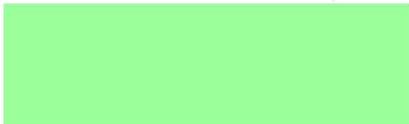




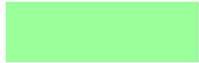
U.S. Citizenship  
and Immigration  
Services

(b)(6)



Date: **FEB 27 2013**

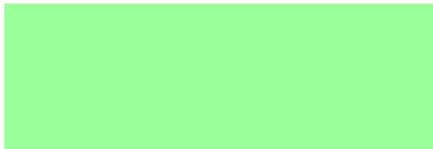
Office: DENVER, CO

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); and section 212(h) of the Act, 8 U.S.C. § 1182(h).

ON BEHALF OF APPLICANT:



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,

A handwritten signature in black ink, appearing to read "Ron Rosenberg".

Ron Rosenberg  
Acting Chief, Administrative Appeals Office

**DISCUSSION:** The waiver application was denied by the Field Office Director, Denver, Colorado, 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 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 United States for more than one year; and under section 212(a)(2)(A)(i)(I) of the Act, 8 U.S.C. § 1182(a)(2)(A)(i)(I), for having been convicted of a crime involving moral turpitude. The director stated that the applicant sought a waiver of inadmissibility pursuant to sections 212(a)(9)(B)(v) and 212(h) of the Act, 8 U.S.C. § 1182(a)(9)(B)(v), and 8 U.S.C. § 1182(h), respectively. The director concluded that the applicant had failed to establish that his bar to admission would impose extreme hardship on a qualifying relative, and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) accordingly.

On appeal, counsel argues that the director did not review the law and consider the hardship factors together. Counsel states that the applicant married his U.S. citizen spouse in 2002, and that the applicant's wife would like to live near her adult children from prior relationships. Counsel declares that the applicant's wife has health problems, a knee replacement and wrist surgery for carpal tunnel syndrome; and physical disabilities for which she receives medical treatment and disability benefits. Counsel asserts that the age and health problems of the applicant's wife will affect her ability to obtain employment in Mexico, and the health benefits she will have in Mexico will be inferior to what she now receives.

We will first address the finding of inadmissibility.

The director determined that the applicant was inadmissible for having been convicted of a crime involving moral turpitude. Section 212(a)(2)(A) of the Act states:

- (i) [A]ny alien convicted of, or who admits having committed, or who admits committing acts which constitute the essential elements of –
  - (I) a crime involving moral turpitude (other than a purely political offense) or an attempt or conspiracy to commit such a crime . . . is inadmissible.

The record of conviction reflects that on December 22, 1996 the applicant committed criminal attempt and first-degree aggravated car theft. In 2007, the applicant was found guilty, and ordered to pay \$2,459.36 in restitution. Counsel indicates that the applicant served five months in custody and was released on unsupervised probation.

The Board of Immigration Appeals (Board) held in *Matter of Perez-Contreras*, 20 I&N Dec. 615, 617-18 (BIA 1992), that:

[M]oral turpitude is a nebulous concept, which refers generally to conduct that shocks the public conscience as being inherently base, vile, or depraved, contrary to the rules

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of morality and the duties owed between man and man, either one's fellow man or society in general....

In determining whether a crime involves moral turpitude, we consider whether the act is accompanied by a vicious motive or corrupt mind. Where knowing or intentional conduct is an element of an offense, we have found moral turpitude to be present. However, where the required mens rea may not be determined from the statute, moral turpitude does not inhere.

(Citations omitted.)

As the applicant has not disputed on appeal that his offense is a crime involving moral turpitude, and the record does not show the finding of inadmissibility to be erroneous, we will not disturb the finding of the director.

The applicant is eligible to apply for a waiver of inadmissibility under section 212(h) of the Act. That section provides:

(h) The Attorney General [Secretary of Homeland Security] may, in his discretion, waive the application of subparagraph (A)(i)(I) . . . of subsection (a)(2) . . . if -

(1) (A) in the case of any immigrant it is established to the satisfaction of the Attorney General [Secretary] that -

- (i) . . . the activities for which the alien is inadmissible occurred more than 15 years before the date of the alien's application for a visa, admission, or adjustment of status,
- (ii) the admission to the United States of such alien would not be contrary to the national welfare, safety, or security of the United States, and
- (iii) the alien has been rehabilitated; or

(B) in the case of an immigrant who is the spouse, parent, son, or daughter of a citizen of the United States or an alien lawfully admitted for permanent residence if it is established to the satisfaction of the Attorney General [Secretary] that the alien's denial of admission would result in extreme hardship to the United States citizen or lawfully resident spouse, parent, son, or daughter of such alien . . .

The applicant was found to be inadmissible under section 212(a)(9)(B) of the Act. That section reads:

(B) Aliens Unlawfully Present

- (i) In general. - Any alien (other than an alien lawfully admitted for permanent residence) who-

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- (I) was unlawfully present in the United States for a period of more than 180 days but less than 1 year, voluntarily departed the United States . . . and again seeks admission within 3 years of the date of such alien's departure or removal, or
- (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.

U.S. Citizenship and Immigration Services (USCIS) records reflect that the applicant entered the United States without inspection in 1995. The applicant therefore accrued unlawful presence from April 1, 1997, when the unlawful presence provisions took effect, to sometime in April or May 1997, when he left the United States. In the summer of 2002, the applicant reentered the United States without inspection, and left the country to return to Mexico in June 2003. With this stay it is not clear from the record or the applicant's statement to the immigration officer that the applicant accrued less than one year of unlawful presence. However, the burden of proving eligibility remains entirely with the applicant. See Section 291 of the Act. The applicant has not demonstrated that he accrued less than one year of unlawful presence. Accordingly, we find that when the applicant left the country he triggered the ten-year bar, rendering him inadmissible under section 212(a)(9)(B)(i)(II) of the Act.

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. Because the hardship standard for the section 212(a)(9)(B)(v) waiver is higher than that of the section 212(h) waiver, we will apply the more difficult standard in the applicant's case. Thus, hardship to the applicant and his children can be considered only insofar as it results in hardship to a qualifying relative. The applicant's U.S. citizen 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. See *Salcido-Salcido*, 138 F.3d 1292, 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

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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.

In rendering this decision, the AAO will consider all of the evidence in the record.

The applicant's wife asserted in the letter dated December 8, 2011 that she would suffer emotional and financial hardship if separated from her husband due to her limited income and physical disabilities. She contended that she cannot live with her husband in Mexico because "this would cut all medical benefits that I need, including simple check-ups or services." The applicant's wife declared that she has been married to her husband for ten years and has a close relationship with him, and needs him to take care of her. She asserts that her children have families of their own and cannot take care of her.

The asserted hardships to the applicant's wife in remaining in the United States while the applicant would live in Mexico are emotional and financial in nature. The claim of financial and emotional hardship is consistent with the social security records for 2009 reflecting the applicant's wife, who was born on November 30, 1965, is disabled and has a low income. She receives social security disability benefits and supplemental security income benefits, and qualifies for Medicare benefits. The applicant's wife asserts having a close relationship with her husband. The marriage certificate reflects that the applicant and his wife married on December 11, 2002. Since their marriage the applicant and his wife have been seeking to have the applicant immigrate to the United States so they can live together. When these hardship factors are considered together, we acknowledge they demonstrate hardship to the applicant's wife in remaining in the United States without her husband.

As to the hardships of relocating to Mexico with the applicant, counsel argues that the applicant's wife has physical disabilities for which she receives medical treatment and disability benefits and that her age and health problems will affect her ability to obtain employment in Mexico. However, the applicant has not provided any evidence reflecting that he will not be able to financially support his wife in Mexico. Furthermore, as the affidavit dated January 20, 2011 stated that the applicant lived in Mexico from 2003 until October 2006, it is not demonstrated that he would lack means to support himself in Mexico. The applicant has not provided any documentation consistent with the assertion that suitable medical care for his wife is unavailable in Mexico. While we recognize that the applicant's wife will experience the hardship of separating from family members in the United States, when the asserted hardship factors are considered together, they fail to establish that her hardship in relocating to Mexico would be more than the common results of inadmissibility, and thus constitute extreme hardship.

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 remain in the United States and thereby suffer extreme hardship as a consequence of separation can easily be made for purposes of the waiver even where there is no intention to separate in reality. *See Matter of Ige*, 20 I&N Dec. 880, 886 (BIA 1994). Furthermore, to separate and suffer extreme hardship, where relocating abroad with the applicant would not result in extreme hardship, is a matter of choice and not the result of inadmissibility. *Id.*, *see also Matter of Pilch*, 21 I&N Dec. 627, 632-33 (BIA 1996). As the applicant

has not demonstrated extreme hardship from relocation, we cannot find that refusal of admission would result in extreme hardship to the qualifying relatives in this case.

Having found the applicant statutorily ineligible for relief, no purpose would be served in discussing whether he merits a waiver as a matter of discretion.

In proceedings for application for waiver of grounds of inadmissibility under sections 212(a)(9)(B)(v) and 212(h) of the Act, the burden of proving eligibility remains entirely with the applicant. *See* 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.