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



U.S. Citizenship  
and Immigration  
Services

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DATE: **JAN 17 2012**

OFFICE: MEXICO CITY

FILE: 

IN RE: 

APPLICATION: Application for Waiver of Grounds of Inadmissibility under sections 212(a)(9)(B)(v) and 212(d)(11) of the Immigration and Nationality Act, 8 U.S.C. § 1182(a)(9)(B)(v) and 8 U.S.C. § 1182(d)(11)

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 law was inappropriately applied by us in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$630. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

  
for

Perry Rhew  
Chief, Administrative Appeals Office

**DISCUSSION:** The waiver application was denied by the District Director, Mexico City, 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 entered the United States without admission or parole in January 2003. The applicant remained in the United States until her departure in November 2007. The applicant 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 her last departure from the United States. The applicant is a beneficiary of an approved Petition for Alien Relative, as a spouse of a U.S. citizen, who seeks a waiver of inadmissibility in order to reside in the United States with her U.S. citizen spouse.

The District Director concluded that the record failed to establish the existence of extreme hardship for a qualifying relative and that the applicant is also inadmissible to the United States for attempting to smuggle her child into the United States, pursuant to section 212(a)(6)(E)(i) of the Act, 8 U.S.C. § 1182(a)(6)(E)(i), and ineligible for a waiver under section 212(d)(11) of the Act, 8 U.S.C. § 1182(d)(11), and denied the application accordingly. *See Decision of the District Director*, dated October 13, 2009.

On appeal, the applicant's spouse noted that the applicant returned voluntarily to Mexico and has been living and working there for years. The applicant's spouse further notes that the applicant has a son who has been living in the United States since he was one year old.

In support of the waiver application and appeal, the applicant submitted letters from her spouse, a psychosocial evaluation of her spouse, and identity documents. 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.

Section 212(a)(6)(E) of the Act, in pertinent part, provides:

(E) SMUGGLERS

(i) In General.- Any alien who at any time knowingly has encouraged, induced, assisted, abetted, or aided any other alien to enter or to try to enter the United States in violation of law is inadmissible.

....

(ii) Waiver Authorized.- For provision authorizing waiver of clause (i), see subsection (d)(11)

Section 212(d)(11) of the Act, provides:

(11) The Attorney General may, in his discretion for humanitarian purposes, to assure family unity, or when it is otherwise in the public interest, waive application of clause (i) of subsection (a)(6)(E) in the case of any alien lawfully admitted for permanent residence who temporarily proceeded abroad voluntarily and not under an order of removal, and who is otherwise admissible to the United States as a returning resident under section 211(b) and in the case of an alien seeking admission or adjustment of status as an immediate relative or immigrant under section 203(a) (other than paragraph (4) thereof), if the alien has encouraged, induced, assisted, abetted, or aided only an individual who at the time of such action was the alien's spouse, parent, son, or daughter (and no other individual) to enter the United States in violation of law.

The record reflects that the applicant attempted to smuggle an individual into the United States in January 2003. *See Form OF-194*, dated November 5, 2007. In an attempt to smuggle her child into the United States, the applicant drove the vehicle and the applicant's now-husband purchased fraudulent documents. *Id.* The applicant was apprehended in her smuggling attempt and she was granted voluntary return to Mexico. *Id.*

The applicant is currently seeking admission to the United States as an immediate relative, as the spouse of a U.S. citizen. *See Form I-130*, approved March 1, 2005. In addition, the individual that the applicant attempted to smuggle into the United States in January 2003 is her child. *See Form OF-194*, dated November 5, 2007. Based on the evidence, it appears that the applicant would be eligible to apply for a waiver of inadmissibility for alien smuggling based upon section 212(d)(11) of the Act, 8 U.S.C. § 1182(d)(11). The AAO conducts appellate review on a *de novo* basis. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004).

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 qualifying relative in this case is her U.S. citizen spouse. The record contains references to hardship the applicant's children would experience if the waiver application were denied. It is noted that Congress did not include hardship to an applicant's children as a factor to be considered in assessing extreme hardship. In the present case, the applicant's spouse is the only qualifying relative for the waiver under section 212(a)(9)(B)(v) of the Act, and hardship to the applicant's children will not be separately considered, except as it may affect the applicant's spouse.

The record reflects that the applicant is a forty-two year-old native and citizen of Mexico. The applicant's spouse is a sixty year-old native and citizen of the United States. The applicant is currently residing in Mexico and the applicant's spouse is residing in El Cenizo, Texas, with the applicant's child<sup>1</sup>.

The applicant's spouse asserts that he and the applicant have doubled their living expenses, as they now maintain two households. *See Letter from [REDACTED] dated July 22, 2008*. The record does not contain information concerning whether the applicant is currently employed. The record reflects that the applicant's spouse is employed in the maintenance department for [REDACTED] at a wage of \$10.50 per hour, but there is no information or documentation concerning the extent of the applicant's spouse's household financial obligations, in Mexico or the United States. *See Psychosocial Evaluation*, dated June 22, 2008. Going on record without supporting documentary evidence generally is not sufficient for purposes of meeting the burden of proof in these proceedings. *See Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998)

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<sup>1</sup> It is noted that the applicant's spouse, in the Form I-290B, states that the applicant's son is living in the United States. *See Form I-290B*, dated November 7, 2009. It is also noted that the applicant's spouse, in an affidavit supporting the applicant's Form I-601 application dated June 24, 2008, stated that the applicant's four children were living with him in the United States. The record is not clear concerning which of the applicant's spouse's stepchildren are currently living with the applicant's spouse in the United States. The record is similarly unclear concerning the immigration status of the applicant's children.

(citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)). Further, the courts considering the impact of financial detriment on a finding of extreme hardship have repeatedly held that, while it must be considered in the overall determination, it is not enough by itself to justify an extreme hardship determination. See *INS v. Jong Ha Wang*, 450 U.S. 139 (1981) (upholding BIA finding that economic detriment alone is insufficient to establish extreme hardship). Accordingly, the record is insufficient to find that the applicant's spouse is suffering extreme financial hardship in the applicant's absence.

The applicant's spouse states that he will experience problems if he is charged with raising his stepchildren without the applicant. See *Affidavit from* [REDACTED] There is no detail in the record concerning the problems that the applicant's spouse will face upon raising his stepchildren without the applicant. Further, it is noted that the applicant departed from the United States in November 2007, and there is no evidence that the applicant's spouse has encountered problems in raising his stepchildren.

The applicant's spouse also asserts that he has suffered emotionally since his wife's departure and lost weight as a result. See *Affidavit from* [REDACTED] The applicant's spouse submitted a psychosocial evaluation to support his assertions. See *Psychosocial Evaluation*, dated June 22, 2008. The evaluation states that the applicant's spouse has a mildly depressed demeanor, high stress level, does not function the same as previously, and fears making mistakes at work due to his distraction. *Id.* It is noted that the applicant's spouse's psychosocial evaluation was performed by a counselor, so that it does not contain any medical diagnosis concerning his psychological condition, and it does not indicate that he is receiving or recommend that he seek any treatment for his condition. See *Psychosocial Evaluation*, dated June 22, 2008. It is further noted that the record does not contain any evidence that the applicant's spouse's employer is dissatisfied with his performance at work; indeed, the evaluation notes that the applicant's spouse's employment appears to be secure at this time. *Id.* Additionally, it is acknowledged that separation from a spouse nearly always creates a level of hardship for both parties, but there is not sufficient evidence to show that if the applicant remains in Mexico, the emotional hardship suffered by the applicant's spouse will render him unable to perform in his work and daily life. There is insufficient evidence in the record to find that the applicant's spouse will suffer a level of emotional hardship beyond the common results of inadmissibility or removal if the applicant remains in Mexico.

Although the depth of concern and anxiety over the applicant's immigration status 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.

The applicant's spouse asserts that he cannot relocate to Mexico because the applicant is living in Nuevo Leon. See *Affidavit from* [REDACTED] The applicant's spouse states that if he and

his stepchildren joined her, they would all be in danger due to the violence. *Id.* It is noted that the Department of State recently issued travel warnings concerning the Nuevo Leon area:

You should be especially aware of safety and security concerns when visiting the northern border states of Northern Baja California, Sonora, Chihuahua, Nuevo Leon, and Tamaulipas. Much of the country's narcotics-related violence has occurred in the border region. More than a third of all U.S. citizens killed in Mexico in 2010 whose deaths were reported to the U.S. government were killed in the border cities of Ciudad Juarez and Tijuana. Narcotics-related homicide rates in the border states of Nuevo Leon and Tamaulipas have increased dramatically in the past two years.

*Travel Warning-Mexico, U.S. Department of State, dated April 22, 2011.*

The record establishes that the applicant's spouse is a native of the United States who has three siblings living nearby in Laredo, Texas. The applicant's spouse states that he would have to be separated from his family members, including a sister with medical problems, if he left the United States. It is noted that the applicant's spouse also has three children from a previous marriage. In this case, the record contains sufficient evidence to show that the hardships faced by the qualifying relative, if he were to relocate to Mexico, rise to the level of extreme hardship.

The record, however, does not contain sufficient evidence to show that the hardships faced by the qualifying relative upon separation, considered in the aggregate, rise beyond the common results of removal or inadmissibility to the level of extreme hardship. 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).

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 the qualifying relative(s) in this case.

The AAO therefore finds that the applicant has failed to establish extreme hardship to her 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 this waiver as a matter of discretion. In addition, no purpose would be served in determining whether the applicant merits a waiver of inadmissibility pursuant to section 212(d)(11) of the Act for humanitarian purposes or to assure family unity, or that such a waiver would otherwise be the public interest.

In proceedings for application for waiver of grounds of inadmissibility under section 212(a)(9)(B)(v) of the Act, the burden of proving eligibility remains entirely with the applicant. Section 291 of the Act, 8 U.S.C. § 1361. Here, the applicant has not met that burden. Accordingly, the appeal will be dismissed.

**ORDER:** The appeal is dismissed.