

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
20 Massachusetts Avenue, N.W., MS 2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services



H6

DATE OCT 28 2011 OFFICE: MEXICO CITY (CIUDAD JUAREZ)

FILE:

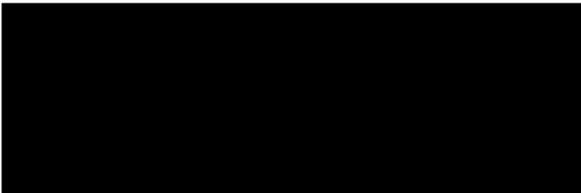


IN RE:



APPLICATION: Application for Waiver of Grounds of Inadmissibility under section 212(a)(9)(B) of the Immigration and Nationality Act, 8 U.S.C. § 1182(a)(9)(B)

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 Acting District Director, Mexico City, 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 entered the United States without admission or parole in May 1999 and departed the United States in January 2007. The applicant was found to be inadmissible to the United States pursuant to section 212(a)(9)(B)(i)(II) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(9)(B)(i)(II), for having been unlawfully present in the United States for more than one year and seeking readmission within ten years of his last departure from the United States. The applicant is a beneficiary of an approved Petition for Alien Relative who seeks a waiver of inadmissibility in order to reside in the United States with his U.S. citizen wife and children¹.

The Acting District Director concluded that the record failed to establish the existence of extreme hardship for the applicant's spouse and denied the application accordingly. *See Decision of the Acting District Director*, dated August 19, 2008.

On appeal, counsel for the applicant asserts that the applicant's spouse needed the applicant in the United States to help her with her pregnancy, especially due to her diabetes and previous miscarriage. Counsel also contends that the applicant's spouse was suffering financial hardship because she could not work due to her pregnancy.

In support of the waiver application and appeal, the applicant submitted identity documents, letters of support, medical documents, school records, and a marriage certificate. The entire record was reviewed and considered in rendering a decision on the appeal.

Section 212(a)(9)(B) of the Act, in pertinent part, provides:

(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.

....

¹ The applicant and his spouse have one child who was born on June 23, 2004. In counsel's appeal brief, it is noted that the applicant's spouse was again pregnant and due to deliver on March 12, 2009.

(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.

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-I-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 applicant's qualifying relative in this case is his U.S. citizen spouse. 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(i) 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 the present case, the record reflects that the applicant is a twenty-eight year-old native and citizen of Mexico who resided in the United States from May 1999, after entering without admission or parole, to January 2007, when he returned to Mexico. The applicant's wife is a twenty-five year-old native of Honduras and citizen of the United States. The applicant is currently residing in Mexico and the applicant's wife is currently residing in [REDACTED]

The applicant's spouse asserts that she needed her husband in the United States while she is pregnant, in case of complications. *See Letter from [REDACTED], dated August 20, 2008.* She notes that she was concerned about her pregnancy because she was diagnosed with diabetes and suffered a previous miscarriage. *Id.* In support of these assertions, counsel submitted four pages of medical documents concerning the applicant's spouse. One page consists of laboratory tests with an affixed sticker reading "diabetic," and another page notes that the applicant's spouse was expected to deliver on March 12, 2009. The other two pages consist of handwritten notes, dates, and abbreviations of medical terminology. The documents submitted do not contain a clear explanation of the applicant's spouse's medical condition, the severity of any condition, or a description of any necessary treatment or family assistance. It is noted that the AAO is not in a position to reach conclusions regarding these topics absent a plain language explanation from a treating physician. In addition, it is further noted that the date of the applicant's spouse's expected delivery has since passed. Based on the evidence, there is no indication that the applicant's spouse is suffering from a medical condition that requires the presence of her husband.

The applicant's spouse further states that she really needs her husband in the United States, both for her and his children, so that they can engage in family bonding. *See Letter from [REDACTED] dated August 20, 2008.* The applicant's spouse also states that she needs the applicant with her for financial support. *Id.* She claims that her mother has been the financial provider for her family since her husband's departure, but notes that her mother cannot support them indefinitely. *Id.* The record does not contain any evidence concerning the applicant's previous employment in the United States. Counsel submitted a letter offering future employment to applicant, contingent upon his return to the United States. *See Letter from [REDACTED] dated August 28, 2008.* However, there is no evidence regarding where the applicant was employed during his time in the United States or how much he earned. Accordingly, there is no indication as to how much the applicant contributed to the household income.

Further, there is no indication that the applicant's spouse would be unable to secure employment in the United States. The applicant's spouse lives with her mother and she states that her mother loaned her money for all the applicant's immigration-related expenses. *See Letter from [REDACTED] dated August 20, 2008.* It is noted that there is no evidence that the applicant's spouse is past due on any bills or other financial obligations. It is further noted that the record contains a letter submitted by the applicant's spouse's mother; the letter does not mention the provision of financial support or loans to the applicant's spouse. *See Letter from [REDACTED] dated September 9, 2008.* Going on record without supporting documentary evidence generally is not sufficient for purposes of meeting the burden of proof in these proceedings. *See Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)). Further, the courts considering the impact of financial detriment on a finding of extreme hardship have repeatedly held that, while it must be considered in the overall determination, it is not enough by itself to justify an extreme hardship determination. *See INS v. Jong Ha Wang*, 450 U.S. 139 (1981) (upholding BIA finding that economic detriment alone is insufficient to establish extreme hardship).

There is insufficient evidence in the record to find that the applicant's spouse would suffer extreme hardship if she and their children relocated to Mexico to live with her husband. It is noted that the applicant's spouse is a native of Honduras, where the official language is Spanish, and there is no indication that she would encounter a language barrier if she moved to Mexico. Aside from the letter submitted by the applicant's spouse's mother, there is no evidence concerning the existence of relatives in the United States and the nature of the applicant's spouse's relationships with any such relatives. There are no letters submitted from acquaintances or other community organizations indicating ties between the applicant's spouse and the United States. Counsel did not submit evidence of country conditions in Mexico and there is no evidence as to whether the applicant is employed in Mexico or with whom he currently resides. The record does not contain sufficient evidence to find that the applicant's spouse would suffer hardship beyond the common consequences of inadmissibility or removal if she relocated to Mexico.

Although the depth of concern and anxiety over the applicant's immigration status is neither doubted nor minimized, the fact remains that Congress provided for a waiver of inadmissibility only under limited circumstances. While the prospect of separation or involuntary relocation

nearly always results in considerable hardship to individuals and families, in specifically limiting the availability of a waiver of inadmissibility to cases of "extreme hardship." Congress did not intend that a waiver be granted in every case where a qualifying relationship exists. U.S. court decisions have repeatedly held that the common results of removal are insufficient to prove extreme hardship. See *Hassan v. INS*, 927 F.2d 465, 468 (9th Cir. 1991), *Perez v. INS*, 96 F.3d 390 (9th Cir. 1996); *Matter of Pilch*, 21 I&N Dec. 627 (BIA 1996) (holding that emotional hardship caused by severing family and community ties is a common result of deportation and does not constitute extreme hardship); *Matter of Shaughnessy*, 12 I&N Dec. 810 (BIA 1968) (holding that separation of family members and financial difficulties alone do not establish extreme hardship). "[O]nly in cases of great actual or prospective injury . . . will the bar be removed." *Matter of Ngai*, 19 I&N Dec. 245, 246 (BIA 1984).

In this case, the record does not contain sufficient evidence to show that the hardships faced by the qualifying relative, considered in the aggregate, rise 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 U.S. 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.