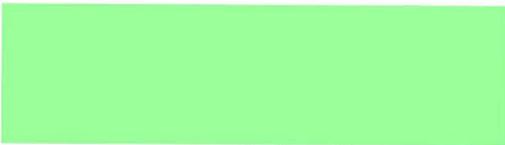




U.S. Citizenship
and Immigration
Services

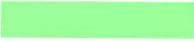
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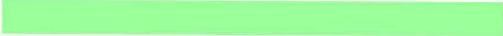
MAY 22 2013

Date:

Office: ANAHEIM

FILE: 

IN RE:

Applicant: 

APPLICATION:

Application for Waiver of Grounds of Inadmissibility under section 212(a)(9)(B) of the Immigration and Nationality Act, 8 U.S.C. § 1182(a)(9)(B)

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,


for

Ron Rosenberg
Acting 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. 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 again seeking admission within 10 years of his last departure from the United States. The record reflects that the applicant entered the United States without inspection in 2004 and remained beyond his 18th birthday in 2006 until departing in 2011, thus accruing more than one year unlawful presence. The applicant is the spouse of a United States citizen. He seeks a waiver of inadmissibility in order to reside in the United States with his wife.

The field office director found that the applicant failed to establish that his qualifying relative would experience extreme hardship as a consequence of his inadmissibility. The application was denied accordingly. *See Decision of the Field Office Director* dated August 30, 2012.

On appeal the applicant's spouse asserts the applicant is everything for her. The applicant submits a letter from his spouse on appeal. The record also contains a letter of support from former counsel; affidavits from the applicant's spouse and her mother and father; financial information; and country information for Mexico.

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

(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.

Section 212(a)(9)(B)(v) of the Act provides for a waiver of section 212(a)(9)(B)(i) inadmissibility as follows:

The Attorney General [now Secretary of Homeland Security] 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 . . . 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.

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. 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-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. *Salcido-Salcido v. INS*, 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.

On appeal the applicant's spouse states she cannot relocate to Mexico because she has a home, cars, job, and education in the United States. She states she wants to start a family with the applicant and feels she is nothing without him. She states that she has medical problems, including depression and migraine headaches that can cause her to be bed-ridden. She states that these conditions began with the 2006 death of her brother, that she has taken medication, and that she fears her condition will worsen without the applicant to help her. She states that she works as a store manager and also in schools as a bilingual educator for students having learning disabilities, but does not earn enough to maintain her household and pay other bills. She states that if she relocated to Mexico she would be forced to leave her jobs, sell her property, and forfeit her education and training while in Mexico finding no job needing her skills. She states that she currently pays bills and provides money to the applicant but if she relocated she would be subjected to sub-standard conditions. She states that separation from her close-knit family in the United States would add to her anxiety, that her mother relies on her financially and emotionally, and that her father is suicidal since divorcing her mother and needs emotional support. The spouse states she has no cultural ties to Mexico, fears for her safety there due to violence and police corruption and fears inadequate medical care because of her need for medication and if she were to have a baby. She states that living there would cause psychological stress and a depletion of her finances.

The spouse's mother states she depends on her daughter financially and needs her daughter and the applicant so the family is together. The spouse's father states that the family was shattered by the death of his son, and that the applicant has become like a son. The father further states he does not want to lose any more children. A note from medical doctor states the spouse's father has a history of major depression exacerbated by the death of his son and family issues, and that he has attempted suicide. It further states he is dependent on the applicant for support.

The AAO finds the applicant has established that his qualifying relative spouse would experience extreme hardship if she were to relocate to Mexico to reside with the applicant. The record establishes that the applicant's U.S. citizen spouse was born in the United States with few ties to Mexico. She would have to leave her family, most notably her parents who rely on her for financial and emotional support, her jobs, educational and career pursuits, and her community while she would be concerned about her safety and her financial well-being in light of the lack of employment

opportunities for her in Mexico. The record indicates the applicant resides in Michoacán. The U.S. Department of State indicates U.S. citizens “should defer non-essential travel to the state of Michoacán” and states, “[a]ttacks on Mexican government officials, law enforcement and military personnel, and other incidents of TCO-related violence, have occurred throughout Michoacán.” *U.S. Department of State, Bureau of Consular Affairs, Travel Warning – Mexico*, November 20, 2012. It has thus been established that the applicant’s spouse would suffer extreme hardship were she to relocate abroad to reside with the applicant due to his inadmissibility.

The record does not establish, however, that the applicant’s spouse would suffer extreme hardship due to separation from the applicant if the spouse remains in the United States while the applicant resides abroad due to his inadmissibility. The applicant’s spouse contends she has psychological and physical health problems exacerbated by separation from the applicant, but the record contains no supporting evidence concerning the hardships the applicant’s spouse states she experiences due to separation from the applicant or how such hardships are outside the ordinary consequences of removal. 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) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)).

The record contains pay and mortgage documentation for the applicant’s spouse and some billing information, but does not establish what the applicant had contributed to support the assertion that without his physical presence in the United States his spouse experiences extreme hardship. 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, “[e]conomic disadvantage alone does not constitute “extreme hardship.” *Ramirez-Durazo v. INS*, 794 F.2d 491, 497 (9th Cir. 1986). Further, it has not been established that the applicant is unable to support himself while in Mexico, thereby ameliorating any hardships of the applicant’s spouse with respect to having to financially support him.

The AAO recognizes that the applicant’s spouse will endure hardship as a result of separation from the applicant. However, her situation if she remains in the United States is typical to individuals separated as a result of removal and does not rise to the level of extreme hardship based on the record.

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 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 in this case.

The record, reviewed in its entirety and in light of the *Cervantes-Gonzalez* factors, cited above, does not support a finding that the applicant's U.S. citizen spouse will face extreme hardship if the applicant is unable to reside in the United States. Rather, the record demonstrates that she will face no greater hardship than the unfortunate but expected disruptions, inconveniences, and difficulties arising whenever a spouse is removed from the United States and/or refused admission. Although the AAO is not insensitive to the spouse's situation, the record does not establish that the hardship she would face rises to the level of "extreme" as contemplated by statute and case law.

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 proceedings for application for waiver of grounds of inadmissibility, 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.