

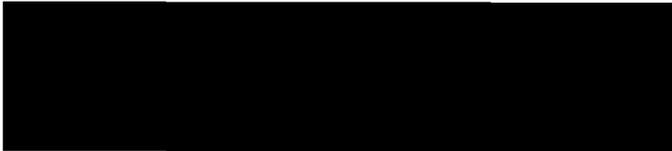
identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

PUBLIC COPY

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



U.S. Citizenship
and Immigration
Services



tt6

Date: Office: PHOENIX, ARIZONA

FILE: 

JUN 28 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)

ON BEHALF OF APPLICANT: SELF-REPRESENTED

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, Phoenix, Arizona. The decision is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The record reflects that the applicant is a 45-year-old 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 her last departure from the United States. The applicant is married to a United States citizen (USC) 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 with her USC spouse and children.

The Field Office Director found 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. *Decision of the Field Office Director*, dated February 8, 2008.

On appeal, the applicant's spouse asserts that denial of the applicant's waiver request would result in extreme hardship to him and his step-daughter. *See Form I-290B*, dated March 11, 2008, and the accompanying documentation submitted with the appeal.

The record includes, but is not limited to, statements from the applicant's spouse and the applicant's daughter, a letter from [REDACTED], dated March 3, 2008, copies of bank and other financial documents, copies of supportive statements from friends and copies of some joint bills. The entire record was reviewed and considered in rendering this decision on the appeal.

Section 212(a)(9) 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.

....

(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 [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.

In the present case, the record reflects that on November 19, 2000, the applicant was admitted into the United States as a B-2 visitor with authorization to remain in the United States until May 18, 2001.¹ In July 2004, the applicant left the United States for Mexico and reentered in the same month using a validly issued Border Crossing Card. On March 19, 2001, the applicant's United States citizen spouse filed a Form I-130 on the applicant's behalf, which was approved on February 21, 2005. On July 12, 2007, the applicant filed an Application to Register Permanent Residence or Adjust Status (Form I-485). On December 13, 2007, the Field Office Director denied that Form I-485 application finding that the applicant is inadmissible to the United States under section 212(a)(9)(B)(i)(II) of the Act. On December 20, 2007, the applicant filed a Form I-601 waiver application. On February 8, 2008, the Field Office Director denied the Form I-601, finding that the applicant failed to establish extreme hardship to a qualifying relative. The AAO notes that the applicant accumulated unlawful presence in the United States from May 10, 2001, the date of the expiration of her authorized stay in the United States, through her departure in July 2004. Her departure from the United States triggered the ten year bar under section 212(a)(9)(B)(i)(II) of the Act. Thus the applicant is inadmissible under 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 her children 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

¹ See a copy of Admission/Departure record (Form I-94) in the file.

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.

In this case, the record reflects that the applicant's spouse, [REDACTED] is a 66-year-old native of Mexico and citizen of the United States. The applicant and her spouse were married in [REDACTED] on April 28, 2000, and they do not have any children together. The record

indicates that the applicant has two daughters from a prior relationship, 23-year-old [REDACTED] and 18-year-old [REDACTED], who resides with the applicant and her spouse.

The applicant's spouse states that he and the applicant have known each other since May 1996 and has been happily married since April 2000. The applicant's spouse states that he would have difficulties if separated from the applicant because he and the applicant love each other very much, that the applicant is the one that "maintains our family together," that he has high blood pressure, that he and [REDACTED] need the applicant's presence and care, and that the applicant is the only family he has. The applicant's spouse also states that it would be "really" difficult for him to move to another country because he has lived in the United States for more than thirty years and it would be "almost impossible to start a new life in Mexico without my wife and daughter." *Statement from [REDACTED]*, dated March 8, 2008. The record contains a letter from [REDACTED] stating that her step-father works every day and does not have the time to care for her, that she needs her mother to help her through her teenage years, and that her step-father "would die" if the applicant is removed from the United States. The record also contains supportive letters from friends attesting to the applicant's good moral character.

In his letter, [REDACTED] states that the applicant and her spouse consulted with him to assist them in clarifying whether the applicant's spouse could experience extreme hardship in the event that they become separated as a result of the applicant's inadmissibility. [REDACTED] states that separation from a loved one is considered to be a significant life event which can cause a variety of psychological symptoms in varying degrees of emotional distress. He states that the more common reactions experienced as a result of a marital separation would include symptoms of depression and anxiety. [REDACTED] noted that depressive symptoms are characterized by depressed mood, diminished interest or pleasure in most of life's activities, appetite and sleep difficulties, fatigue, diminished capacity to think or concentrate, indecisiveness, recurrent thoughts of death, recurrent suicidal ideation, or suicide attempt, and that symptoms typically associated with anxiety disorder would include excessive worry and sense of apprehension, restlessness, irritability, difficulty concentrating or mind going blank, muscle tension, and sleep difficulties. [REDACTED] concluded that in the case of the applicant's spouse, a "forced" marital separation has a significant potential of causing serious emotional difficulties as described above, that would be detrimental to the applicant's spouse's psychological health and emotional well-being. *See Letter from [REDACTED]* dated March 3, 2008.

The AAO acknowledges that separation from the applicant may cause some challenges for her spouse, however, it finds that the evidence in the record is insufficient to demonstrate that the challenges he encounters meet the extreme hardship standard. Although the input of any mental health professional is respected and valuable, the AAO notes that Dr. [REDACTED] does not provide evidence of what tests he administered or how he gathered the evidence he used in arriving at the conclusion he made in this case. The letter does not establish that any hardship the applicant's spouse would experience if separated from the applicant would be unusual or beyond that which would normally be expected upon deportation or removal of a family member. Furthermore, the conclusions reached in the submitted evaluation, are based on speculation thereby rendering the findings speculative and diminishing its value to a determination of extreme hardship. The AAO

notes that other than [REDACTED] letter, the record does not contain detailed testimony, medical records or other evidence to demonstrate that the applicant's spouse would suffer extreme hardship upon separation from the applicant.

The applicant's spouse also states he will find it difficult to relocate to Mexico and start a new life there because he has resided in the United States for more than thirty years. Other than the applicant's spouse's claim of long residence in the United States, he has not provided information on any family ties in the United States who may be impacted upon his relocation to Mexico. The record lacks any country condition information on Mexico to demonstrate that the applicant's spouse would suffer extreme hardship upon relocation to Mexico, there is no information on any family ties he may have in Mexico, and there is no evidence that he has any significant health conditions that would be impacted upon relocation to Mexico.

Based on the totality of the evidence in the record, the applicant has failed to establish that her spouse would suffer extreme hardship if she were to be removed from the United States due to her inadmissibility.

In sum, although the applicant's spouse claims hardships based on family separation, the record does not support a finding that the difficulties he faces, considered in the aggregate, would rise beyond the common results of removal or inadmissibility to the level of extreme hardship. *See Perez*, 96 F.3d at 392; *Matter of Pilch*, 21 I&N Dec. at 631. Although the distress caused by separation from one's family is not in question, a waiver of inadmissibility is only available where the resulting hardship would be unusual or beyond that which would normally be expected upon removal. *See id.* The AAO therefore finds that the applicant has failed to establish extreme hardship to her spouse, as required for a waiver of inadmissibility under section 212(a)(9)(B)(v) of the Act.

Section 291 of the Act, 8 U.S.C. § 1361, provides that the burden of proof is on the applicant to establish eligibility for the benefit sought. Here, the applicant has not met that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.