

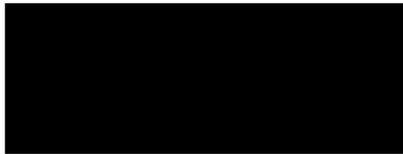
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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals
20 Massachusetts Ave. NW MS 2090
Washington, DC 20529-2090



**U.S. Citizenship
and Immigration
Services**



H6

DATE: NOV 09 2011 OFFICE: CIUDAD JUAREZ, MEXICO File: [REDACTED]

IN RE: Applicant: [REDACTED]

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, 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 readmission within 10 years of her last departure from the United States. The applicant seeks a waiver of inadmissibility in order to reside with her U.S. citizen husband and children in the United States.

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 *Decision of the Field Office Director*, dated July 20, 2009.

On appeal, the applicant's husband asserts hardship of a familial, emotional, economic, and educational nature, and fears for the safety of his wife and children in Mexico. See *Form I-290B, Notice of Appeal or Motion*, received August 15, 2009.

The record includes, but is not limited to: Form I-290B; two hardship letters from the applicant's husband; a letter from his employer; Form I-601 and Form I-601 denial; a mortgage loan statement; and Form I-130. The record also contains three Spanish language documents, which appear to include a letter from the applicant's obstetrician/gynecologist; a letter from the applicant; and a school record for the applicant's son. None of the Spanish language documents were accompanied by full English translations with proper certifications as required under 8 C.F.R. § 103.2(b)(3).¹ Because the applicant failed to submit the required translations for these documents, the AAO cannot determine whether the evidence supports the applicant's claims. Accordingly, the Spanish language evidence is not probative and will not be accorded any weight in this proceeding. The entire record, with the exception of the three Spanish language documents, was reviewed and considered in rendering this decision on the appeal.

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

(B) ALIENS UNLAWFULLY PRESENT.-

(i) In general.- Any alien (other than an alien lawfully admitted for permanent residence) who- ...

¹ 8 C.F.R. § 103.2(b)(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.

(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 entered the United States without inspection in July 2000 and remained until January 2006, when she voluntarily departed to Mexico. The applicant accrued unlawful presence for the entire time she was in the United States. As the applicant was unlawfully present in the United States for more than one year and seeks readmission within 10 years of her January 2006 departure, she is inadmissible under section 212(a)(9)(B)(i)(II) of the Act, 8 USC § 1182(a)(9)(B)(i)(II). The applicant does not contest this finding on appeal.

A waiver of inadmissibility under section 212(9)(B)(v) of the Act is dependent on a showing that the bar to admission would impose 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 the qualifying relative. The applicant's 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.

In this case, the record reflects that the applicant's husband is a 46-year-old native of Mexico and naturalized citizen of the United States. The applicant's husband states that he and his wife met in 2000, moved in together in November 2001, married in March 2002, and welcomed the birth of their son in August 2002. *See Hardship Letter*, dated May 29, 2009. He states that when they were driving to Ciudad Juarez for his wife's immigration interview in January 2006, he had

difficulty imagining being separated while she and their son remained outside the U.S. awaiting a decision. *Id.* The applicant's husband was concerned about his then 3-year-old son being able to adjust to the separation, as the boy was very attached to him, had his own bedroom in the U.S., and would have to share a room with his mother in a relative's home in Mexico. *Id.* The applicant's husband states that because his job does not permit him to watch over his son, the boy had to stay in Mexico with the applicant. See *Earlier Hardship Letter*, dated January 21, 2006. The applicant's husband states: "My biggest worry is how our family is separated and will be without their father figure and support and I without that family pillar that manages and unites us all." *Id.* He states that he has had "nervous break-downs at work, just thinking of this situation, and not finding any answers." *Id.* The applicant's husband states that his son is now in school in Mexico, "not learning his native language," and that he is very concerned "in the quality of education that my child has missed." See *Hardship Letter*, dated May 29, 2009. He states that he and his wife conceived their second child in Mexico, that she was due to give birth in June 2009, and that this has caused him mental anguish. *Id.* The applicant's husband states that the thought of his wife "not receiving proper medical attention with her pregnancy" scares him. *Id.*

No probative evidence has been submitted that shows any medical difficulties related to the applicant's pregnancy in Mexico. The AAO cannot review or consider the short pre-natal letter from [REDACTED] because it is entirely in the Spanish language and not accompanied by a full English translation with proper certifications as required pursuant to 8 C.F.R. § 103.2(b)(3).² The AAO will not, therefore speculate concerning any medical difficulties. Further, the record contains no evidence of the applicant's second child's birth. Without evidence such as a birth certificate and an updated hardship letter addressing any concerns for the child, the AAO is unable to find hardship to the applicant's spouse related thereto. Similarly, the record contains no evidence concerning the quality of education in Mexico generally, or the education being received by the applicant's child specifically. Nor has evidence been submitted to show that the applicant's children would be unable to learn the English language in Mexico. In this proceeding the evidentiary burden is upon the waiver applicant, thus the AAO will not speculate with regard to the quality of education available to the applicant's children in Mexico.

The applicant's husband states that he is concerned about the risk of violence in Mexico, "as we all know how drugs, politics and power have cause so many deaths including those of bystanders who just happened to be in the wrong place at the wrong time, also knowing the dangers specially with all the violence and those said [REDACTED] that have been killing people during the plain daylight. This has caused me to be in constant nerve wrecking state specially known that they are in harms way." See *Hardship Letter*, dated May 29, 2009. The record contains no evidence of country conditions in Mexico and no evidence has been submitted to support the applicant's husband's assertions concerning the risk of violence there. The AAO notes that the U.S. Department of State has issued a travel warning relating to violence in certain areas of Mexico. However, the applicant failed to submit any evidence showing violence in the area of Mexico in which she lives, or any

² See *supra*. at fn. 1.

evidence that the current conditions in Mexico have specifically impacted her and thus, that it would cause extreme hardship to her qualifying relative husband.

Congress did not include hardship to the applicant or her children as factors to be considered in assessing extreme hardship under section 212(a)(9)(B)(v) of the Act, except as it may affect the qualifying relative – here the applicant’s spouse. The AAO recognizes that the applicant’s husband has suffered hardships related to separation. He and the applicant have been together for more than a decade, and living without her and his young children is certainly a challenge. However, while the applicant’s husband states that the situation “scares” him, has caused him “mental anguish,” and “nervous breakdowns at work,” there is insufficient evidence that his fears and emotional difficulties go beyond those normally associated with the inadmissibility of a family member. Thus, the AAO is unable to make a determination that hardship to the applicant or her children will cause extreme hardship to the applicant’s spouse.

Asserting economic hardship, the applicant’s husband states that he has been taking at least a week off of work every other month to visit his wife and child in Mexico. See *Hardship Letter*, dated May 29, 2009. He states that he may lose his job due to these frequent absences, which may in turn cause him to lose his home. *Id.* A letter from [REDACTED], Vice President, [REDACTED] asserts that the time the applicant’s husband “takes off work is becoming an increasingly monumental problem,” that the employer can no longer schedule work around his travels, and that “[REDACTED] would regret to terminate this relationship for these reasons.” See *Employment Letter*, dated May 18, 2009. The applicant’s husband stated earlier that it is a 20-hour drive from Houston, Texas to his wife’s hometown, and that during his visits to Mexico he “still has to pay for the room and board for them abroad,” as well as his living expenses in the U.S. See *Earlier Hardship Letter*, dated January 21, 2006. He states that he is responsible for mortgage payments on their \$100,000 home in the U.S. and that he sends money to support the applicant in Mexico. See *Hardship Letter*, dated May 29, 2009. The applicant’s husband has not indicated the amount of room and board he pays, the amount of support he sends to his wife in Mexico, or the frequency with which he does so. A *Mortgage Loan Statement*, dated May 2, 2009, shows a principal balance on their home of \$67,380.76, an escrow balance of \$200.35, and a current payment of \$1,396.80. The mortgage statement is the only evidence of expenses in the record. The applicant’s husband states that his financial situation is negatively affected “due to higher spending in keeping in touch either by phone, mail, and the times I travel to Mexico to visit them...” *Id.* The record contains no evidence, however, of any costs associated therewith. No evidence has been submitted that shows the applicant’s husband salary or any other household income. Without income evidence such as tax returns, Form W-2 wage and tax statements, earnings statements, and expense evidence such as billing statements for insurance, utilities, credit cards, and/or other regular expenses, the AAO is unable to determine economic hardship.

The AAO acknowledges that separation from the applicant may have caused various difficulties for the applicant’s spouse. The difficulties described, however, do not take the present case beyond those hardships ordinarily associated with inadmissibility of a family member, and the evidence is insufficient to demonstrate that the challenges encountered by the qualifying relative, when considered cumulatively, meet the extreme hardship standard.

The applicant's husband has not addressed the possibility of relocating to Mexico to join the applicant, and the applicant has not asserted hardship to her husband related to relocation. Thus, the AAO will not speculate in this regard.

The applicant has, therefore, failed to demonstrate extreme hardship to her spouse. Accordingly, the AAO finds that the applicant has failed to demonstrate that the challenges her spouse faces are unusual or beyond the common results of removal or inadmissibility to the level of extreme hardship.

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. 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. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.