



U.S. Citizenship
and Immigration
Services

(b)(6)

DATE: FEB 06 2015

OFFICE: SAN BERNARDINO

FILE: [REDACTED]

IN RE: [REDACTED]

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

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 that reads "Ron Rosenberg".

Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The Field Office Director, San Bernardino, California denied the waiver application and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant 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 seeking readmission within 10 years of his last departure from the United States, and section 212(a)(2)(A)(i)(I) of the Act, 8 U.S.C. § 1182(a)(2)(A)(i)(I), for having committed a crime involving moral turpitude. The applicant seeks a waiver of inadmissibility in order to reside in the United States with his U.S. citizen spouse and stepchildren.

The Field Office Director concluded that the record failed to establish the existence of extreme hardship for a qualifying relative upon separation or relocation and denied the application accordingly. See *Decision of the Field Office Director*, dated March 12, 2014.

On appeal, the applicant asserts that he is not inadmissible to the United States, as he has not been convicted of a crime involving moral turpitude. In the alternative, the applicant contends that he has demonstrated that his spouse would experience extreme hardship if his waiver application were denied, as she would suffer emotional and financial hardship upon separation and would be unable to bring her children to Mexico upon relocation.

In support of the waiver application and appeal, the applicant submitted identity documents, legal documents, criminal records, letters from his spouse and letters of support, financial documents, and a psychological evaluation of his spouse. The entire record was reviewed and considered in rendering this decision.

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

(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 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 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 regarding a waiver under this clause.

The record reflects that the applicant initially entered the United States pursuant to a B2 visitor visa on April 22, 2005, with authorization to remain until October 21, 2005. The applicant remained in the United States beyond this authorized period, until his departure to Mexico in December 2010. The applicant accrued unlawful presence in the United States from October 22, 2005 until his departure in December 2010. Accordingly, the applicant is inadmissible under section 212(a)(9)(B)(i)(II) of the Act for having been unlawfully present in the United States for more than one year and seeking readmission within 10 years of his last departure from the United States. The applicant does not contest his inadmissibility on this ground on appeal.¹

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.

(ii) Exception.—Clause (i)(I) shall not apply to an alien who committed only one crime if-

(I) the crime was committed when the alien was under 18 years of age, and the crime was committed (and the alien was released from any confinement to a prison or correctional institution imposed for the crime) more than 5 years before the date of the application for a visa or other documentation and the date of application for admission to the United States, or

(II) the maximum penalty possible for the crime of which the alien was convicted (or which the alien admits having committed or of which the acts that the alien admits having committed constituted the essential elements) did not exceed imprisonment for one year and, if the alien was convicted of such crime, the alien was not sentenced to a term of imprisonment in excess of 6 months (regardless of the extent to which the sentence was ultimately executed).

¹ The applicant's inadmissibility under section 212(a)(9)(B)(i)(II) of the Act was not mentioned in the Form I-601 denial decision, dated March 12, 2014. However, the applicant's Form I-485 denial decision, issued on October 2, 2014, indicates that he is inadmissible due to unlawful presence of over one year in the United States.

The record reflects that the applicant, on September [REDACTED] was convicted of felony evading a peace officer with a wanton disregard for safety, in violation of California Vehicle Code section 2800.2(a) and driving under the influence, in violation of California Vehicle Code section 23152(b). On December 5, 2012, the applicant was sentenced to 210 days in jail and 36 months of probation.

The applicant asserts that his California vehicle code convictions are not crimes involving moral turpitude, as the elements of the statutes require, at most, a mens rea of negligence. As the applicant is also inadmissible under section 212(a)(9)(B)(i)(II), with a more restrictive waiver under section 212(a)(9)(B)(v), his assertions concerning his inadmissibility under section 212(a)(2)(A)(i)(I) will not be considered at this time.

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 his stepdaughter can be considered only insofar as it results in hardship to a qualifying relative. 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. See *Salcido-Salcido*, 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 record reflects that the applicant is a 39-year-old native and citizen of Mexico. The applicant’s spouse is a 35-year-old native and citizen of the United States. The applicant is currently residing with his spouse and stepchildren in [REDACTED] California.

The applicant asserts that his spouse would suffer extreme emotional hardship upon separation. The applicant’s spouse contends that the applicant’s immigration uncertainty, in addition to legal, financial and health problems have caused her to develop intense feelings of anxiety, stress, anger and depression. The applicant’s spouse asserts that her muscles and joints hurt when she is very depressed. It is noted that the record does not contain any medical documentation concerning the applicant’s spouse’s physical ailments.

The record does contain a psychological evaluation of the applicant’s spouse stating that she is suffering from major depressive disorder, severe without psychotic features, and she fears for the applicant’s safety in Mexico. The record also contains letters of support from individuals stating that the applicant’s spouse seems worried, stressed and has gained weight. The psychological evaluation of the applicant’s spouse states her depression forced her to stop working, give up her

studies and that she is depressed all day long. However, the evaluation also states that the applicant's spouse does a good job of caretaking for her minor children and is in the planning process of opening her own accounting and tax preparation business. In addition, the psychological evaluation of the applicant's spouse was based upon a single evaluation, over two hours, and does not contain any recommendation for further treatment despite a diagnosis of severe major depressive disorder. Further, the psychological evaluation is dated October 19, 2013, and a letter from the applicant's spouse, dated November 5, 2013, states that she and the applicant both work and depend on each other financially to cover household expenses.

The applicant asserts that he is the only working member of his household so that his spouse and stepchildren depend upon his income for support. The applicant's spouse asserts that the applicant is the sole financial supporter in regards to income and health insurance benefits and that she would be unable to continue her restorative nurse assistant schooling without him. It is noted that the applicant's spouse's psychological evaluation indicates that she is no longer attending school. It is also noted that the stipulation for judgment for the applicant's spouse and her oldest child's biological father states that any medical expenses not covered by insurance will be equally divided between the parties.

Further, the record contains conflicting information concerning the applicant's spouse's employment, based upon the applicant's spouse's submitted letters and the psychological evaluation of the applicant's spouse. The applicant's spouse's November 5, 2013 letter contains an accounting of income and expenses for their household, with income listed only for the applicant. However, in the same letter, the applicant's spouse states that their current household expenses are almost equal to her entire salary. The record contains 2012 tax records for the applicant and his spouse, but does not contain more recent tax or other financial documentation. The 2012 tax records state that the applicant and his spouse are both workers, but the record does not contain accompanying W-2 forms to indicate the earned income for each individual. The applicant's spouse's 2011 and 2010 tax records indicate her wages as a housecleaner. However, in her Form G-325A, Biographic Information, the applicant's spouse states that she was employed as a shipping and receiving and staff clerk in 2011 and does not list any employment for 2010. The record is unclear concerning the applicant's spouse's financial resources and her ability to meet her financial responsibilities in the absence of the applicant.

It is acknowledged that separation from a spouse often creates hardship for both parties, and the evidence indicates that the applicant's spouse would suffer hardship due to separation from the applicant. However, there is insufficient evidence in the record, in the aggregate, to find that the applicant's spouse would suffer extreme hardship upon separation from the applicant.

The applicant asserts that his spouse would be unable to relocate to Mexico because she shares custody of her three children with their biological fathers. The applicant's spouse asserts she shares custody equally with the father of her oldest child and the father of her other two children, and is required to remain in the state of California to comply with the custody agreements. The applicant's spouse contends that she would be subject to criminal and civil penalties upon violations of these custody agreements. The applicant's spouse also contends that, in the past, the biological father of her oldest child has refused to allow her to take their child to Mexico for

a visit. The applicant's spouse acknowledges that she has not broached the topic of relocation with her children's biological fathers, but asserts that they would fight her for full custody.

The record contains a stipulation for judgment for the applicant's spouse and the biological father of her oldest child, but does not contain a formal judgment of dissolution of marriage. The stipulation states that it shall be enforceable until such time as the formal judgment has been ordered. Further, the child custody section in the stipulation for judgment states that the full text of orders shall be itemized in the formal judgment, which has not been submitted in the record. The record does not contain any court documents concerning custody for the applicant's spouse's younger children. The supporting documentation is unclear or unavailable concerning the custody rights of the applicant's spouse's children's biological fathers. 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 record does not contain sufficient evidence to show that the hardships faced by the qualifying relative, in the aggregate, would rise to the level of extreme hardship if she relocated to Mexico.

In this case, the record does not contain sufficient evidence to show that denial of the present waiver application would result in extreme hardship for the applicant's spouse. The AAO therefore finds that the applicant has failed to establish extreme hardship to his U.S. citizen spouse as required 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 balancing positive and negative factors to determine whether the applicant merits this 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.