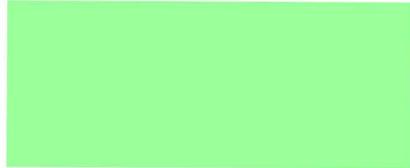




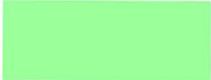
U.S. Citizenship  
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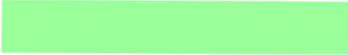
(b)(6)



DATE: JUL 18 2014

OFFICE: ANAHEIM

FILE: 

IN RE: 

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

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,

for

Ron Rosenberg  
Chief, Administrative Appeals Office

**DISCUSSION:** The International Adjudications Support Branch denied the waiver application on behalf of the Field Office Director, Ciudad Juarez, Mexico, and the Administrative Appeals Office (AAO) dismissed a subsequent appeal. The matter is now before the AAO on motion. The motion will be granted and the prior AAO decision dismissing the appeal will be affirmed.

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 more than one year and seeking readmission within 10 years of her last departure from the United States. The applicant was also found to be inadmissible to the United States under section 212(a)(6)(C)(i) of the Act, 8 U.S.C. § 1182(a)(6)(C)(i), for attempting to procure entry to the United States by fraud or willful misrepresentation. The applicant seeks a waiver of inadmissibility in order to reside in the United States with her husband.

The field office director found that the applicant failed to establish that the bar to her admission would result in extreme hardship to her husband and denied the application, accordingly. *Decision of the Field Office Director*, May 22, 2013. On appeal, the AAO found the applicant had not shown that failure to grant a waiver would impose extreme hardship on a qualifying relative. *Decision of the AAO*, December 9, 2013.

On motion, the applicant's husband contends that his wife's absence is causing him extreme hardship. In support of the motion, the applicant provides no documentary evidence and cites no legal authority. The only evidence offered is the qualifying relative's updated statement, largely restating the hardships claimed on the underlying waiver application and the subsequent appeal, but also asserting a medical concern not previously raised and citing the fear of violence as additional hardships. The applicant previously submitted a letter from her qualifying relative, supportive statements, photographs, financial documentation, identity and travel documents, medical records, and letters in Spanish with no accompanying translation.<sup>1</sup> The entire record was reviewed and considered in rendering a decision on the appeal.

Section 212(a)(6)(C)(i) of the Act provides, in pertinent part:

Any alien who, by fraud or willfully misrepresenting a material fact, seeks to procure (or has sought to procure or has procured) a visa, other documentation, or admission into the United States or other benefit provided under this Act is inadmissible.

Section 212(i)(1) of the Act provides:

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<sup>1</sup> As "[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 accurate, and by the translator's certification that he or she is competent to translate from the foreign language into English," 8 C.F.R. § 103.2(b)(3), we are unable to consider the more than 37 pages submitted in handwritten Spanish and other Spanish language documents.

The [Secretary] may, in the discretion of the [Secretary], waive the application of clause (i) of subsection (a)(6)(C) in the case of an alien who is the spouse, 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 [Secretary] that the refusal of admission to the United States of such immigrant alien would result in extreme hardship to the citizen or lawfully resident spouse or parent of such an alien [...].

The applicant claims to have attempted entry to the United States on June 8, 2004 using a passport and U.S. visa not belonging to her. She is thus inadmissible under section 212(a)(6)(C)(i) of the Act for attempting to procure admission to the United States through fraud or misrepresentation, and does not dispute this ground of inadmissibility.

Section 212(a)(9)(B) of the Act provides:

(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...

After failing in her June 8, 2004 attempt to enter the country, the applicant claims to have succeeded in crossing the border in the trunk of a car, thus entering the country without admission or parole later in June 2004. She remained in the United States until departing in September 2012 to attend her immigrant visa interview. The applicant accrued one year or more of unlawful presence in the United States from her June 2004 entry until her departure in September 2012. She is inadmissible under section 212(a)(9)(B)(i)(II) of the Act for seeking readmission within 10 years of her last departure, and does not contest this inadmissibility.

A waiver of inadmissibility under sections 212(a)(9)(B)(v) or 212(i) 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 lawful permanent resident husband 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 at 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 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 39-year-old applicant has been living in Mexico since September 2012, while her 56-year-old husband resides here. The applicant's husband states that his eight-year-old daughter resides with the applicant in Mexico.

Regarding the claim of hardship due to separation from his wife, the qualifying relative asserts that supporting two households is causing him financial problems. He also states he is incurring higher medical costs due to the fact that his medical insurance does not pay benefits for costs incurred abroad. Although the record contains financial documentation, including bills for household expenses from before the applicant's departure and her husband's Affidavit of Support (Form I-864) stating 2010 income of \$24,808, there is no indication of her current living expenses or that her absence has made her qualifying relative unable to meet his financial obligations. The record reflects that the applicant did not work outside the home while here and thus contributed no earnings toward household income. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *See 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)).

Regarding emotional hardship, the applicant's husband states he misses his wife and their child, needs them close to him again, and they belong together as a family. He contends that concern for his wife's health has caused him insomnia. While the record contains a medical letter showing the applicant takes insulin for diabetes and medication for high cholesterol, there is no indication these conditions are uncontrolled or documentation establishing the seriousness of the qualifying relative's medical condition. For the first time on motion, the applicant's husband claims to need his wife's care regarding future surgery on his eyes. We note that the record is silent regarding the qualifying relative having any eye condition, contains no mention of surgery for any condition, and thus fails to substantiate this claim. Further, although the qualifying relative claims to be worried that his daughter missed too much school in 2012, there is no evidence regarding her subsequent school attendance or any indication she has been unable to receive an education. As his daughter is not a qualifying relative and, further, where there is no indication of hardship to her, the record contains no evidence that any hardship to her is causing hardship to her father. While sensitive that separation from a spouse may create hardship, we

note there is insufficient evidence to demonstrate that the applicant's husband is suffering hardship beyond the common result of inadmissibility or removal.

For these reasons, the cumulative effect of the financial and emotional hardships the applicant's husband will experience due to the applicant's inadmissibility does not rise to the level of extreme or show that, as a result of her absence, he will suffer hardship beyond those problems normally associated with family separation.

The applicant's husband contends that he would have returned to Mexico with the applicant and their child, if not for financial considerations. Besides failing to show that the applicant's absence has caused her husband financial problems, the record contains no evidence supporting the qualifying relative's claim that he would be unable to find a job. On motion, the applicant raises for the first time safety concerns regarding living in Mexico, citing increased violence. Although the record contains no documentation supporting safety concerns, we note that official U.S. government reporting advises U.S. citizens to exercise caution when visiting parts of Mexico. *See Travel Warning—Mexico*, U.S. Department of State (DOS), January 9, 2014. There is, however, no indication where the applicant is currently living, no evidence that violence is a problem where the qualifying relative would reside, and thus insufficient evidence to substantiate concerns about lack of safety and security. In this case, the record fails to show that the hardships faced by the qualifying relative, in the aggregate, would rise to the level of extreme hardship if he relocated to Mexico.

Based on the totality of the circumstances, the evidence is insufficient to establish that a qualifying relative would experience extreme hardship by returning to Mexico. While we are sensitive to the disruptions caused by such a move, the evidence fails to establish hardship that rises beyond mere inconvenience to the level of "extreme." Although circumstances would impose some hardship, we conclude, based on the evidence that, were the applicant's husband to relocate due to the applicant's inadmissibility, he would not suffer extreme hardship.

We therefore find that the applicant has failed to establish extreme hardship to a qualifying relative as required under sections 212(i) and 212(a)(9)(B)(v) of the Act. Therefore, no purpose would be served in examining 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, the applicant has not met that burden and, accordingly, the prior decision of the AAO will be affirmed.

**ORDER:** The motion is granted. The prior decision of the AAO dismissing the appeal is affirmed.