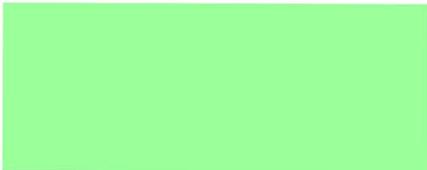


U.S. Department of Homeland Security  
U. S. Citizenship and Immigration Services  
Administrative Appeals Office (AAO)  
20 Massachusetts Ave., N.W., MS 2090  
Washington, DC 20529-2090

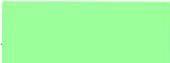


U.S. Citizenship  
and Immigration  
Services

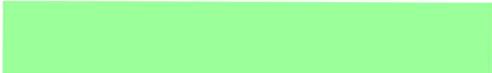


Date: JUL 12 2013

Office: MONTERREY, MEXICO

FILE: 

IN RE:

Applicant: 

APPLICATION: Application for Waiver of Grounds of Inadmissibility under sections 212(h) and 212(a)(9)(B)(v) of the Immigration and Nationality Act, 8 U.S.C. §§ 1182(h) and 1182(a)(9)(B)(v), and Application for Permission to Reapply for Admission into the United States After Deportation or Removal under Section 212(a)(9)(A) of the Immigration and Nationality Act, 8 U.S.C. § 1182(a)(9)(A).

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  
Acting Chief, Administrative Appeals Office

**DISCUSSION:** The waiver application was denied by the Field Office Director, Monterrey, Mexico. An appeal of the denial was dismissed by the Administrative Appeals Office (AAO). The matter is now before the AAO on motion. The motion will be granted and the underlying application remains denied.

The applicant is a native and citizen of Mexico who was found to be inadmissible to the United States pursuant to section 212(a)(2)(A)(i)(I) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(2)(A)(i)(I), for having committed a crime involving moral turpitude, and 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 more than one year and again seeking admission within 10 years of his last departure from the United States. The applicant does not contest the finding of inadmissibility but rather seeks a waiver of inadmissibility in order to reside in the United States with his U.S. citizen spouse.

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 June 11, 2010.

On appeal the AAO determined that the applicant had not established that his spouse would suffer extreme hardship if the waiver application is denied and she continues to reside in the United States or if she were to relocate to Mexico. Consequently, the appeal was dismissed. See *Decision of the AAO*, dated December 5, 2012.

On motion the applicant's spouse asserts that she has shown extreme hardship, that she needs the applicant to provide for her and her family, and that she can no longer continue financially and emotionally. Submitted with the motion are a statement from the applicant's spouse; a letter from a psychological service about the applicant's son; medical documentation for the applicant's spouse and her daughters; school information for a daughter; and financial documentation. The record contains previously-submitted medical information about the spouse and daughters and a statement from the spouse. The entire record was reviewed and considered in rendering this decision.

Section 212(a)(2)(A) of the Act states, in pertinent parts:

- (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.

Section 212(h) of the Act provides, in pertinent part:

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

....

(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 . . . .

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.

The record reflects that the applicant entered the United States without inspection in 1989, remaining until being removed in September 2006, thus accruing unlawful presence of more than one year after the April 1, 1997, effective date of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA)<sup>1</sup>. The record also reflects that the applicant was convicted of False Information on February 18, 1999, pled guilty to Assault on August 31, 1997, and pled guilty to Assault/Battery on March 12, 2003. The record also indicates that the applicant has numerous arrests and convictions for driving-related offenses.

The AAO notes that section 212(a)(9)(B)(v) of the Act provides that a waiver of inadmissibility is dependent first upon a showing that the bar to admission imposes an extreme hardship on a qualifying family member. In this case, the relative that qualifies is the applicant's spouse.

---

<sup>1</sup> The applicant's year of entry is not clear from the record as a Notice to Appear filed with the Executive Office for Immigration Review states he arrived in 1991. A statement by the consular office that the applicant entered the United States in 1998 appears to be a typographical error as the officer noted in a separate letter that he entered in 1989.

Hardship to the applicant himself or to his children is not relevant under section 212(a)(9)(B)(v) of the Act and will be considered only insofar as it results in hardship to a qualifying relative. If extreme hardship is established, the Secretary then assesses whether an exercise of discretion is warranted. Although the applicant's children are qualifying relatives for a waiver under section 212(h), the applicant requires a waiver due to his unlawful presence accrued in the United States. For this waiver the only qualifying relative is the applicant's spouse, for whom extreme hardship must be established.

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. 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 AAO found that the record did not contain sufficient evidence to establish that the spouse's hardship exceeds that normally created by separation of families, and that no documentary evidence had been submitted to support the assertion that the spouse is financially dependent on the applicant. The AAO found the record did not document the nature or extent of emotional hardships experienced by the spouse's children or its impact on their mother. The AAO found that country information submitted to the record was general and did not establish that conditions would specifically impact the qualifying relative and found the record contained no evidence to support the spouse's contention that her older children's father would not allow them to be taken out of the United States. The AAO acknowledged the spouse's assertion that her children would have difficulty relocating, but noted that they are not qualifying relatives and the record did not contain evidence to establish the impact any hardship might have on their mother. The AAO further found no documentation to establish the necessity of claimed medical treatment for the spouse's children or that treatment is not available in Mexico.

On motion the applicant's spouse asserts that since the applicant's departure her son is suffering sleeplessness and poor school performance and that he needs his father. She states that she has been traveling to Mexico so her son can visit the applicant, but can no longer financially afford the long trips, which she also considers dangerous. She refers to U.S. Department of State reports of violent crime in Mexico. She states that one of her daughters is under dental care and another is attending school and depends on her mother. The applicant's spouse states that she has been diagnosed with depression and anxiety for which she takes medication and was referred for counseling. She states that counseling is a financial hardship as insurance does not cover psychological services and that she is unable to support her son since the applicant has not been able to obtain a job in Mexico. She also states that she could no longer afford her home's mortgage and has moved to an apartment. The applicant's spouse had previously stated that she is financially dependent on the applicant, that a daughter and son had medical problems, and that she hoped to return to college.

A note from a medical service dated March 4, 2013, states that the applicant's spouse was prescribed medication to help with depression and sleep "due to the ongoing stress of the situation and a scheduled court appearance . . . . She feels very anxious and intimidated about being in the presence of the plaintiff . . . ." A note dated April 21, 2010, refers to the spouse's trouble with a daughter

who had run away and stated that the spouse had had depression and anxiety “five years ago” for which she reported medication had been helpful.

Documentation submitted to the record shows financial obligations for one of the spouse’s daughters who is undergoing dental care and another who is attending a medical assistant program at a college with scheduled completion to have been March 2013. A note from a psychological service dated April 2013 states the spouse’s son is being treated for depression and issues of attachment and behavior.

The AAO finds the record to establish that the applicant’s spouse would experience extreme hardship if she were to relocate to Mexico. The record establishes that the applicant’s U.S. citizen spouse was born in the United States and has no ties to Mexico. She would have to leave her family, most notably her children from a previous relationship, and her community and she would be concerned about her safety as well as her financial well-being in light of the lack of employment opportunities in Mexico. The applicant’s spouse states that she fears for her son’s safety in Mexico. On the Petition for Alien Relative (Form I-130), Application for Waiver of Grounds of Inadmissibility (Form I-601), and Biographic Information (Form G-325A), the applicant indicated he was born and lives in Puebla, for which the U.S. Department of State has no travel warnings in effect. However, on motion the applicant’s spouse states the applicant now resides in Ciudad Juarez in the state of Chihuahua, where the Department of State warns to defer non-essential travel as it continues to experience high rates of violent crimes and narcotics-related murders. *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.

However, the AAO finds the record fails to establish that the qualifying spouse would suffer extreme hardship as a consequence of being separated from the applicant. The applicant’s spouse asserts that she experiences emotional hardship due to separation from the applicant. However, the applicant failed to provide any detail explaining the exact nature of the qualifying spouse’s emotional hardships and how such emotional hardships are outside the ordinary consequences of removal. Although documentation on record shows the applicant’s spouse has received psychological counseling and been prescribed medication, one medical note refers to problems with a daughter, who is now attending college, and another to a plaintiff, though it is not clear to whom the note is referring.

The applicant’s spouse states she was forced to move from her home to an apartment due to her inability to continue paying her mortgage. However, the mortgage statement lists the applicant’s spouse along with her first husband, but there is no indication whether he is contributing financially or lives at the house, and the record indicates the applicant’s spouse has returned to live at that address. Other than a mortgage statement and documentation of payments for a daughter’s dental work and for another daughter’s post-high school education, and receipts for travel to Mexico, no documentation has been submitted establishing the spouse’s current income, expenses, assets, and liabilities or her overall financial situation, or to show the applicant’s previous financial

contributions, to establish that without the applicant's physical presence in the United States the applicant's spouse experiences financial hardship. Further, 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)

The record contains references to hardship the applicant's child would experience if the waiver application were denied. It is noted that Congress did not include hardship to an alien's children as a factor to be considered in assessing extreme hardship under section 212(a)(9)(B)(v) of the Act. 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 child will not be separately considered, except as it may affect the applicant's spouse.

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. The difficulties that the applicant's spouse faces as a result of her separation from the applicant, even when considered in the aggregate, do not rise to the level of extreme as contemplated by statute and case law.

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 in this case.

On motion, the record does not support a finding that the applicant's spouse would face extreme hardship if the applicant is unable to reside in the United States. Rather, the record demonstrates that she faces 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.

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 motion will be granted and the underlying application remains denied.

The AAO notes that the field office director denied the applicant's Application for Permission to Reapply for Admission into the United States After Deportation or Removal (Form I-212) in the same decision. *Matter of Martinez-Torres*, 10 I&N Dec. 776 (reg. Comm. 1964) held that an application for permission to reapply for admission is denied, in the exercise of discretion, to an alien who is mandatorily inadmissible to the United States under another section of the Act, and no purpose would be served in granting the application. As the applicant is inadmissible under sections 212(a)(2)(A)(i)(I) and 212(a)(9)(B)(i)(II) of the Act no purpose would be served in granting the applicant's Form I-212.

**ORDER:** The motion is granted and the underlying applications remain denied.