

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 26 2013

Office: ANAHEIM

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 (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 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,

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, Mexico. An appeal of the denial was initially rejected by the Administrative Appeals Office (AAO). The matter will be reopened on USCIS motion and 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 one year or more. He is seeking a waiver of inadmissibility in order to immigrate to the United States as the beneficiary of the approved Petition for Alien Relative (Form I-130) filed by his father.

The field office director concluded the applicant had failed to establish that extreme hardship would be imposed on a qualifying relative and, accordingly, denied the Application for Waiver of Ground of Inadmissibility (Form I-601). *Decision of the Field Office Director, August 14, 2012.*

In reviewing the applicant's Form I-601 on appeal, the AAO initially found that the appeal was untimely, and rejected the appeal. *Decision of the AAO, dated April 2, 2013.* The AAO subsequently established that the appeal was, in fact, timely, and reopens the case on USCIS motion.

On appeal, the applicant claims that a qualifying relative would suffer extreme hardship due to the waiver denial. The record on appeal consists of an appeal statement, a psychological report, medical records, a notice from Fannie Mae, and support statements, as well as of evidence submitted with the waiver application.

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....

The record indicates the applicant entered the United States in September 2003 without admission or parole, his parents having brought him into the country at the age of twelve, and remained here until December 2011 when he departed to apply for an immigrant visa. He accrued unlawful presence of one year or more from April 24, 2009¹ until his departure and the field office director found that he had thereby incurred inadmissibility for 10 years under the Act. He thus requires a waiver to return to the United States before December 2021.

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. The applicant's lawful permanent resident 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-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).

¹ Under section 212(a)(9)(B)(iii)(I) of the Act, no period of time in which an alien is under 18 years of age shall be taken into account in determining the period of unlawful presence in the United States under section 212(a)(9)(B)(i) of the Act.

However, though hardships may not be extreme when considered abstractly or individually, the Board has made 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. INS.*, 138 F.3d 1292, 1293 (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.

Regarding hardship from separation, there is no documentary evidence that the applicant’s father has incurred emotional hardship from his son’s absence beyond the normal and typical impact of separation from a loved one. Although this qualifying relative contends his son’s inability to immigrate is difficult for him and offers a psychological report to show the emotional impact of his son’s absence, there is little to substantiate that his absence has caused any specific harm. The psychologist diagnoses him² with anxiety and major depression, based on testing and self-reported symptoms including feelings of extreme guilt (over his son’s immigration problems), insomnia, fatigue, dizziness, stomach pains, and sadness. The report offers no prognosis or treatment, other than recommending the applicant be allowed to immigrate. The record reflects he is able to visit the applicant to ease the emotional pain of separation.

The applicant provides no similar evidence addressing the emotional impact of his absence on his mother. The record contains no psychological evaluation of or statement from this qualifying relative, only the psychologist reporting what the applicant’s father told him regarding his son’s mother. 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)).

² Although referring to the applicant’s mother, the report makes clear that only the applicant’s father appeared for evaluation, and that any diagnosis of the mother is based on information provided by the applicant’s father.

The only documentation regarding financial hardship is a Fannie Mae notice dated August 2010. Although the applicant's father describes it as an eviction notice, this claim is unsupported by the terms of the document, which offers various options to the occupants of the property. The address on the notice is for a property other than the qualifying relative's current address of record, there is no indication of whether he owned the property or resided there as a tenant, and it is dated over one year before the applicant left the country. There is no evidence for his father's claims that the house went into foreclosure, that he is unemployed, or that he was ever receiving unemployment benefits that have now run out. The record reflects that the applicant's father and mother are living with another of their children, who is supporting them; lacks any documentation of their income and expenses either before or after the applicant's departure; and contains no indication of the applicant's contribution to family income before leaving or his current living expenses in Mexico. There is no documentation confirming the applicant's or his parent's employment history, earnings history, or expenses. Without evidence of the applicant's pre-departure financial contribution to the household, his parent's current employment and earnings situation, or their expenses, we cannot determine that either qualifying relative needs the applicant's economic support. While we are sensitive that the applicant's departure inconvenienced his parents, the applicant has not established that his absence has caused them economic problems. As noted above, hardship claims without supporting documentary evidence are not sufficient for purposes of meeting the burden of proof in these proceedings. *Id.*

Documentation on record, when considered in its totality, does not show that either of the applicant's parents is suffering extreme hardship due to the applicant's inability to reside in the United States. The AAO recognizes that the qualifying relatives will endure some hardship as a result of separation from the applicant. However, their situation is typical of individuals separated as a result of removal or inadmissibility, and the AAO therefore finds that the applicant has failed to establish hardship to a qualifying relative that rises to the level of "extreme" under the Act.

Regarding relocation, the applicant's father states that he worries about his son's safety in Mexico. However, the record contains no specific information that the applicant lives in a dangerous area. We note that while official U.S. government reporting reflects that violence is an issue in the applicant's native Zacatecas province, *see Travel Warning—Mexico*, November 20, 2012, there is no indication he or his father is subject to a particular threat. The record shows that the applicant and another sibling are living in the family home.

While claiming that concerns about the applicant's safety due to violence in Ciudad Juarez led him to relocate his sons to the family home in Zacatecas, the applicant's father fails to express any worries about his own personal safety. The record reflects that he lived intermittently in both Mexico and the United States between 1969 and 1981 before immigrating lawfully in 2001. Thereafter, he accompanied the applicant and another of his sons to Mexico for their visa interviews in 2011 and remained with them for several months in Zacatecas.

Although the applicant's father claims to have high blood pressure, there is no indication of the severity of this condition or that treatment would be unavailable in his native country. There is evidence confirming the applicant's mother also is receiving care for high blood pressure, as well as for Type 2 (non-insulin dependent) diabetes. As with her husband's situation, there is no evidence

of the severity of her medical condition or that necessary treatment would be lacking in Mexico. The record contains copies of medical records, including hand-written progress notes containing medical terminology and abbreviations that are not easily understood, and laboratory results. The documents submitted were prepared for review by medical professionals or are otherwise illegible or indiscernible and do not contain a clear explanation of the current medical condition of the patients. Absent an explanation in plain language from the treating physician of the exact nature and severity of any condition and a description of any treatment needed, the AAO is not in the position to reach conclusions concerning the severity of a medical condition or the treatment needed.

The AAO is sensitive that returning to Mexico might be disruptive for the qualifying relatives, or entail loss of contact with children or grandchildren here. However, without any evidence showing how relocating to their homeland will adversely impact his parents, the applicant cannot show hardship that rises to the level of "extreme." The AAO thus concludes that, were the applicant unable to reside in the United States due to his inadmissibility, the record does not establish that a qualifying relative would suffer extreme hardship by relocating to live with the applicant.

The documentation on record, when considered in aggregate, reflects that the applicant has not established either his father or his mother will suffer extreme hardship if the applicant is unable to live in the United States. The AAO recognizes that the applicant's parents will endure hardship as a result of the applicant's inability to immigrate. However, their situation is typical of individuals affected by removal or inadmissibility, and the AAO thus finds that the applicant has failed to establish extreme hardship to a qualifying relative as required under the Act.

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.