

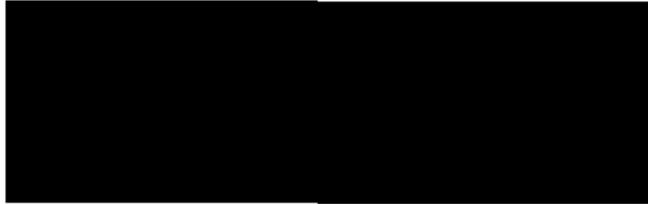
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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals
20 Massachusetts Ave. NW MS 2090
Washington, DC 20529-2090



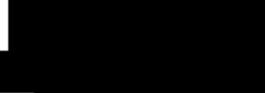
**U.S. Citizenship
and Immigration
Services**



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DATE: **AUG 08 2012**

OFFICE: MEXICO CITY, MEXICO

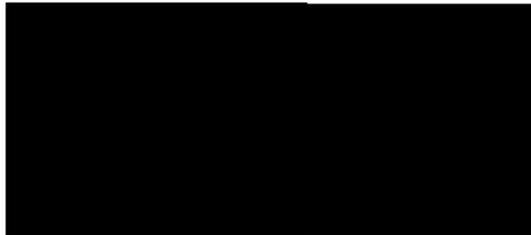
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IN RE:

Applicant: 

APPLICATION: Application for Waiver of Grounds of Inadmissibility under Section 212(9)(B)(v) of the Immigration and Nationality Act, 8 U.S.C. § 1182(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 AAO inappropriately applied the law in reaching its decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen with the field office or service center that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$630. The specific requirements for filing such a motion can be found at 8 C.F.R. § 103.5. **Do not file any motion directly with the AAO.** Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires any motion to 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, 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 was found to be inadmissible to the United States under 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 his departure from the United States. The applicant seeks a waiver of inadmissibility, in order to reside in the United States with his U.S. citizen spouse.

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 August 3, 2010.

On appeal counsel asserts that each hardship factor was not considered for its subjective impact upon the qualifying relative and weighed together. *See Form I-290B, Notice of Appeal or Motion*, received September 9, 2010.

The record contains, but is not limited to: Form I-290B and counsel's brief; various immigration applications and petitions; hardship letters; a letter from the applicant's spouse's daughter; tax, financial and wire transfer records; birth, marriage, divorce, child custody and support records, and family photos; and the applicant's criminal record. The record also contains a Spanish language document, dated February 9, 2009, that was not accompanied by a full, certified English translation as required under 8 C.F.R. § 103.2(b)(3).¹ Because the required translation was not submitted for this document, the AAO will not consider it in this proceeding. The entire record, with the exception of the Spanish language document, 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 United States Citizenship and Immigration Services (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.

The record reflects that the applicant entered the United States without inspection in or about December 1997 and remained until August 2009, when he departed voluntarily to Mexico. The applicant accrued unlawful presence in the United States for a period in excess of one year. As the applicant is seeking admission within 10 years of his departure, he was found to be inadmissible pursuant to section 212(a)(9)(B)(i)(II) of the Act, 8 U.S.C. § 1182(a)(9)(B)(i)(II). The record supports this finding, the applicant does not contest inadmissibility, and the AAO concurs that the applicant is inadmissible under section 212(a)(9)(B)(i)(II) of the Act.

The record shows that on June 6, 2005, the applicant was arrested in Mecklenburg County, North Carolina and charged with Assault on a Female – Non Aggravated Physical Force in violation of North Carolina Criminal Statute 14-33.000C200, a misdemeanor; Unlawful Concealment in violation of North Carolina Criminal Statute 14-72.010(A), a misdemeanor under \$50; Interference with Emergency Communication; and Misdemeanor Larceny. The record shows that the latter charges were dismissed by the district attorney and the applicant was convicted on June 28, 2005 of Simple Assault under § 14.33(a)(c)(2). The applicant was sentenced to 2 years unsupervised probation and fined \$215. The Field Office Director did not address whether this conviction is a crime involving moral turpitude rendering the applicant inadmissible under section 212(a)(2)(A)(i)(I) of the Act.

Section 212(a)(2)(A) of the Act states, in pertinent parts:

(i) [A]ny alien convicted of, or who admits having committed, or who admits committing acts which constitute the essential elements of –

(I) a crime involving moral turpitude (other than a purely political offense) or an attempt or conspiracy to commit such a crime . . . is inadmissible.

(ii) Exception.—Clause (i)(I) shall not apply to an alien who committed only one crime if-

(I) the crime was committed when the alien was under 18 years of age, and the crime was committed (and the alien was released from any confinement to a prison or correctional institution imposed for the crime) more than 5 years before the date of the application for a visa or other documentation and the date of application for admission to the United States, or

(II) the maximum penalty possible for the crime of which the alien was convicted (or which the alien admits having committed or of which the acts that the alien admits having committed constituted the essential elements) did not exceed imprisonment for one year and, if the alien was convicted of such

crime, the alien was not sentenced to a term of imprisonment in excess of 6 months (regardless of the extent to which the sentence was ultimately executed).

As of the date of the applicant's conviction, North Carolina Criminal Code: General Statutes § 14-33 stated, in pertinent part:

(a) Any person who commits a simple assault or a simple assault and battery or participates in a simple affray is guilty of a Class 2 misdemeanor.

...

(c) Unless the conduct is covered under some other provision of law providing greater punishment, any person who commits any assault, assault and battery, or affray is guilty of a Class A1 misdemeanor if, in the course of the assault, assault and battery, or affray, he or she:

...

(2) Assaults a female, he being a male person at least 18 years of age.

Upon review of North Carolina criminal law, the AAO finds that a Class A1 misdemeanor, including simple assault, carries a maximum penalty of 150 days in jail. While the AAO has not determined whether a conviction under North Carolina Criminal Code § 14-33(a)(c)(2) is categorically a crime involving moral turpitude, it finds that a single simple assault conviction thereunder meets the petty offense exception of section 212(a)(2)(A)(i)(I)(ii)(II) of the Act because the maximum penalty possible does not exceed one year in prison. Accordingly, the AAO finds that the applicant is not inadmissible under section 212(a)(2)(A)(i)(I) of the Act as a consequence of his conviction for simple assault. The AAO notes that that the applicant offers no explanation or evidence of rehabilitation concerning his June 2006 arrest on multiple charges and his subsequent conviction, though the applicant's spouse writes: "...he was requested court records regarding a situation he had with a prior girlfriend. He is truly sorry for his previous actions, and has learned so much from it." The AAO further notes, that despite documentary evidence to the contrary, counsel contends that the applicant has no criminal record. While the applicant is found not to be inadmissible under § 212(a)(2)(A)(i)(I) of the Act, he is inadmissible under section 212(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 his departure from the United States.

A waiver of inadmissibility under section 212(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. In the present case, the applicant's spouse is the only qualifying relative. 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-Moralez*, 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 reflects that the applicant's spouse is a 41-year-old native and citizen of the United States who has been married to the applicant since October 2007. She has three adult children from a prior marriage and one minor child from a prior relationship. Counsel asserts that the applicant's spouse has "regained custody" of [REDACTED] now 16-years-old, though no corroborating documentary evidence has been submitted. The applicant's spouse indicates that she is depressed, experiences daily panic attacks and anxiety, and has been an emotional wreck without the applicant since August 2009. The record contains no supporting documentary evidence. The applicant's spouse states that [REDACTED] exhibits rebellious behavior, lack of interest in school, anger and resentment due to the applicant's absence. No corroborating documentary evidence has been submitted in this regard. While the AAO recognizes that the applicant's spouse has suffered emotional challenges related to the applicant's absence during his temporary period of inadmissibility, the evidence in the record is insufficient to demonstrate that these challenges go beyond those ordinarily associated with a spouse's inadmissibility.

The applicant's spouse writes in a letter dated June 1, 2010, that she is experiencing extreme financial hardship as she has been supporting herself and [REDACTED] in the United States as well as the applicant in Mexico. She states that she has been unemployed since February 25, 2010, and submits a document showing that she collected unemployment from February 26, 2010 to June 22, 2010. The record shows that subsequent to that period, the applicant's spouse had been employed by Choice Management Group, earning a salary of \$18.27 per hour/\$1,461.60 gross wages for an 80-hour pay period ending August 20, 2010. Counsel reveals that since late 2006, the applicant's spouse has also been employed as resident manager of the apartment complex where she resides. The record shows that some of the applicant's spouse's bills were sent to collections during her period of unemployment and that during the same period, her former husband sued for child support arrearages when she failed to make court-ordered payments for the support of their then minor daughter, [REDACTED]. Evidence reflective of the applicant's spouse's current economic situation has not been submitted on appeal. The applicant's spouse claims that her husband has been unable to secure employment in Mexico since August 2009. His efforts in that regard and inability to find work have not been addressed or documented for the record, and no reviewable country conditions evidence has been submitted to demonstrate Mexico's economic or employment conditions. The applicant's spouse indicates that communicating with her husband in Mexico is also very expensive and that if he is permitted to return to the United States, his old job will be waiting for him with Carolina Landscaping.

Counsel asserts on appeal that the applicant's spouse "can no longer afford the time and expenses" of driving to Miami to visit family members, which counsel claims the applicant's spouse did frequently as well as routinely paying for her parents to visit her in Charlotte. Without supporting documentary evidence the assertions of counsel will not satisfy the applicant's burden of proof and such unsupported assertions do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec.

533, 534 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980). Counsel also asserts without corroborating statements or documentation that in August 2010, the applicant's spouse drove to Miami and brought her daughter, [REDACTED] and her daughter's three children back with her to Charlotte due to concerns about her daughter's relationship with an abusive man. In an earlier letter, dated June 1, 2010, [REDACTED] wrote that she was pregnant with a baby due in August. The record has not been supplemented with any documents concerning the child or addressing whether the applicant's spouse is supporting her daughter's family financially. While the AAO recognizes that the applicant's spouse has experienced some reduction in household income as a result of the applicant's absence, the evidence in the record is insufficient to demonstrate significant economic difficulties beyond those ordinarily associated with a spouse's removal or inadmissibility.

The AAO acknowledges that separation from the applicant has caused and may continue to cause various difficulties for the applicant's spouse. However, it finds the evidence in the record insufficient to demonstrate that the challenges encountered by the qualifying relative, when considered cumulatively, meet the extreme hardship standard.

Addressing relocation, counsel asserts that the applicant's spouse cannot abandon her family responsibilities and join the applicant in Mexico. The applicant's spouse writes that it would be difficult for her to find work because while she speaks Spanish, she cannot read or write the language and there are no jobs in Mexico. As noted, the record contains no reviewable country conditions documents addressing the economy or job market in Mexico. The applicant's spouse writes that her husband lives in a rural part of Mexico where the amenities are unfamiliar to her and she has no experience taking care of farm animals and cooking over an open fire. She adds that while she does not mind trying Mexican food, she has gotten sick to her stomach when visiting the country as a result of differences in the food. The applicant's spouse states that her most important loss would be separation from her children and grandchildren who would not be able to accompany her, and friends and co-workers. She writes that combined with the cultural differences, she is certain she will become isolated, depressed, lonely, and totally devastated. Counsel adds the applicant's spouse has five siblings, "countless" nieces and nephews, and both parents residing in the United States and asserts that her father has Parkinson's disease, her mother is diabetic, and she would not want to move far away from them. The record contains no supporting medical evidence or corroborating statements from the applicant's spouse to this effect.

The AAO has considered cumulatively all assertions of relocation-related hardship to the applicant's spouse including her adjustment to a country in which she has never resided; her lifelong residence in the United States; inability to read or write the Spanish language; separation from close family ties in the United States including her children, grandchildren, parents, and siblings; separation from friends and community ties; loss of U.S. employment and her concerns about securing employment in Mexico; along with her cultural, emotional, health-related and economic concerns about Mexico. While the difficulties asserted are not insignificant, the AAO finds that, considered in the aggregate, the evidence is insufficient to demonstrate that the applicant's U.S. citizen spouse would suffer extreme hardship were she to relocate to Mexico to be with the applicant during the remainder of his temporary period of inadmissibility.

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