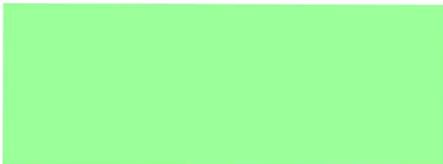


(b)(6)

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

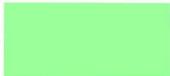


U.S. Citizenship
and Immigration
Services

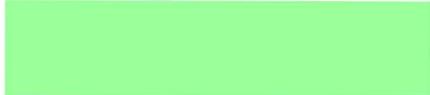


Date: **MAY 28 2014**

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 (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,

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

Ron Rosenberg
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 AAO then dismissed a motion to reopen and reconsider. The matter is now before the AAO on a second motion. The second motion will also 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)(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 and denied the application accordingly. *See Decision of the Field Office Director*, dated June 11, 2010. On appeal we determined that the applicant had not established that his spouse would suffer extreme hardship if the waiver application is denied. Consequently, the appeal was dismissed. *See Decision of the AAO*, dated December 5, 2012. Reviewing the applicant's motion to reopen and reconsider, we granted the motion to reopen but ultimately dismissed the underlying application. *See Decision of the AAO*, dated July 12, 2013.

A motion to reopen must state the new facts to be provided and be supported by affidavits or other documentary evidence. 8 C.F.R. § 103.5(a)(2). A motion to reconsider must state the reasons for reconsideration and be supported by any pertinent precedent decisions to establish that the decision was based on an incorrect application of law or Service policy. A motion to reconsider a decision on an application or petition must, when filed, also establish that the decision was incorrect based on the evidence of record at the time of the initial decision. 8 C.F.R. § 103.5(a)(3).

On motion, the applicant's spouse asserts that she has provided proof that she is the only legal owner of her home. She also indicates that for her children's sake she moved back to her home and that she can no longer afford to travel to Mexico. Because the applicant has provided new facts to support assertions that his spouse and children will experience extreme hardship, the AAO will grant the motion to reopen the proceedings and consider the documentation submitted in support of the motion.

The applicant submits letters, two articles¹ regarding safety in border towns and a document indicating his spouse sent money to him. The record also includes medical documentation regarding

¹ Although the applicant provides one partial article written in Spanish, the requisite translation was not provided. 8 C.F.R. § 103.2(b)(3) states, with regard to translations, that "[a]ny document containing foreign language submitted to USCIS shall be accompanied by a full English language translation which the translator has certified as complete and

the applicant's spouse and children, school information, financial documentation, photographs and documentation relating to the applicant's arrests and convictions. The entire record, with the exception of the Spanish-language article, 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:

The Attorney General [now Secretary of Homeland Security, "Secretary"] 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 [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:

accurate, and by the translator's certification that he or she is competent to translate from the foreign language into English." As such, this article without a translation cannot be considered in analyzing this case.

The [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 . . . 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)². 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. 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.

² 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 the applicant entered in 1989.

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.

In our July 2013 decision, we previously found that, when considered in the aggregate, the evidence of record established that the applicant's spouse would experience extreme hardship if she were to relocate to Mexico. As previously stated, 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, among other reasons. As such, the applicant has shown that his spouse would suffer extreme hardship were she to relocate abroad to reside with him due to his inadmissibility.

We also concluded however, that the applicant failed to establish that his spouse would suffer extreme hardship as a consequence of being separated from him, because he failed to provide detail about the exact nature of his spouse's emotional hardships and how such emotional hardships are outside the ordinary consequences of removal. We also found the record did not document the nature or extent of emotional hardships experienced by his spouse's children or its impact on their mother. Although this motion includes a letter from the applicant's spouse stating that she is very upset and that her son is suffering due to this separation, the record fails to provide sufficient detail regarding her emotional condition. Similarly, on motion, the applicant provides a report regarding his spouse's visit to a medical center for chest pain on August 6, 2013, describing the severity of her pain as "mild." However, the report does not associate her chest pain with emotional difficulties caused by the applicant's removal.

We also previously found that no documentary evidence supported the assertion that the applicant's spouse financially depends on the applicant, because the record lacked documentation establishing his spouse's current income, expenses, assets, and liabilities and her overall financial situation, or documentation reflecting the applicant's financial contributions, to establish that without the applicant's physical presence in the United States the applicant's spouse would experience financial hardship. Although the applicant's spouse provides a document indicating that she sent money to the applicant once, this does not show her financial dependence on the applicant; instead it demonstrates that she may support the applicant. Further, the applicant's spouse provides a past-due mortgage statement with the instant motion, and a mortgage statement was also previously submitted indicating that she failed to make a timely payment. However, it appears that the applicant's spouse is making her mortgage payments, as shown through an online web pay statement that she submits as proof of this expense. In addition, the applicant's spouse notes that a warranty deed, which appears to have been submitted previously, proves that she is the sole owner of the home. However, while this evidence indicates that she bears the expense of a mortgage by herself, this alone does not show that the applicant's spouse requires the support of the applicant. Moreover, although she may sometimes be late, it appears that she is managing her payments. The applicant's spouse previously provided a letter from 2012 indicating that her debt to [REDACTED] was now in collection and that she should contact a collection agency to resolve her debt. No new evidence was provided to show that this debt to [REDACTED] is still outstanding. The applicant's spouse also provided an IRS form indicating that her salary is approximately 31,000 per year. Without any other information regarding her expenses, other than her mortgage, which she appears to be paying, her overall financial situation is unclear.

As previously noted, 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, 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 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 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). *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.

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 motion is granted and the underlying applications remain denied.