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



U.S. Citizenship
and Immigration
Services

DATE: SEP 25 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, 8 U.S.C. § 1182(a)(9)(B)(v)

ON BEHALF OF APPLICANT:
[REDACTED]

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, Anaheim, California on behalf of the Field Office Director, Ciudad Juarez, Mexico and 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 under 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 country for more than one year and seeking readmission within ten years of his departure from the United States. He 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 live in the United States with his lawful permanent resident father.

The Field Office Director concluded that the applicant failed to establish that extreme hardship would be imposed on a qualifying relative and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) accordingly. *See Decision of the Field Office Director*, dated April 19, 2013.

Counsel asserts on appeal that the director had the necessary evidence for a favorable adjudication and submits additional evidence on appeal. *See Form I-290B, Notice of Appeal or Motion* (Form I-290B), filed on May 20, 2013.

The record contains, but is not limited to: Form I-290B; various immigration forms; statements by the applicant, applicant's father, and family members; medical documents; financial records; police clearance documents; and copies of family members' lawful permanent resident cards. The entire record was reviewed and considered in rendering a decision on the appeal.

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

(i) [A]ny 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 reflects that the applicant entered the United States without inspection in May 2008 and returned to Mexico in May 2011. He is thus inadmissible under 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 over a year, beginning on September 22, 2008, when he became age 18, until he departed in May 2011. Counsel does not contest the inadmissibility.

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

Waiver.-The [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 [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.

Section 212(a)(9)(B)(v) of the Act provides that a waiver of the bar to admission is dependent first upon a showing that the bar imposes an extreme hardship on a qualifying family member, which includes the United States citizen or lawful permanent 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 the 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 U.S. 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 v. I.N.S.*, 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.

The applicant’s father is a 50 year-old native and citizen of Mexico and lawful permanent resident of the United States since 1990. The record reflects evidence of the applicant’s father’s mental and physical health and financial situation. Through a therapist the applicant’s father reports that without the applicant in the United States, he has trouble sleeping, difficulty concentrating on his work, no longer enjoys activities he used to, and is constantly sad. The therapist recommends individual or family therapy sessions as treatment. According to a medical document from December 2012, the applicant’s father reports having headaches, dizziness, weakness, and he worries about the applicant in Mexico. Additionally, the document reflects that he stopped taking medication for blood pressure two weeks before his medical exam, and after the exam he was prescribed medication for headaches and sinusitis.

A letter from the applicant’s father’s employer and financial documents indicate that the applicant’s father is a seasonal agricultural worker and earned between \$8,641 and \$13,629 from 2008 to 2011. His tax returns show that two children are financially dependent on him. The record also reflects expenses of \$600 for monthly rent, approximately \$100 for monthly utilities, and a payment of \$80 for car insurance, leaving less than approximately \$400 a month for other expenses. The applicant and his father indicate that if the applicant were to live in the United States, he could help the applicant’s father and the family economically. The applicant’s Form G-325 Biographic Form shows that he worked in construction and as a stacker while he lived in the

United States. The record also indicates that the applicant's mother, three siblings, and other family members live in Florida. The record does not reflect whether they contribute to the applicant's father's income.

Although the AAO acknowledges the mental, emotional, and asserted financial impact that applicant's separation has caused the applicant's father, documents in the record do not support finding that he continues to experience mental and emotional hardship after requesting and receiving treatment. The AAO also notes that the applicant's father has family members in the United States who may be able to support him emotionally and financially. The AAO has considered in the aggregate all evidence of separation-related hardship to the applicant's father and finds that the record is insufficient to demonstrate that the applicant's father suffers extreme hardship without the applicant that is distinguished from those hardships ordinarily associated with a loved one's removal.

The applicant and the applicant's father state that they worry about the applicant's safety in Mexico due to the violence and crime there. The U.S. Department of State's Travel Warning for Mexico dated July 12, 2013 corroborate their assertions and notes that U.S. citizens should defer travel to the state of San Luis Potosi, where the applicant resides, according to a criminal-clearance letter from Mexico. Besides the risk of harm to the applicant, the record does not contain any claims of hardship that that the applicant's father may experience were he to relocate to Mexico to be with the applicant.

The AAO considers cumulatively all evidence and assertions of relocation-related hardship to the applicant's father, including his length of residence in the United States, his ability to maintain his permanent resident status, his loss of family ties and employment, and safety concerns in Mexico. Although the AAO acknowledges the various difficulties in the event the applicant's father chooses to relocate to Mexico, the evidence in the record is not sufficient to establish that the applicant's father would suffer hardship in the aggregate that would meet the extreme-hardship standard.

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.