

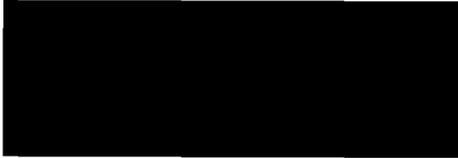
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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services

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DATE: DEC 07 2011 OFFICE: CIUDAD JUAREZ, MEXICO 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, 8 U.S.C. § 1182(a)(9)(B)(v)

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 law was inappropriately applied by us in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$630. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you.

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Field Office Director, Ciudad Juarez, Mexico, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The record reflects that 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 ten years of his last departure from the United States. The record indicates that the applicant is married to a United States citizen and is the beneficiary of an approved Petition for Alien Relative (Form I-130). The applicant seeks a waiver of inadmissibility pursuant to section 212(a)(9)(B)(v) of the Act, 8 U.S.C. § 1182(a)(9)(B)(v), in order to reside in the United States.

The Field Office Director found that the applicant had failed to establish that extreme hardship would be imposed on a qualifying relative and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) accordingly. *Decision of the Field Office Director*, dated July 2, 2009.

On appeal, counsel for the applicant asserts the Field Office Director erred as a matter of fact and law in denying the waiver application and that extreme hardship to the applicant's spouse has been established. *See Notice of Appeal or Motion (Form I-290B)*.

The record includes, but is not limited to, statements from the applicant's spouse, the applicant's spouse's mother, and the applicant's spouse's aunt, describing the hardship claimed; a medical statement pertaining to the applicant's spouse; a statement and an Employee Disciplinary Report from the applicant's spouse's employer; statements of support from friends of the applicant; money transfer receipts; and counsel's briefs and attachments. The entire record was reviewed and considered in arriving at a decision on the appeal.

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.

The record indicates that the applicant stated during his immigrant visa interview that he had entered the United States without inspection in November 2001 and remained until January 2008, when he departed the United States for Mexico. Therefore, the applicant accrued unlawful presence from his November 2001 entry, until his January 2008 departure. As the applicant is seeking admission to the United States within ten years of his November 2008 departure, he is inadmissible under section 212(a)(9)(B)(i)(II) of the Act for having been unlawfully present in the United States for a period of more than one year.

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. Hardship to an applicant or other family members 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-Moralez*, 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.

On appeal, counsel asserts that the applicant’s spouse’s emotional and physical health has been compromised as a result of her separation from the applicant. He states that the applicant’s spouse suffers from severe and debilitating migraine headaches and anxiety and that some days she has been too sick or depressed to go to work. He reports that since August 2008, she has had eight unexcused absences from work, which has resulted in two reprimands from her employer and a two-day suspension.

Counsel also asserts that since the applicant’s absence, his spouse has been under financial strain. He states that the applicant’s spouse has been sending \$100 weekly to support the applicant in Mexico. He also states that the applicant’s spouse’s mother is unable to work and that the applicant’s spouse assists her financially. Counsel states that the applicant’s spouse earns \$13.96 per hour but is under constant pressure to support the applicant and her ailing mother and the resulting financial strain has forced her to move in with her sister and brother-in-law where she pays \$300 monthly rent and helps with the cost of groceries.

In an August 19, 2009 affidavit, the applicant’s spouse asserts that since the applicant’s departure, she has experienced constant anxiety attacks, has been upset and depressed, and has had trouble sleeping. She states that she has missed work because she has been depressed and that she has been reprimanded because her work performance has not been good. The applicant’s spouse also indicates that she worries about the applicant in Mexico because of the poor economy and the high levels of crime. In a February 29, 2008 statement, the applicant’s spouse’s aunt asserts that since the applicant’s immigration appointment the applicant’s spouse has been noticeably depressed.

The applicant's spouse states that without the applicant's financial assistance she was unable to afford their apartment rent and daily expenses and had to move in with her sister and brother-in-law. The applicant's spouse's mother states that the applicant's spouse used to help her but cannot anymore due to her financial situation. She also states that she is no longer able to assist her mother financially.

To establish the applicant's spouse's medical condition, the record includes a February 20, 2008 letter from [REDACTED] stating that since the applicant's departure his spouse has been dealing with depression and migraine headaches. The applicant has also submitted two Employee Disciplinary Reports, dated July 27, 2009 and August 12, 2009, from the applicant's spouse's employer, indicating she was given verbal and written warnings and a two-day suspension for eight unexcused absences.

[REDACTED] however, does not indicate the severity of the applicant's spouse's depression and the symptoms she is experiencing and how they affect her ability to function. We also note that [REDACTED] does not indicate the frequency or symptoms of the spouse's migraine headaches. As such, his statement is of limited value in determining the impacts of separation on the applicant's spouse's mental and physical health.

Also included in the record is a March 3, 2008 statement from the Human Resource Manager at the applicant's spouse's place of employment, which indicates that the applicant's spouse was given a verbal warning for her absences, and stated that she was having a hard time finding a ride to work since her husband had returned to Mexico. It is noted that the record does not support [REDACTED]'s note and counsel's and the applicant's spouse's claims that some days she is too sick or depressed to go to work. There is nothing in any of the reports that indicates what the spouse states as her reasons for not showing up for work and no statement in the record from her employer that indicates the company is aware that her absences are related to her health or any other reason. It is noted that the March 3, 2008 statement indicates the applicant's spouse was reprimanded at that time for being absent from work and that the reason she gave then was that she was having a difficult time finding a ride to work.

Regarding the applicant's spouse's financial situation, the record includes 19 receipts, dated in 2008 and 2009, for remittances sent by the applicant's spouse to the applicant in Mexico. While the AAO finds these receipts to establish that the applicant has been receiving financial support from his spouse, no other documentation has been submitted that would allow the AAO to determine the extent to which providing such remittances to the applicant has affected his spouse's financial situation. Although counsel indicates that the applicant's spouse is paid \$13.96 an hour, the record contains no letters of employment, earnings statements or tax records to document her income. Further, the record lacks documentary evidence that supports the applicant's spouse's claim that she pays \$300 a month in rent to her sister and brother-in-law or that establishes her other financial obligations. The AAO also notes that the applicant has failed to submit any documentation to demonstrate that his mother-in-law is unable to work, that she requires financial assistance or that she previously received financial assistance from his spouse.

Without supporting documentation, the assertions of counsel are not sufficient to meet the burden of proof in these proceedings. The assertions of counsel do not constitute evidence. *Matter of Obaiqbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980). Going on record without supporting documentation is not

sufficient to meet the applicant's burden of proof in this proceeding. 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)).

Accordingly, the AAO finds the record to offer insufficient evidence of the applicant's spouse's financial circumstances and is, therefore, unable to determine the extent of the financial hardship, if any, the applicant's spouse is experiencing in the applicant's absence.

Having reviewed the record, the AAO finds that the hardship factors discussed, even when considered in the aggregate, fail to establish that the applicant's spouse would experience extreme hardship if the waiver application is denied and she remains in the United States.

With respect to relocation, counsel asserts that the applicant's spouse would experience hardship in Mexico because she does not have family there and she has never lived in Mexico. Counsel also states that the applicant is very religious and is close to her family, including her aunt and maternal grandmother with whom she regularly attends church services.

Counsel further states that the applicant's spouse suffers from eczema and she experiences flare-ups as a result of changes in climate and surrounding environment. He reports that her eczema worsened when she traveled to Mexico because of the climate there and that she would not be able to afford the medication she needs without health insurance.

Counsel further states that the applicant's spouse would be unlikely to find employment in Mexico that would provide health benefits. Counsel also asserts that no one is safe in Mexico because of the high level of crime there. The applicant's spouse states that she is afraid of visiting the applicant in Mexico because of the high crime rate. She also notes the problem Mexico is experiencing with the drug cartels.

The record indicates that the applicant's birth place is [REDACTED] and these appear to be locations where the applicant's spouse and his family would potentially reside if she relocates to Mexico. It is noted that recently the United States Department of State, *Bureau of Consular Affairs*, warned against traveling along the U.S-Mexico border and also to parts of Jalisco based on the rapid rise in drug violence and crime. See United States Department of State, *Bureau of Consular Affairs*, Washington, DC, *Travel Warning*, April 22, 2011.

The AAO acknowledges the pronounced negative effect that moving to an unfamiliar country and culture would have on the applicant's spouse. We further note the emotional hardship that would result for the applicant who would be apart from her family in the United States. Also, the applicant's spouse would have to leave her employment without the assurance of obtaining a job in Mexico. In addition, we note that the applicant's spouse would be concerned with the high crime level and violence in Mexico. Therefore, we find that when considered in the aggregate, the hardship that would be experienced by the applicant's spouse and the normal disruptions and difficulties created by relocation would result in extreme hardship for the applicant's spouse.

It has thus been established that the applicant's spouse would suffer extreme hardship if she relocates to Mexico to reside with the applicant due to his inadmissibility.

Although the applicant has demonstrated that his spouse, the qualifying relative, would experience extreme hardship if he relocated abroad to reside with the applicant, we can find extreme hardship warranting a waiver of inadmissibility only where an applicant has shown extreme hardship to a qualifying relative in the scenario of relocation *and* the scenario of separation. The AAO has long interpreted the waiver provisions of the Act to require a showing of extreme hardship in both possible scenarios, as 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.

As discussed above, the applicant has not demonstrated that his qualifying relative would experience extreme hardship as a result of his inadmissibility. Therefore, he has not established eligibility for a waiver under section 212(a)(9)(B)(v) of the Act.

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 section 212(a)(9)(B)(v) 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.