Department of State, Travel Warning, Mexico*, dated July 12, 2013. Considering these unique circumstances cumulatively, the

AAO finds that the hardship Ms. [REDACTED] would experience if she relocated to Mexico to be with her fiancé is extreme, going beyond those hardships ordinarily associated with inadmissibility.

Nonetheless, Ms. [REDACTED] has the option of remaining in the United States and the record does not show that she has experienced or will experience extreme hardship if she remains in the United States without her fiancé. Although the AAO is sympathetic to the couple's circumstances, the record does not show that the applicant's situation is unique or atypical compared to other individuals in similar circumstances. *See Perez v. INS*, 96 F.3d 390 (9th Cir. 1996) (holding that the common results of deportation are insufficient to prove extreme hardship and defining extreme hardship as hardship that was unusual or beyond that which would normally be expected). Regarding Ms. [REDACTED]'s anxiety and depression, the record contains a psychological evaluation diagnosing her with generalized anxiety disorder and major depressive disorder, and describing her symptoms, including, but not limited to: having a poor appetite, difficulty concentrating, feeling depressed, having little energy, general nervousness, having abdominal discomfort, and difficulty sleeping. Although the input of any health care professional is respected and valuable, the evaluation does not show that Ms. [REDACTED]'s situation, or the symptoms she is experiencing, are unique or atypical compared to others in similar circumstances. The AAO also notes that Ms. [REDACTED] has significant family support both emotionally and financially. Although the record contains copies of bills showing Ms. [REDACTED] is in arrears with paying her bills, at the same time, the record shows that her parents financially support her. Even considering all of the factors in the case cumulatively, there is insufficient evidence showing that the hardship Ms. [REDACTED] will experience if she remains in the United States amounts to hardship that is extreme, unique, or atypical.

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 Ms. [REDACTED], the only qualifying relative in this case.

A review of the documentation in the record fails to establish the existence of extreme hardship to the applicant's fiancée caused by the applicant's inadmissibility to the United States. Having found the applicant statutorily ineligible for relief, no purpose would be served in discussing whether he merits a waiver as a matter of discretion.

In application proceedings, it is the applicant's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361. Here, that burden has not been met.

ORDER: The appeal is dismissed.