



U.S. Citizenship
and Immigration
Services

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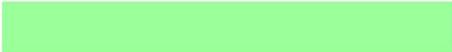


DATE: **SEP 18 2013**

OFFICE: CIUDAD JUAREZ, 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:

SELF-REPRESENTED

INSTRUCTIONS:

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 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 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 ten years of his last departure from the United States. The record indicates that the applicant is the son of a lawful permanent resident and the beneficiary of an approved Petition for Alien Relative (Form I-130). The applicant seeks a waiver of inadmissibility pursuant to section 212(a)(9)(B)(v) of the Act, 8 U.S.C. § 1182(a)(9)(B)(v), in order to reside in the United States.

The Field Office Director concluded that the applicant failed to establish that extreme hardship would be imposed on a qualifying relative and denied the Form I-601, Application for Waiver of Grounds of Inadmissibility (Form I-601), accordingly. *See Decision of the Field Office Director*, dated July 1, 2009.

On appeal the applicant's father indicates that he will suffer extreme hardship if a waiver is not granted. *See Form I-290B, Notice of Appeal or Motion* (Form I-290B), dated July 28, 2009. The Form I-290B subsequently arrived at the AAO on June 13, 2013.

The record contains, but is not limited to: Form I-290B; various immigration applications and petitions; a hardship declaration from the applicant's father; a statement by prior counsel in support of a waiver; birth certificates; and copies of the applicant's father's permanent resident card, social security card and California identification card. The entire record was reviewed and considered in rendering this decision on the appeal.

Section 212(a)(9) of the Act 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.

The record indicates that the applicant entered the United States without inspection in February 2006 and remained until he voluntarily departed in November 2007, accruing unlawful presence in excess of one year. As the applicant is seeking admission within 10 years of his departure, he was found to be inadmissible pursuant to section 212(a)(9)(B)(i)(II) of the Act, 8 U.S.C. § 1182(a)(9)(B)(i)(II).

The record supports this finding, the applicant does not contest inadmissibility, and the AAO concurs that the applicant is inadmissible under section 212(a)(9)(B)(i)(II) of the Act.

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 can be considered only insofar as it results in hardship to a qualifying relative. In the present case, the applicant's father is his only qualifying relative. 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. 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 applicant's father is a 58 year-old native of Mexico and lawful permanent resident of the United States who asserts emotional and economic hardship. He states on appeal that separation from the applicant has left him feeling heartbroken, and the tremendous pain has affected his everyday normal life, leaving him hopeless and with no desire to live. The applicant's father does not describe how his daily life has been affected and submits no corroborating documentary evidence with the appeal. 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)). As the Field Office Director noted, no supporting documentary evidence in the record demonstrated extreme hardship to the applicant's father in the scenarios of separation or relocation. This deficiency was not addressed on appeal and no new documentary evidence was submitted.

In his declaration the applicant's father wrote that he and the applicant have always had a close relationship, he relies on the applicant for emotional and financial support, and he does not have many other family members in the United States for support. Prior counsel asserted in a statement dated April 21, 2008, that the applicant's father has a lawful permanent resident sister in the United States and another son without lawful immigration status. These assertions have not been corroborated in the record. The applicant's father states that his health condition would deteriorate if separated from the applicant, but he does not define the condition to which he refers or submit supporting medical evidence. The applicant's father states that although he works, he does not earn enough money to support himself and he relies on the applicant to help provide for his housing, food, and emotional support. The record contains no documentary evidence of the applicant's father's employment or income, and no documentation of the applicant's income while he lived in the United States or the economic support he provided to his father. The record contains no evidence of expenses from which an accurate determination might be made as to whether the applicant's father is experiencing economic hardship in the applicant's absence.

While the AAO recognizes that the applicant's father may experience a reduction in income as a result of his separation from the applicant, the evidence is insufficient to demonstrate that he is

unable to meet his financial obligations in the applicant's absence. Additionally, though the applicant's father may be experiencing emotional and other challenges as a result of his separation from the applicant, the evidence does not distinguish these from difficulties ordinarily associated with a loved one's inadmissibility. The AAO acknowledges that separation from the applicant has caused difficulties for his father. However, we find the evidence in the record insufficient to demonstrate that his father's challenges, when considered cumulatively, meet the extreme-hardship standard.

Addressing the hardship that the applicant's father would experience upon relocation to Mexico, prior counsel asserted that the applicant's father does not have technical skills that would allow him to earn a living in Mexico, and he would be discriminated against in the workforce because of his age. No supporting documentary evidence was submitted previously or on appeal. Without documentary evidence to support the claim, the assertions of counsel will not satisfy the applicant's burden of proof. The unsupported assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980). Prior counsel further contended that conditions in Mexico are socially, politically and economically very poor, but submitted no corroborating country-conditions evidence. Prior counsel averred that the applicant's father has many personal and business ties in the United States and has worked for the same employer since 1985. No corroborating evidence has been submitted. The applicant's father stated that he has resided continually in the United States since 1985, but he has not addressed the possibility of relocation.

The AAO has considered cumulatively all assertions of relocation-related hardship to the applicant's father, including readjusting to a country in which she has not resided for more than 27 years, his residence in the United States since 1985, and the loss of his current employment in the United States. Considered in the aggregate, the AAO finds the evidence insufficient to demonstrate that the applicant's lawful permanent resident father would suffer extreme hardship were he to relocate to Mexico to be with the applicant during the remainder of his temporary period of inadmissibility.

The applicant has, therefore, failed to demonstrate that the challenges his father faces are unusual or beyond the common results of removal or inadmissibility. Accordingly, the AAO finds that the applicant has failed to demonstrate extreme hardship to his qualifying relative, and thus no purpose would be served in determining 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.