

U.S. Department of Homeland Security  
U.S. Citizenship and Immigration Services  
*Office of Administrative Appeals*  
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U.S. Citizenship  
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Services

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DATE: NOV 09 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 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 is the spouse of a U.S. Citizen and is the beneficiary of an approved Petition for Alien Relative. Through counsel, the applicant does not contest this finding of inadmissibility. Rather, he 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 with his wife and their 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 Field Office Director, Ciudad Juarez, Mexico*, dated December 23, 2008.

On appeal, counsel asserts that the evidence previously submitted shows that the applicant's U.S. citizen spouse will suffer extreme hardship if the applicant's waiver is not granted. *See I-290B Brief in Support of Appeal*, received January 21, 2009. Also, counsel asserts that new, previously unavailable evidence shows that the applicant's spouse is currently suffering extreme hardship since the applicant's departure from the United States and that the hardship will worsen if the applicant is not permitted to return to the United States. *Id.*

The record includes, but is not limited to: Notice of Entry of Appearance as Attorney or Representative (Form G-28); Notice of Appeal or Motion (Form I-290B); Application for Waiver of Grounds of Inadmissibility (Form I-601); Petition for Alien Relative (Form I-130); briefs from counsel; letters of support from the applicant's spouse; letters of support from the applicant's sister, sister-in-law, and neighbors; a copy of medical laboratory results; a copy of a medical report; a prescription profile; copies of W-2s and a personal income tax return; a copy of a personal bank account statement; a copy of a private residence rental receipt; a copy of a telephone bill; copies of automobile payment receipts; photographs; and criminal court dispositions. The entire record was reviewed and considered in rendering a 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 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 September 2002 and remained until in or around October 2007, when he voluntarily departed. The AAO finds that the Field Office Director incorrectly calculated the timeframe for which the applicant accrued unlawful presence by finding, "The applicant unlawfully resided in and accrued unlawful presence in the United States from February 2002, when he entered the United States without inspection until October 2007, when the applicant voluntarily departed the United States." *Decision of Field Office Director, supra*. At the time of the applicant's entry without inspection into the United States, the applicant was approximately 16 years of age. Section 212(a)(9)(B)(iii) of the Act provides, in pertinent part that, an individual does not accrue unlawful presence while under 18 years of age. The applicant did not turn 18 years of age until on or about December 16, 2003. Accordingly, the applicant did not accrue unlawful presence from in or around September 2002 through in or around October 2007, but from on or about December 16, 2003 until in or around October 2007.

Nevertheless, the AAO finds that the Field Office Director's incorrect calculation of unlawful presence is harmless error given that the applicant still accumulated more than one year of unlawful presence by remaining in the United States without inspection from on or about December 16, 2003 until in or around October 2007. 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.<sup>1</sup>

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<sup>1</sup> The record shows that the applicant was convicted of Criminal Mischief pursuant to the Penal Code of Texas § 28.03(b)(2) and of Theft pursuant to the Penal Code of Texas § 31.03(e)(2), and was given a reduction in punishment pursuant to the Penal Code of Texas § 12.44(b). The Field Office Director did not address whether these convictions are a crime involving moral turpitude rendering the applicant inadmissible under section 212(a)(2)(A)(i)(I) of the Act. Nevertheless, because the applicant is inadmissible under section 212(a)(9)(B)(i)(II) of the Act and demonstrating eligibility for a waiver under section 212(a)(9)(B)(i)(II) also satisfies the requirements for a waiver of criminal grounds of inadmissibility under section 212(h), the AAO will not determine whether the applicant is inadmissible under section 212(a)(2)(A)(i)(I).

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 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 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.

In support of the Form I-601, prior counsel contends that the applicant's spouse would suffer extreme mental, physical, emotional, and financial hardship upon separation from the applicant because of the applicant's inadmissibility: "... [The applicant's spouse] would suffer extremely in that she will have to make a decision that will impact her greatly. She would either be forced to separate from her husband or accompany him and leave behind everything that she has here in the United States. Either decision will cause severe hardships on [her]. She has lived in the United States her entire life. Ultimately, [she] would accompany [the applicant] in Mexico. This move would cause extreme hardships of epic proportions." *I-601 Brief in Support of Waiver*, dated October 23, 2007. Specifically, prior counsel contended that the spouse would suffer mental, physical, and emotional hardship upon separation because she would not be able to spend quality time with the applicant such as going out on dates. *Id.* Also, prior counsel contended that the spouse had been constantly worrying about what would happen if the applicant were not permitted to stay in the United States, and as a result, has been unable to sleep at night and has been physically ill. *Id.* The record also includes a statement from the applicant's spouse which specifies, "If this waiver is not granted[,] I fear that I am going to suffer tremendously. [The applicant] and I have a very strong, close knit relationship. We care [for] and love one another greatly. I cannot imagine life without him ... I do not know what I would do without him ... We are a young couple. We have many hopes and dreams ... I constantly worry about whether or not [the applicant] is going to be allowed to stay in the United States. There are times when I can't

sleep and I feel sick because I am thinking about what is going to happen in the future ...” *Letter of Support from* [REDACTED] dated October 23, 2007.

In support of the financial hardship that the applicant’s spouse would experience upon separation from the applicant because of the applicant’s inadmissibility, prior counsel contended: “[The applicant] is the primary economic contributor to the household. The income that he earns from his job pays all the bills that the family has. If not granted this waiver, [the applicant] will no longer be able to keep his job. Currently, [the applicant’s spouse] is not working[.] [S]he takes care of the home and of the children.” *I-601 Brief in Support of Waiver, supra*. Additionally, prior counsel submitted copies of the applicant and his spouse’s bank account statement, indicating over-the-limit fees of \$72.00 and a telephone bill with a past due amount of \$447.49. *See Bank of America Account Statement*, for transactions between April 10 and May 9, 2007; *see also at&t Statement*, dated September 21, 2007.

The record does not contain any evidence of the spouse’s mental health or the emotional impact that the possibility of separation would have on the spouse and how the applicant’s presence is necessary to support the spouse’s mental health. Absent any such evidence, the AAO is not in the position to reach conclusions concerning any mental, emotional, or physical hardship that the applicant’s spouse may endure or that the hardship that the applicant’s spouse would endure goes beyond what is ordinary and commonly experienced by qualified family members because of the applicant’s inadmissibility.

Additionally, the record contains statements submitted by the applicant’s sister, sister-in-law, and neighbors. However, the statements are in the Spanish language. 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.

Given that the written information contained in the statements are in the Spanish language, the AAO cannot determine whether the statements contain a clear explanation of the spouse’s mental health upon separation from the applicant. Absent a certified translation to the English language of each of the statements, the AAO is not in the position to reach conclusions concerning any mental, emotional, or physical hardship that the spouse may endure. Based on the record, the AAO cannot conclude that separation from the applicant would result in extreme hardship to the applicant’s spouse due to the spouse’s mental, emotional, or physical condition.

Also, the AAO notes that while the applicant’s spouse may endure some financial hardship upon separation from the applicant due to the applicant’s inadmissibility, the record indicates that the financial hardship does not go beyond what is ordinary and commonly experienced by qualified family members because of the inadmissibility. The record indicates that the applicant and his spouse were already experiencing some financial difficulty before the applicant left from the United States. Specifically, the applicant and his spouse were behind on a telephone bill and were

paying over-the-limit fees for withdrawals from their bank account. Moreover, the record does not include any evidence concerning the applicant's inability to obtain gainful employment and provide financial support to her and her spouse's households.

The AAO recognizes that the applicant's spouse may experience some hardship as a result of separation from the applicant. However, the AAO finds that even when this hardship is 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.

Current counsel asserts that the applicant's spouse has suffered extreme medical, financial, and emotional hardship as a result of relocating to Mexico with the applicant: "Since [the applicant's spouse] left with [the applicant] to Mexico, [the applicant's spouse's] life has been turned upside down and her hardship has in fact been very extreme. Everything she described in her original I-601 application packet is now happening." *I-290B Brief in Support of Appeal, supra*. Specifically, counsel asserts that the spouse has endured extreme medical hardship because she is suffering from thyroid problems and has not been to a doctor or has taken her prescription medication for her condition since relocating to Mexico. *Id.* Additionally, counsel asserts that the spouse has been suffering from depression and has been unable to afford the medical attention necessary to deal with the depression. *Id.* In support of the medical problems that the spouse has endured, counsel submitted a statement from the spouse, specifying, "As I stated before, I am suffering from thyroid problems. Since I have been to Mexico, I have not been to a doctor to care for my condition. I last saw a doctor ... over two years ago ... I took the medication until I ran out. I cannot afford the medication attention I need nor [sic] the medications I need ... I have been suffering from depression since I left. I have lost over 40 pounds because of my depression ... I am suffering through a hardship so extreme that I cannot even put into words." *Letter of Support from [REDACTED]*, dated January 20, 2009. Also in support of the medical problems, counsel submitted the spouse's medical laboratory results and medical reports stating, in relevant part, the purpose of the spouse's visit was because of a "low thyroid" and that tests showed "a low T4 of 0.7 (0.83 – 1.44) and high TSH of 14.170 (0.36 – 5.8)", that there were "no symptoms related to hypothyroidism", that family members have a "low thyroid function", and that the spouse "received thyroid studies." *See Laboratory Corporation of America Results, Referring Physician [REDACTED]*, reported June 2, 2006; *Medical Reports*, dated July 12, 2005 and April 26, 2006.

In support of the financial problems that the applicant's spouse has experienced, counsel states: "... [The applicant's spouse] and her family now live in abject poverty. On a good week, they have an income of \$50.00 per week. The standard of living they now live in is unbearable. [The applicant's spouse] cannot afford anything anymore, not even food for her family. All the clothes have [sic] for her and her children are given to them from her family in the United States." *I-290B Brief in Support of Appeal, supra*; *see Letter of Support from [REDACTED]*, dated January 20, 2009; *see also photographs*.

In support of the emotional hardship that the applicant's spouse has experienced, counsel states: "[The applicant's spouse] never knew any other way of life aside from her life in the United States

until she left to Mexico. Her world has been turned upside down. She and her family are suffering from a hardship so great that just thinking about it makes her cry. She suffers from extreme hardship being away from my [sic] family in the United States. She has not seen her family since she moved to Mexico. She has a very close family. The only interaction she now has with them is over the phone, which is about once a week. Every time she gets off the phone[,] she feels so far away from her family and misses them terribly ... All of her worse [sic] nightmares have become a reality.” *I-290B Brief in Support of Appeal, supra; see Letter of Support from* [REDACTED], dated January 20, 2009.

Significant conditions of health, particularly when tied to an unavailability of suitable medical care in the country to which the qualifying relative would relocate, are relevant factors in establishing extreme hardship. The evidence on the record is insufficient to establish that the applicant’s wife suffers from thyroid problems and depression as asserted by counsel. The record consists of medical laboratory results and medical reports for medical care that the applicant’s spouse received in the United States from July 12, 2005 to April 26, 2006. However, the record does not contain any evidence of medical care that the applicant’s spouse received since she relocated to Mexico. Moreover, the medical laboratory results and reports that were submitted contain medical terminology and abbreviations that are not easily understood, and they do not contain a clear explanation of the current medical condition of the applicant’s wife. Absent an explanation in plain language from the treating physician of the exact nature and severity of any condition and a description of any treatment or family assistance needed, the AAO is not in the position to reach conclusions concerning the severity of a medical condition or the treatment needed.

Moreover, as stated above concerning the supporting statements provided by the applicant’s sister, his sister-in-law, and neighbors, absent a certified translation to the English language of each of the statements, the AAO is not in the position to reach a conclusion that the applicant’s spouse has endured extreme medical hardship. Given that the written information contained in the statements are in the Spanish language, the AAO cannot determine whether the statements contain a clear explanation of the current medical condition of the applicant’s spouse. Absent a certified translation to the English language of each of the statements, the AAO is not in the position to reach conclusions concerning the severity of a medical condition or the treatment needed by the applicant’s spouse. Based on the record, the AAO cannot conclude that relocation with the applicant would result in extreme hardship to the applicant’s spouse due to the spouse’s medical condition.

Also, the record is insufficient to establish that the applicant’s spouse has suffered financial hardship because of the applicant’s inadmissibility. Specifically, the record does not contain any country conditions information concerning economic conditions and employment opportunities in Mexico that preclude the applicant or his spouse from obtaining gainful employment there. And, the record does not contain any evidence concerning the applicant and his spouses’ inability to provide financial support to their household since relocating to Mexico. Accordingly, the record does not establish that the financial hardship goes beyond what is commonly experienced by relatives of inadmissible family members. Based on the record, the AAO cannot conclude that

relocation with the applicant would result in extreme hardship to the applicant's spouse due to financial hardship.

Further, the record does not contain any evidence to support counsel's assertion that the applicant's spouse has suffered emotional hardship since relocating to Mexico. Specifically, the record does not contain any country conditions information concerning social conditions and opportunities in Mexico. Nor has it been established that the applicant's spouse has been unable to travel to the United States on a regular basis to visit her family. Moreover, as stated above concerning the supporting statements provided by the applicant's sister, his sister-in-law, and neighbors, absent a certified translation to the English language of each of the statements, the AAO is not in the position to reach a conclusion that the applicant's spouse has endured and would continue to endure extreme hardship upon relocation. Based on the record, the AAO cannot conclude that the applicant's spouse's relocation to Mexico would result in extreme hardship to the applicant's spouse. Thereby, the AAO finds that when considered in the aggregate, the record fails to establish that the applicant's spouse has suffered and will continue to suffer extreme hardship as a result of relocation with the applicant.

The applicant's spouse's situation, if she remained in the United States, is typical to individuals separated as a result of removal and does not rise to the level of extreme hardship based on the record. In regards to establishing extreme hardship upon the qualifying relative having relocated abroad based on the denial of the applicant's waiver request, the AAO notes that this criterion has not been established.

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.