

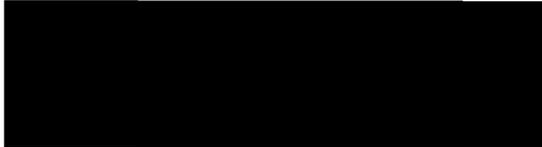
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U.S. Department of Homeland Security  
U.S. Citizenship and Immigration Services  
Office of Administrative Appeals  
20 Massachusetts Ave. N.W. MS 2090  
Washington, D.C. 20529-2090



U.S. Citizenship  
and Immigration  
Services

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DATE: OFFICE: CIUDAD JUAREZ, MEXICO

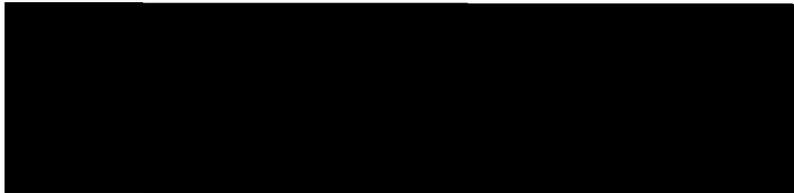
FILE:

DEC 14 2011  
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) and section 212(g) of the Immigration and Nationality Act, 8 U.S.C. § 1182(g)

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 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 admission within 10 years of his last departure from the United States. The applicant also was found to be inadmissible pursuant to section 212(a)(1)(A)(iii)(I) of the Act, 8 U.S.C. § 1182(a)(1)(A)(iii)(I), for having a physical or mental disorder with associated behavior that may pose or has posed a threat to the property, safety, or welfare of the applicant or others. The applicant through counsel does not contest the findings of inadmissibility. Rather, he seeks a waiver of inadmissibility in order to reside in the United States with his U.S. citizen spouse and their daughters.

The Field Office Director concluded that the applicant 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. *See Field Office Director's Decision*, dated May 22, 2009.

The AAO notes that in his Decision, the Field Office Director does not make a final determination whether the applicant is eligible for a waiver of the inadmissibility grounds as provided by 212(g) of the Act, 8 U.S.C. § 1182(g). *Id.* Rather, the Field Office Director only provides a procedural history of the applicant and his spouse's actions as they relate to the 212(g) waiver provision. The relevant regulation for a waiver of inadmissibility of section 212(a)(1)(A)(iii)(I) of the Act is 8 C.F.R. § 212.7. The record indicates that the applicant has completed every step of the waiver process. *See* Statements in Support of Application for Waiver of Inadmissibility Under Section 212(a)(1)(A)(iii)(I) or 212(a)(1)(A)(iii)(II), Immigration and Nationality Act (Form CDC 4.422-1), dated September 12, October 25, and November 1, 2007. Accordingly, the applicant is eligible for a waiver as provided by section 212(g) of the Act, and no longer remains inadmissible pursuant to section 212(a)(1)(A)(iii)(I) of the Act.

On appeal, counsel asserts that the U.S. Citizenship and Immigration Services (USCIS) erred as a matter of law and abused its discretion in denying the applicant's Application for Waiver of Grounds of Inadmissibility (Form I-601) filed pursuant to sections 212(a)(9)(B)(i)(II) and 212(a)(1)(A)(iii) of the Act because the applicant has established numerous ties to the United States, including maintaining a life together with his United States citizen spouse. Counsel further asserts that the failure to recognize extreme hardship to the applicant's spouse constitutes an abuse of discretion and is contrary to law. Notice of Appeal or Motion (Form I-290B), dated June 18, 2009.

The record includes, but is not limited to: counsel's brief; a letter of support from the applicant; letters of support from the applicant's spouse; a letter of support from the applicant's daughter; letters of support from the applicant's in-laws and church; employment records; financial records

and various bills; school records; medical documentation relating to the applicant and his children; and photographs.<sup>1</sup> The entire record, with the exception of the untranslated Spanish language documents, was reviewed and considered in rendering a decision on the appeal.

Section 212(a)(1) of the Act provides, in pertinent part:

(a) Classes of Aliens Ineligible for Visas or Admission.—Except as otherwise provided in this Act, aliens who are inadmissible under the following paragraphs are ineligible to receive visas and ineligible to be admitted to the United States:

(1) Health-related grounds.—

(A) In general.—Any alien—

...

(iii) who is determined (in accordance with regulations prescribed by the Secretary of Health and Human Services in consultation with the Attorney General [now Secretary of Homeland Security])—

(I) to have a physical or mental disorder and behavior associated with the disorder that may pose, or has posed, a threat to the property, safety, or welfare of the alien or others, or

(II) to have had a physical or mental disorder and a history of behavior associated with the disorder, which behavior has posed a threat to the property, safety, or welfare of the alien or others and which behavior is likely to recur or to lead to other harmful behavior ... is inadmissible.

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<sup>1</sup>The AAO notes that the record includes letters of support in the English and the Spanish languages. 8 C.F.R. § 103.2(b)(3) states:

(3) Translations. Any 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.

The AAO also notes that the letters of support in the Spanish language do not contain a certified translation to the English language. Accordingly, the AAO will not consider these letters of support.

(B) Waiver authorized.—For provision authorizing waiver of certain clauses of subparagraph (A), see subsection (g).

The relevant waiver for section 212(a)(1)(A)(iii)(I) of the Act is located at section 212(g) of the Act, which reads, in pertinent part:

(g) The [Secretary] may waive the application of—

(3) subsection (a)(1)(A)(iii) in the case of any alien, in accordance with such terms, conditions, and controls, if any, including the giving of bond, as the [Secretary], in the discretion of the [Secretary] after consultation with the Secretary of Health and Human Services, may by regulation prescribe.

Regulations at 8 C.F.R. § 212.7(b) govern aliens with certain mental health conditions who are eligible for immigrant visas, but require the approval of waivers of grounds of inadmissibility. The regulations require that the applicant submit the waiver application and a statement to the appropriate USCIS office, indicating that arrangements have been made to provide the alien's complete medical history, including details of any hospitalization or institutional care or treatment for any physical or mental condition; the alien's current physical and mental condition, including prognosis and life expectancy; and a psychiatric examination. 8 C.F.R. § 212.7(b)(4)(i). "For an alien with a past history of mental illness, the medical report shall also contain available information on which the U.S. Public Health Service can base a finding as to whether the alien has been free of such mental illness for a period of time sufficient in the light of such history to demonstrate recovery." *Id.* The medical report must then be forwarded to the U.S. Public Health Service (USPHS) for review. *Id.* Subsequent to the USPHS review, the applicant must comply with the requirements at 8 C.F.R. § 212.7(b)(4)(ii), which state:

(ii) *Submission of statement.* Upon being notified that the medical report has been reviewed by the U.S. Public Health Service and determined to be acceptable, the alien or the alien's sponsoring family member shall submit a statement to the consular or Service office. The statement must be from a clinic, hospital, institution, specialized facility, or specialist in the United States approved by the U.S. Public Health Service. The alien or alien's sponsor may be referred to the mental retardation or mental health agency of the state of proposed residence for guidance in selecting a post-arrival medical examining authority who will complete the evaluation and provide an evaluation report to the Centers for Disease Control. The statement must specify the name and address of the specialized facility, or specialist, and must affirm that:

(A) The specified facility or specialist agrees to evaluate the alien's mental status and prepare a complete report of the findings of such evaluation.

(B) The alien, the alien's sponsoring family member, or another responsible person has made complete financial arrangements for payment of any charges that may be incurred after arrival for studies, care, training and service;

(C) The Director, Division of Quarantine, Center for Prevention Services, Centers for Disease Control, Atlanta, GA. 30333 shall be furnished:

(1) The report evaluating the alien's mental status within 30 days after the alien's arrival; and

(2) Prompt notification of the alien's failure to report to the facility or specialist within 30 days after being notified by the U.S. Public Health Service that the alien has arrived in the United States.

(D) The alien shall be in an outpatient, inpatient, study, or other specified status as determined by the responsible local physician or specialist during the initial evaluation.

The record reflects that the Field Office Director appropriately consulted with the USPHS prior to the inadmissibility determination as required by 8 C.F.R. § 212.7(b)(4)(i). Furthermore, the applicant has complied with the requirements at 8 C.F.R. § 212.7(b)(4)(ii), as reflected by the completed Form CDC 4.422-1. Accordingly, the AAO will evaluate whether the applicant merits a 212(g) waiver of inadmissibility as a matter of discretion.

The adverse factors are the applicant's disorder with harmful behavior history, unlawful presence, and unauthorized employment.

The favorable factors include the applicant's U.S. citizen spouse and two daughters, letters attesting to the applicant's good moral character, and an approved I-130 Petition.

The AAO finds that the applicant's disorder is serious in nature. Nevertheless, the AAO concludes that, taken together, the favorable factors in the present case outweigh the adverse factors, such that a favorable exercise of discretion is warranted. Accordingly, the applicant is eligible for a section 212(g) waiver of inadmissibility.

Section 212(a)(9) of the Act states 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.

...

(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. No court shall have jurisdiction to review a decision or action by the Attorney General [Secretary] regarding a waiver under this clause.

The record establishes that the applicant entered the United States without inspection by U.S. immigration officials in or around January 1998 and remained until in or around June 2007, when he voluntarily departed. The applicant accrued unlawful presence from in or around January 1998 until in or around June 2007, a period in excess of one year. As the applicant is seeking admission within 10 years of departure, he is inadmissible pursuant to section 212(a)(9)(B)(i)(II) of the Act.

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 children can be considered only insofar as it results in hardship to a qualifying relative. The applicant's wife 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 the Service 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 contains references to hardship the applicant’s children 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. 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 children will not be separately considered, except as it may affect the applicant’s spouse.

Counsel contends that the applicant’s spouse has experienced and continues to experience hardships well beyond those “usually” associated with separation: the loss of an educational opportunity; the loss of fulltime employment; stress, depression, and worry; loss of the applicant’s

assistance in financially providing for their family and in the rearing of their children. *See I-290B Brief in Support of Appeal*, undated. In support of her contention, counsel submitted a statement from the applicant's spouse in which the spouse discusses the circumstances in which she and the applicant met, fell in love, and had children; the financial and social circumstances which brought the applicant to the United States; hers and the applicant's remorse for the applicant's violation of the United States immigration laws; hers and the applicant's dreams of home ownership and raising their daughters together; her hopes of obtaining a college education; the stress that she has been experiencing as a fulltime student without a fulltime job and financial obligations and bills; and the emotional pain that her daughters have been experiencing because of the applicant's absence. *See I-290B Letter of Support from [REDACTED]* undated; *see also I-601 Letter of Support from [REDACTED]*, undated.

In support of the financial hardship that the applicant's spouse has been experiencing because of the applicant's inadmissibility, counsel submitted a statement from the spouse's father, youngest sister, and brother in which they indicate that the father and youngest sister moved into the spouse's household so that the father could assist the spouse monetarily. *See Letter of Support from [REDACTED]*, undated; *see also Letter of Support from [REDACTED]*, dated June 5, 2009; *Unsigned Letter of Support from [REDACTED]*, dated June 2009. The record also includes residential mortgage documents and receipts; utility bills; automobile insurance bills; and student loan documents. *See Home and Space Lease Agreement*, dated May 1, 2006; *see also Warranty Deed*, dated November 13, 2006; *Deed of Trust*, dated November 13, 2006; *Real Estate Lien Note*; dated November 13, 2006; *Receipts of Payment*, dated monthly throughout 2008 and 2009; *Nash-Forreston WSC Statements*; *Old American County Mutual Fire Insurance Company Statements*; *TXU Energy Statements*; and *Federal Stafford Loan Master Promissory Note*, dated October 6, 2008.

In support of the emotional hardship that the applicant's spouse has been experiencing because of the applicant's inadmissibility, counsel submitted a statement from the spouse's sister in which she asserts that the spouse has been devastated; her hopes and dreams have been shattered because of the continued separation from the applicant. *Unsigned Letter of Support from [REDACTED]* dated June 9, 2008.

The record is insufficient to establish that the applicant's spouse has suffered or will suffer extreme financial hardship because of separation from the applicant. Although the applicant's spouse has significant financial debt, there is no evidence in the record that the spouse is unable to financially support her household. The spouse receives monetary assistance from her father. Also, the record does not contain any evidence of the financial costs required to maintain two households; the spouse's in the United States and the applicant's in Mexico. And, the record does not contain any country conditions concerning the applicant's employment opportunities in Mexico. Counsel asserts, "[The applicant] lives in a small town in Mexico that offer no meaningful employment opportunity." *I-290B Brief in Support of Appeal, supra*. However, no documentary evidence has been provided to support counsel's assertion. 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)). And, without documentary evidence to support the claim, the assertions of counsel will not satisfy the applicant's burden of proof. The unsupported assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 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). The difficulties described, though not insignificant, do not take the present case beyond those hardships ordinarily associated with the inadmissibility of a family member. Accordingly, the evidence is insufficient to support a finding of extreme financial hardship.

Also, the record is insufficient to establish that the applicant's spouse has suffered or will suffer extreme emotional hardship because of separation from the applicant. Counsel asserts that the spouse has been "experiencing the effects of stress, depression, and worry ... The stress of juggling the family's expenses, and ever so slightly avoiding foreclosure or suspension of utility services is exacting quite a toll on [the spouse's] health." *I-290B Brief in Support of Appeal, supra*. However, no documentation has been provided, evidencing the spouse's current mental health or the effect that separation from the applicant has had on the spouse's overall wellbeing. As mentioned previously, the unsupported assertions of counsel do not constitute evidence and without documentary evidence to support the claim, the assertions of counsel will not satisfy the applicant's burden of proof. *Matter of Obaigbena, supra; Matter of Laureano, supra; Matter of Ramirez-Sanchez, supra*.

The AAO recognizes the challenges in raising children without the daily support of the other parent, the pain that the spouse's and the applicant's daughters have been experiencing since the applicant's separation, and the spouse's desires to pursue a higher education and a career as a court reporter. However, the difficulties described do not take the present case beyond those hardships ordinarily associated with the inadmissibility of a family member. Thereby, the evidence is insufficient to support a finding of extreme emotional hardship.

The AAO recognizes that the applicant's spouse may have experienced and continues to experience some hardships as a result of separation from the applicant. However, the AAO finds that even when these hardships are considered in the aggregate, the record fails to establish that the applicant's spouse will suffer extreme hardship as a result of separation from the applicant.

Counsel also contends that the applicant's spouse will suffer extreme hardship if she were to relocate to Mexico to be with the applicant: she will have to sacrifice her dream of obtaining a college degree; she will leave behind her numerous and significant family ties; she has no family ties in Mexico; she will be unable to sell their family home because of the poor real estate market; and she has never held a job in Mexico. *See I-290B Brief in Support of Appeal, supra*.

The record is insufficient to establish that the applicant's spouse will suffer extreme hardship upon relocating to Mexico. Although the spouse's immediate family members are in the United States and the spouse may experience some hardship upon separating from them, the evidence in the record does not indicate that the hardship that the spouse may experience goes beyond what is

commonly experienced by qualified relatives of inadmissible family members. Also, the record is unclear whether the spouse would have to sell her home upon relocating given that her father and younger sister live in the home. And, if the spouse were to sale her home, there is no evidence that the sale of the home would cause significant financial hardship.

Additionally, the record does not contain any evidence of economic, political, or social conditions in Mexico and how such conditions would impact the spouse. And, the record does not contain any evidence of the spouse's opportunities to pursue a higher education or employment in Mexico. Based on the record, the AAO cannot conclude that the spouse's relocation to Mexico would result in extreme hardship to the spouse. Although the spouse may experience some hardships as a result of relocation to Mexico with the applicant, the AAO finds that even when these hardships are considered in the aggregate, the record fails to establish that the applicant's spouse will suffer extreme hardship as a result of relocation with the applicant.

In this case, the record does not contain sufficient evidence to show that the hardship faced by the qualifying relative, considered in the aggregate, rises beyond the common results of removal or inadmissibility to the level of extreme hardship. The AAO therefore finds that the applicant has failed to establish extreme hardship to his United States 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 determining whether the applicant 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. 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.