

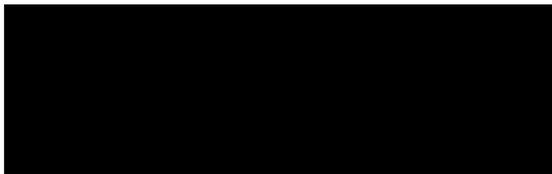
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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals
20 Massachusetts Avenue, N.W., MS 2090
Washington, DC 20529-2090



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



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DATE: **SEP 22 2011** OFFICE: CIUDAD JUAREZ FILE:

IN RE:

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, 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 January 2000 and departed in January 2008. 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. The applicant seeks a waiver of inadmissibility in order to reside in the United States with his U.S. citizen spouse and children.

The Field Office Director concluded that the record failed to establish the existence of extreme hardship to the applicant's spouse and denied the application accordingly. *See Decision of the Field Office Director*, dated March 12, 2009.

On appeal, the applicant's spouse claims she is suffering emotionally and financially due to the absence of her spouse. She further asserts that she cannot move to Mexico to be with the applicant because she would be in danger and has no ties to the country.

In support of the waiver application and appeal, the applicant submitted identity documents, a letter of support for the applicant, financial documentation, and family photographs. 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.

....

- (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-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 applicant's qualifying relative in this case is his U.S. citizen spouse. The record contains references to hardship the applicant's child 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 child 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 thirty year-old native and citizen of Mexico who resided in the United States from January 2000, after entering without admission or parole, to January 2008, when he returned to Mexico. The applicant's spouse is a twenty-nine year-old native and citizen of the United States. The applicant is currently residing in Mexico and the applicant's spouse is currently residing in Dublin, Texas.

The applicant's spouse asserts that she needs to have her husband back in the United States so that her family can be reunited. *See Letter from [REDACTED] dated March 23, 2009*. She further claims that she has become stressed and depressed because she cannot handle parenting on her own. *Id.* The applicant's spouse's family members submitted multiple letters stating that since the applicant's departure, the applicant's spouse has been crying and stressed and she is no longer her vibrant and upbeat self. *See Letter from [REDACTED] dated March 21, 2009; Letter from [REDACTED] dated March 23, 2009*. It is acknowledged that separation from a spouse nearly always creates a level of hardship for both parties. However, there is no indication that the applicant's spouse is unable to work and support herself and her child as a result of her emotional hardship or that it is otherwise interfering with her daily activities. The record does not contain supporting evidence to indicate that she is experiencing emotional or psychological hardship beyond the common consequences of removal or inadmissibility.

The applicant's spouse states that she has suffered financially since the departure of her husband. She claims that she and her daughter have had to relocate from Dallas, Texas, to move in with her mother and sisters in Dublin, Texas. *See Letter from [REDACTED] dated March 23, 2009*. The applicant's spouse asserts that she cannot afford to live on her own due to her monthly expenses and the need to send money to her husband. *Id.* She claims that she has had to depend on government help, such as Medicaid, to take care of her family. *Id.* The applicant's spouse further stated that she was confirmed pregnant with the applicant's child in January 2009 after visiting him in Mexico, and that an additional child would exacerbate her financial difficulties. *Id.* It is

noted that counsel for the applicant submitted pay stubs for the applicant's spouse from November and December of 2007. The applicant's spouse also submitted a letter in February 2008, detailing her monthly expenses, including rental payments. *See Letter from [REDACTED] signed February 24, 2008.* However, there has been no updated financial documentation or accounting submitted since the applicant's spouse moved to [REDACTED], and became employed as a certified nurse aid. There is also no documentation concerning monetary assistance that the applicant's spouse receives from the government. There is no indication in the record that the applicant's spouse is past due on any financial obligations or otherwise unable to pay her bills. Further, there is no evidence concerning the amount of money the applicant's spouse is sending to her husband and no indication that he is in receipt of such payments. 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)).

Counsel for the applicant asserts that the applicant's spouse cannot join her husband in Mexico because she would be leaving behind her work and ties in the United States to relocate to a country with violence and lesser opportunities and facilities. Counsel further claims that the applicant's older child suffers from respiratory problems and she would not receive adequate medical care in Mexico. As the applicant's children are not qualifying relatives in the context of this application, their hardship will only be evaluated insofar as it affects the applicant's spouse. Counsel submitted a photograph of the applicant's older child with a nebulizer mask, but there has been no medical documentation submitted concerning any current respiratory problems or necessary treatment. 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. Further, there has been no evidence submitted concerning country conditions in Mexico, including the area where the applicant is currently residing with his parents.

The applicant's spouse is a native and citizen of the United States who has visited Mexico multiple times. *See Letter from [REDACTED], dated March 23, 2009.* The identity documents submitted for the applicant's spouse's sister and mother indicate that they both immigrated to the United States from Mexico. *See Permanent Resident Card of [REDACTED] Naturalization Certificate of [REDACTED]* The applicant's spouse brings her daughter to Mexico on her visits and there is no indication that either has experienced any problems in Mexico. *See Letter from [REDACTED] dated March 23, 2009.* Based on the evidence in this case, it is evident that the applicant's spouse has familiarity with the country and culture of Mexico despite her long-term residence in the United States. Letters were submitted on behalf of the applicant from the applicant's spouse's family members, but it is not clear whether the applicant's spouse has any relatives who continue to reside in Mexico and the nature of her relationship with any such individuals. It is further noted that the applicant is living with his parents in Mexico. It is similarly unclear whether the applicant has any other relatives who continue to reside in Mexico and the extent to which his relatives are willing to assist the applicant's family if they were to relocate to Mexico.

The applicant's spouse further asserts that her husband has been unable to find employment in Mexico, so that if she were to join him, they would have no source of income. *See Letter from [REDACTED] dated March 32, 2009.* The applicant's spouse states that her husband and has been living with his parents in Mexico. *Id.* There has been no evidence submitted detailing the applicant's financial obligations in Mexico and his ability to meet those obligations. The applicant's spouse has stated that she sends money to her husband in Mexico, but there is no accounting for the amount and regularity of these payments. There is no indication in the record as to why the applicant's spouse would be unable to seek and secure a position herself if she were to relocate to Mexico. Further, the courts have found that though economic detriment is a factor for consideration, 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).

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).*

The record, however, does not contain sufficient evidence to show that the hardships faced by the qualifying relative upon separation, 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.