



U.S. Citizenship
and Immigration
Services

(b)(6)

DATE: SEP 09 2013

OFFICE: ANAHEIM FILE: [REDACTED]

IN RE: [REDACTED]

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:

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,

Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The International Adjudications Support Branch, on behalf of the Field Office Director, Ciudad Juarez, Mexico, denied the waiver application and 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, 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 is a beneficiary of an approved Petition for Alien Relative, as the spouse of a U.S. citizen, who seeks a waiver of inadmissibility in order to reside in the United States with his spouse.

The Field Office Director concluded that the record failed to establish the existence of extreme hardship for a qualifying relative and denied the application accordingly. *See Decision of the Field Office Director*, dated November 23, 2012.

On appeal, filed on December 23, 2012 and received by the AAO on April 11, 2013, the applicant's spouse asserted that she is suffering financial, emotional, and medical hardship due to separation from the applicant.

In support of the waiver application and appeal, the applicant submitted letters from the applicant's spouse, financial documentation, medical documentation concerning the applicant's spouse, photographs of their home in the United States, and a prospective letter of employment for the applicant. The entire record was reviewed and considered in rendering a decision on the appeal.

Section 212(a)(9)(B) of the Act, in pertinent part, provides:

(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.

The applicant is a native and citizen of Mexico who claims to have entered the United States without admission or parole on March 15, 2002. The applicant also claims to have departed from the United States on February 28, 2011. The applicant accrued unlawful presence in the United States from his entry on March 15, 2002 until his departure on February 28, 2011. Accordingly, the applicant accrued over one year of unlawful presence in the United States, is seeking readmission within 10 years of his last departure, and is inadmissible under section 212(a)(9)(B)(i)(II) of the Act. The applicant does not contest his inadmissibility on appeal.

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 other relatives can be considered only insofar as it results in hardship to a qualifying relative. The applicant's spouse 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 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 record reflects that the applicant is a 37-year-old native and citizen of Mexico. The applicant’s spouse is a 51-year-old native and citizen of the United States. The applicant is currently residing in Mexico¹ and the applicant’s spouse is residing in Lancaster, California.

The applicant’s spouse asserts that she is experiencing financial and medical hardship and needs the applicant in the United States for assistance. The applicant’s spouse asserts that she is in poor health, is taking blood pressure medication, receives injections for back lumbar issues, and has pain and other problems with her legs. The applicant’s spouse contends that her five children have their own lives, and she does not want to burden them with her care. The record contains medical documentation concerning the applicant’s spouse, including physician referrals

¹ In an undated letter the applicant’s spouse states that the applicant went missing on June 26, 2012 and she believes he has been kidnapped by the cartels and further states that a police report has been filed. There is no copy of the police report on record, and the applicant’s spouse has not submitted any further detail or updated information concerning the applicant’s disappearance or whether he has been located.

and prescriptions, but does not contain a clear explanation of the applicant's spouse's current condition. Without 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.

The applicant's spouse asserts that her medical conditions are interfering with her employment, part-time work at her sister's flower shop. The applicant's spouse also asserts that her last trip to Mexico was expensive. The applicant's spouse submitted several letters, from three separate dates, reflecting that the applicant's spouse was past due in her mortgage payment. It is noted that the last date reflecting a past due balance was June 5, 2012, and the record does not contain any updated financial documentation reflecting a continuing inability to meet financial obligations. Further, the applicant's spouse indicates that the applicant did not work a regular job in the United States, but earned money to help with everyday living expenses. The record does not contain documentation of the applicant's income in the United States or information concerning the ability of the applicant's spouse's five children to provide their mother with financial support if necessary.

The applicant's spouse asserts that she is going through depression, which is interfering with her work. The record contains a psychology referral for the applicant's spouse dated December 10, 2012, but does not contain any further documentation concerning the applicant's spouse's psychological state. It is acknowledged that separation from a spouse often creates hardship for both parties, and the evidence indicates that the applicant's spouse is suffering emotional hardship due to separation from the applicant. However, there is insufficient evidence in the record to demonstrate that the applicant's spouse is suffering from hardship due to separation from the applicant that is beyond the common results of the inadmissibility or removal of a spouse.

The applicant's spouse asserts that she cannot relocate to Mexico because she would not have money or a place to live and does not know if she would have access to treatment for her medical conditions. The record reflects that the applicant's spouse has visited Mexico and the applicant has both immediate and extended family members residing in Mexico. There is no information concerning the extent to which the applicant's family members could or would provide assistance to him and his spouse in Mexico. The record does not contain any background country conditions information for Mexico indicating whether the applicant's spouse could find treatment for her medical conditions in Mexico. In this case, the record contains insufficient evidence to show that the hardships faced by the qualifying relative, if she were to relocate to Mexico, rise to the level of extreme hardship.

Although the depth of concern and anxiety over the applicant's family's circumstances is neither doubted nor minimized, the fact remains that Congress provided for a waiver of inadmissibility only under limited circumstances. While the prospect of separation or involuntary relocation nearly always results in considerable hardship to individuals and families, in specifically limiting the availability of a waiver of inadmissibility to cases of "*extreme* hardship," Congress did not

intend that a waiver be granted in every case where a qualifying relationship exists. U.S. court decisions have repeatedly held that the common results of removal are insufficient to prove extreme hardship. See *Hassan v. INS*, 927 F.2d 465, 468 (9th Cir. 1991), *Perez v. INS*, 96 F.3d 390 (9th Cir. 1996); *Matter of Pilch*, 21 I&N Dec. 627 (BIA 1996) (holding that emotional hardship caused by severing family and community ties is a common result of deportation and does not constitute extreme hardship); *Matter of Shaughnessy*, 12 I&N Dec. 810 (BIA 1968) (holding that separation of family members and financial difficulties alone do not establish extreme hardship). “[O]nly in cases of great actual or prospective injury . . . will the bar be removed.” *Matter of Ngai*, 19 I&N Dec. 245, 246 (BIA 1984).

In this case, the record does not contain sufficient evidence to show that the hardships faced by the qualifying relative, considered in the aggregate, rise beyond the common results of removal or inadmissibility to the level of extreme hardship. The AAO therefore finds that the applicant has failed to establish extreme hardship to his U.S. citizen spouse as required under section 212(a)(9)(B)(v) of the Act. As the applicant has not established extreme hardship to a qualifying family member, no purpose would be served in determining whether the applicant 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.