

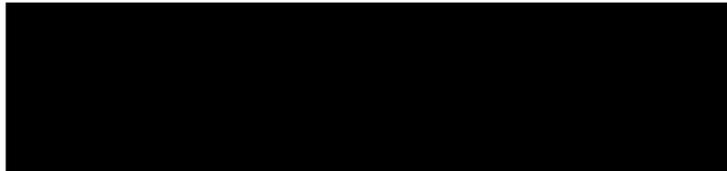
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U.S. Department of Homeland Security  
U.S. Citizenship and Immigration Services  
Administrative Appeals Office (AAO)  
20 Massachusetts Ave., N.W., MS 2090  
Washington, DC 20529-2090  
**U.S. Citizenship  
and Immigration  
Services**

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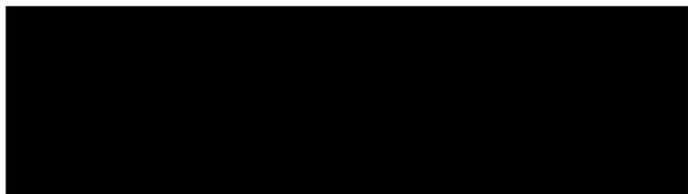


DATE: Office: CIUDAD JUAREZ, MEXICO FILE: 

IN RE: **SEP 16 2011** Applicant: 

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 Field Office Director, Ciudad Juarez, Mexico. The matter 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 ten years of her last departure from the United States. The applicant's spouse and child are U.S. citizens. She seeks a waiver of inadmissibility in order to reside in the United States.

The field office director found that the applicant had failed to establish extreme hardship to a qualifying relative and the application was denied accordingly. *Decision of the Field Office Director*, dated December 22, 2008.

On appeal, counsel asserts that the applicant has established extreme hardship to her spouse. *Form I-290B*, dated January 22, 2009.

The record includes, but is not limited to, two briefs from counsel, a deacon's statement, statements in Spanish, letters of support, the applicant's spouse's statements, a psychosocial evaluation, letters of support. The entire record was reviewed and considered, except for the statements in Spanish, in rendering a decision on the appeal.<sup>1</sup>

The record reflects that the applicant entered the United States without inspection in December 2003 and departed the United States in February 2006. The applicant accrued unlawful presence during this entire period of time. The applicant is inadmissible to the United States under section 212(a)(9)(B)(i)(II) of the Act for being unlawfully present in the United States for a period of more than one year and seeking readmission within ten years of her February 2006 departure from the United States.

Section 212(a)(9)(B) 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

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<sup>1</sup> The AAO notes the statements in Spanish, but they will not be considered as they do not include a translation, as required by the regulation at 8 C.F.R. § 103.2(b)(3).

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.

A section 212(a)(9)(B)(v) waiver of the bar to admission resulting from section 212(a)(9)(B)(i)(II) of the Act is dependent first upon a showing that the bar imposes an extreme hardship to the U.S. citizen or lawfully resident spouse or parent of the applicant. Hardship to the applicant or her child is not considered in section 212(a)(9)(B)(v) waiver proceedings unless it causes hardship to a qualifying relative, in this case the applicant's spouse. Once extreme hardship is established, it is but one favorable factor to be considered in the determination of whether the Secretary should exercise discretion. *See Matter of Mendez*, 21 I&N Dec. 296 (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.

As noted, the record contains a Psychosocial Evaluation of the applicant’s spouse prepared by a licensed clinical social worker. The evaluation states that the applicant has 10 siblings in Mexico and two in the United States. *Psychosocial Evaluation*, dated January 28, 2009. The social worker states that the applicant’s child is not being accepted to public school as he is a U.S. citizen; and enrolling him in private school is an extra financial burden. *Id.* The applicant’s spouse states that his son is having trouble getting enrolled in school in Mexico. *Applicant’s Spouse’s Statement*, undated. The record does not include documentary evidence to support the claim that the applicant’s son is not able to enroll in public school in Mexico. Nor is there evidence showing the cost of private school in Mexico or that the applicant and applicant’s spouse would be unable to meet such cost.

The applicant’s spouse also states that he worries about the current situation in Mexico with all of the crime there. *Id.* The record reflects that the applicant and the child are residing in Michoacán. The U.S. Department of State Travel Warning for Mexico, dated April 22, 2011, details the security and safety issues in Mexico. It specifically states, “You should defer non-essential travel to the State of Michoacán, which is home to another of Mexico’s most dangerous TCOs, “La Familia”. Attacks

on government officials and law enforcement and military personnel, and other incidents of TCO-related violence, have occurred throughout Michoacan, including in and around the capital of Morelia and in the vicinity of the world famous butterfly sanctuaries in the eastern part of the State.” Although the AAO recognizes that there are security concerns in Michoacan, Mexico, there is no indication that the applicant, her son or other family members have been directly impacted during the time that they have lived in Mexico.

For the foregoing reasons, the AAO finds that the record lacks sufficient documentary evidence of emotional, financial, medical or other types of hardship that, in their totality, establish that the applicant’s spouse would suffer extreme hardship if he were to relocate to Mexico.

The applicant’s spouse states that the applicant is in Mexico; his son is living with her; it is expensive to fly there and visit; he is only able to visit them twice a year; he is often unable to sleep properly and is losing his appetite; and he does not go out much as he gets sad when he sees other families together. *Applicant’s Spouse’s Statement*. Counsel states that the applicant’s spouse has been deprived of the companionship of the applicant and their son; he is maintaining two households and the stress is unbearable; his emotional problems are turning into medical problems; he is suffering from spiritual emptiness, he believes in the sanctity of the family as a Catholic and his current situation does not allow him to live his faith; and the applicant and their child are also suffering from separation. *Brief in Support of Appeal*, dated March 17, 2009. The social worker diagnosed the applicant’s spouse with major depression, single episode, moderate; and headaches, stomach pains, muscular aches and pains. *Psychosocial Evaluation*. The social worker details the emotional difficulties that the applicant’s child is experiencing and other issues being experienced by the applicant’s spouse, including financial difficulty, lack of socializing, sleeping problems, fatigue, irritability, forgetfulness, and lack of appetite. *Id.* The record reflects that the applicant’s spouse has been attending a Catholic church off and on for about five years. *Letter from [REDACTED]* dated January 31, 2011.

The applicant’s spouse states that his monthly net pay is \$3,000; he sends the applicant and his son \$1,000 monthly; he assists his father and grandmother who live in Mexico; he would not be able to take care of his son as he works so many hours per week; he would go to church every Sunday with the applicant; and his religion teaches him the importance of family. *Applicant’s Spouse’s Statement*.

The record includes several Western Union money transfer receipts. However, it does not include documentary evidence of the applicant’s spouse’s income and of his additional expenses due to separation. As such, the level of financial hardship is unclear from the record. The record reflects that the applicant’s spouse is experiencing difficulty without the applicant, however, the record lacks sufficient documentary evidence of emotional, financial, medical or other types of hardship that, in their totality, establish that a qualifying relative would suffer extreme hardship upon remaining in the United States.

A review of the documentation in the record fails to establish the existence of extreme hardship to the applicant's spouse caused by the applicant's inadmissibility to the United States. Having found the applicant statutorily ineligible for relief, no purpose would be served in discussing whether he merits a waiver as a matter of discretion.

In proceedings for application for waiver of grounds of inadmissibility under section 212(a)(9)(B) of the Act, the burden of proving eligibility remains entirely with the applicant. *See* 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.