

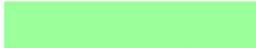


U.S. Citizenship
and Immigration
Services

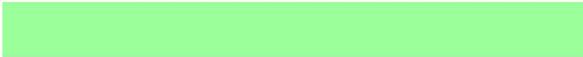
(b)(6)



DATE: OFFICE: ANAHEIM



IN RE: **AUG 28 2013** Applicant:



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

ON BEHALF OF APPLICANT:

SELF-REPRESENTED

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,

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 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 one year or more and seeking admission within 10 years of her last departure from the United States. The applicant is the spouse of a U.S. citizen and the beneficiary of an approved Petition for Alien Relative (Form I-130). The applicant does not contest the finding of inadmissibility. Rather, she seeks a waiver of inadmissibility pursuant to section 212(a)(9)(B)(v) of the Act, 8 U.S.C. § 1182(9)(B)(v), in order to reside in the United States with her spouse and child.

The International Adjudications Support Branch concluded the applicant failed to establish 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 on Behalf of the Field Office Director*, dated February 8, 2013.

On appeal, the applicant's spouse asserts he has been suffering psychological and financial hardship because of the applicant's inadmissibility. *See Statement in Support of Form I-290B, Notice of Appeal or Motion* (Form I-290B), dated March 8, 2013.

The record includes, but is not limited to: correspondence; letters of support from the applicant and her spouse; employment and financial documents; and photographs. The entire record was reviewed and considered in rendering a decision on the appeal.

Section 212(a)(9) of the Act provides, in relevant 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.

...

(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. No court shall have jurisdiction to review a decision or action by the Attorney General [Secretary] regarding a waiver under this clause.

The record reflects the applicant was permitted entry into the United States for humanitarian purposes about November 2, 2005; valid until November 13, 2005. The applicant remained beyond the permissible time until about December 4, 2008, when she voluntarily departed to Mexico. The applicant accrued unlawful presence from November 14, 2005, until December 4, 2008; a period in excess of one year. Accordingly, the AAO finds the applicant is inadmissible pursuant to section 212(a)(9)(B)(i)(II) of the Act, and she requires a waiver under section 212(a)(9)(B)(v) 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 or her child can be considered only insofar as it results in hardship to a qualifying relative. The applicant's U.S. citizen spouse is the only demonstrated 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 of Immigration Appeals (BIA) 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. at 565. 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 BIA 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 BIA 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; *In re 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 BIA 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., *In re Bing Chih Kao and Mei Tsui Lin*, 23 I&N Dec. 45, 51 (BIA 2001) (distinguishing *In re 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, 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.

The applicant’s spouse indicates he has been suffering psychological and financial hardship in the applicant’s absence as: he has been separated from the applicant and his child for four years; he has not been able to concentrate at his work or “in his daily life”; he needs his family to continue with his life; he is feeling depressed and afraid that he may get sick; he fears for the safety of the applicant and his child due to the violence occurring throughout Mexico; he has been unable to work a “full year”, and his “bills are begin[n]ing to pile up due to all the expenses that [have] accumulated since [the applicant] has been away from [him]”; he fears he may lose his job as he has “not been consistent” and he “keep[s] going back and forth to visit [the applicant and his child]”; he also fears the applicant or his child “will get sick and will not be able to afford the cost of medical and medicine bills with [the] little income that [he] has now”; and he would like for his child to get an education in the United States. The applicant also indicates: her family is affected emotionally as they need to be together and “live as a united family”; she and her spouse have lived together for six years, and have been married for two years; the last three years have been “very hard for [their] family[] because [her] husband only visit[is] for short periods”; and her spouse has to work to support their family and he does not want to lose his job, but he is afraid for their safety and leaving them alone because of the violence in Mexico.

Although the record does not include specific evidence of the applicant's spouse's current mental health, the AAO notes in its latest travel warning for [REDACTED] where the applicant and her spouse's son currently reside, the U.S. Department of State indicates, "defer non-essential travel to areas of the state that borders the state of [REDACTED]. The security situation along the [REDACTED] and [REDACTED] borders continues to be unstable and gun battles between criminal groups and authorities occur. Concerns include roadblocks placed by individuals posing as police or military personnel and recent gun battles between rival [Transnational Criminal Organizations] involving automatic weapons ... exercise caution in rural areas and when using secondary highways, particularly along the northern border of the state." *Travel Warning, Mexico*, issued July 12, 2013. Accordingly, the AAO finds the record is sufficient to establish the applicant's spouse would suffer emotional hardship in the applicant's absence. However, the AAO notes the record does not include any evidence of the applicant's spouse's current financial obligations, demonstrating he is unable to meet them in the applicant's absence. Moreover, the record does not include any evidence of current educational opportunities and health conditions in Mexico, demonstrating their impact on the applicant's spouse; her only qualifying relative. 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)). The AAO is thus unable to conclude the applicant's spouse's financial hardship would go beyond that which is commonly expected.

The AAO notes the concerns regarding the hardship the applicant's spouse may experience in the applicant's absence, but finds that even when this hardship is considered in the aggregate, the record fails to establish the applicant's spouse would suffer extreme hardship as a result of separation from the applicant.

Additionally, the AAO notes the applicant's appeal does not specifically address whether the applicant's spouse would experience extreme hardship if he were to relocate to Mexico to be with her. However, the applicant's spouse indicates his "boss needs [him]" and [cannot] afford to lose [him]."

As mentioned previously, the AAO notes the travel warning for [REDACTED] presumptively where the applicant and her spouse would reside. Also, the record reflects the applicant's spouse has resided in the United States for almost 20 years, where he maintains employment with [REDACTED]. The AAO further notes the applicant's spouse's employer is not a qualifying relative, and the record does not include evidence of the impact the loss of an employee on the employer would have on the applicant's only qualifying relative; her spouse. Nevertheless, the AAO finds, in the aggregate, the applicant's spouse would suffer extreme hardship if he were to relocate to Mexico.

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. *In re Pilch*, 21 I&N Dec. at 632-33. 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.

In this case, the record does not contain sufficient evidence to show that the hardship faced by the qualifying relative, considered in the aggregate, rises beyond the common results of removal or inadmissibility to the level of extreme hardship. The AAO therefore finds the applicant has failed to establish extreme hardship to her U.S. citizen spouse 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 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.