

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

H/6

DATE: DEC 05 2012

OFFICE: BLOOMINGTON, MN

FILE: [REDACTED]

IN RE: [REDACTED]

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

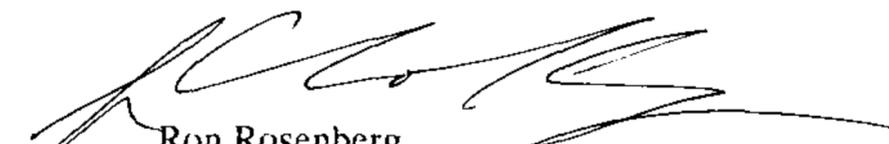
ON BEHALF OF APPLICANT:

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 in accordance with the instructions on 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,

  
Ron Rosenberg  
Acting Chief, Administrative Appeals Office

**DISCUSSION:** The waiver application was denied by the Field Office Director, Bloomington, Minnesota, 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 last entered in the United States on May 3, 2002 when he was admitted into the United States on a nonimmigrant H-2B visa. 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 10 years of his last departure from the United States. He was additionally found to be inadmissible to the United States under section 212(a)(6)(C)(i) of the Act, 8 U.S.C. § 1182(a)(6)(C)(i), for having previously procured admission to the United States through misrepresentation by using his brother's passport and visitor's visa. The applicant is the spouse of a U.S. citizen and is the beneficiary of an approved Petition for Alien Relative. The applicant seeks a waiver of inadmissibility pursuant to sections 212(a)(9)(B)(v) and 212(i) of the Act, 8 U.S.C. § 1182(a)(9)(B)(v), (i), in order to remain in the United States with his U.S. citizen spouse.

The Field Office Director concluded that the applicant was inadmissible under sections 212(a)(9)(B)(i)(II) and 212(a)(6)(C)(i) of the Act and that the applicant failed to establish that the bar to admission would impose extreme hardship on his U.S. citizen spouse, the qualifying relative, and denied the application accordingly. *Decision of Field Office Director*, dated September 9, 2011.

On appeal, counsel submits a brief, an updated affidavit from the applicant's spouse, support letters attesting to the applicant's good moral character, student enrollment records for the applicant's spouse, letter from the applicant's spouse's mother, criminal records for the applicant's spouse's father's 2007 conviction for Terrorist Threats, tax records for the applicant's spouse's parents, electronic mail messages from the applicant's spouse's mother regarding the nonpayment of alimony, prescription record for the applicant's spouse, updated monthly budget and financial documents for the applicant and his spouse, articles on country conditions in Mexico and photographs of the couple. The record also includes, but is not limited to, a prior affidavit from the applicant's spouse, medical records, letters from employers, copies of birth, marriage, divorce and identification documents, and tax and financial records. The AAO conducts appellate review on a *de novo* basis. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). The entire record was reviewed and considered in rendering a decision on the appeal.

The Field Office Director determined that the applicant was inadmissible under section 212(a)(9) of the Act, which provides, in pertinent part that:

**(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 [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 [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 [Secretary] regarding a waiver under this clause.

The Field Office Director determined that the applicant was also inadmissible under section 212(a)(6)(C)(i) of the Act, which provides that:

Any alien who, by fraud or willfully misrepresenting a material fact, seeks to procure (or has sought to procure or has procured) a visa, other documentation, or admission into the United States or other benefit provided under this Act is inadmissible.

Section 212(i)(1) of the Act provides, in pertinent part:

The [Secretary of Homeland Security] may, in the discretion of the [Secretary], waive the application of clause (i) of subsection (a)(6)(C) in the case of an immigrant who is the spouse, 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 [Secretary] that the refusal of admission to the United States of such immigrant alien would result in extreme hardship to the citizen or lawfully resident spouse or parent of such an alien....

The record establishes that the applicant entered the United States without inspection in 1985 and returned to Mexico in 1988. He subsequently reentered without inspection in 1989 and returned to Mexico in 1995. The applicant then admits to having procured admission to the United States on two occasions when he used his brother's passport and visitor's visa to enter the United States in 1996 until 1999 and 1999 until 2005. In 2005, the record shows that the applicant returned to Mexico after more than one year of unlawful presence and reentered on an H-2B nonimmigrant visa in his own name. The applicant is therefore inadmissible under sections 212(a)(6)(C)(i) and 212(a)(9)(B)(i)(II) of the Act for having procured admission to the United States through fraud or willful misrepresentation and for seeking admission after more than one year of unlawful presence. Inadmissibility is not contested on appeal. The applicant's qualifying relative for a waiver of this inadmissibility is his U.S. citizen spouse.

Sections 212(a)(9)(B)(v) and 212(i) of the Act provide that a waiver of the bar to admission is dependent first upon a showing that the bar imposes an extreme hardship on a qualifying family member. 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 of Immigration Appeals 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 v. I.N.S.*, 138 F.3d 1292 (9th Cir. 1998) (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 spouse's mother would experience if the waiver application were denied. It is noted that Congress did not include hardship to an alien's mother-in-law as a factor to be considered in assessing extreme hardship under sections 212(a)(9)(B)(v) and 212(i) of the Act. In the present case, the applicant's spouse is the only qualifying relative for the waiver under sections 212(a)(9)(B)(v) and 212(i) of the Act, and hardship to the applicant's spouse's mother will not be separately considered, except as it may affect the applicant's spouse.

The record, in the aggregate, establishes that the applicant's spouse will suffer extreme hardship upon relocation to Mexico. On appeal, counsel claims that the applicant's wife will suffer extreme hardship upon relocation to Mexico due to rampant violence and crime and a lack of ties and language abilities. The applicant's spouse states that relocating to Mexico would mean that she would have to leave her family, friends, community and studies. She further states that she does not speak Spanish and would find it difficult to continue her nursing studies or find employment upon relocation. Counsel submits various articles relating to the increased drug cartel violence in different regions in Mexico. The AAO notes that the U.S. State Department has issued a travel warning for U.S. citizens traveling to Mexico. *Travel Warning by U.S. State Department*, dated November 20, 2012. In addition, the relevant evidence indicates that the applicant's wife has no family ties outside the United States and does not speak Spanish.

The record does not, however, show that the applicant's spouse would suffer extreme hardship if she remained in the United States and the applicant returned to Mexico. On appeal, counsel claims that the applicant's wife will suffer psychological, emotional and financial hardship upon separation from the applicant. The applicant's wife states that she has survived a great deal of personal problems including her parent's bitter divorce, her father's recent conviction for Terrorist Threats and subsequent mental health problems, the recent revelation that she is not the biological daughter of her father, her mother's financial dependence and health problems, and an abusive relationship. The applicant's wife states that she needs the emotional support of the applicant to help her handle these problems. The record reflects that the applicant's wife's father was convicted in 2007 for Terrorist Threats. The applicant's wife asserts that she was diagnosed with Post-Traumatic Stress Disorder (PTSD) as a result of the conviction and her parent's divorce and since then, has been having psychological problems requiring her to take medication to treat anxiety and depression. The record does not contain supporting documentation from a medical practitioner regarding the qualifying relative's PTSD diagnosis, ongoing treatment and prognosis.

The record contains a copy of a physical examination report and a medication list from 2010. On appeal, counsel stated that additional medical records would be submitted but none have been submitted since the filing of the brief and supplemental materials on October 31, 2011.

Regarding financial hardship, counsel submits a monthly budget for the applicant and his wife. However, the record does not contain supporting documentation for some of the expenses enumerated in the budget to show financial hardship. The applicant's wife states that she would not be able to continue her nursing studies without the financial support of the applicant. The applicant's wife claims that the applicant sends money to Mexico and also supports her mother since her father is not paying alimony. The record does not contain evidence of these payments to family or payments for the applicant's wife's nursing studies. The record does not establish that the hardship suffered by the applicant's spouse rises to the level of extreme in the event of separation.

We can find extreme hardship warranting a waiver of inadmissibility only where an applicant has demonstrated extreme hardship to a qualifying relative in the scenario of separation *and* the scenario of relocation. A claim that a qualifying relative will relocate and thereby suffer extreme hardship can easily be made for purposes of the waiver even where there is no actual intention to relocate. *Cf. Matter of Ige*, 20 I&N Dec. 880, 886 (BIA 1994). Furthermore, to relocate and suffer extreme hardship, where remaining the United States and being separated from the applicant would not result in extreme hardship, is a matter of choice and not the result of inadmissibility. *Id.*, also *cf. Matter of Pilch*, 21 I&N Dec. 627, 632-33 (BIA 1996). As the applicant has not demonstrated extreme hardship from separation, we cannot find that refusal of admission would result in extreme hardship to the qualifying relative in this case.

Considered in the aggregate, the evidence does not demonstrate that the hardships suffered in this case have risen beyond what is normally experienced by families dealing with removal or inadmissibility. Consequently, the applicant has failed to establish extreme hardship to his qualifying relative as required for a waiver of his inadmissibility under sections 212(a)(9)(B)(v) and 212(i) of the Act. As the applicant has not established extreme hardship to a qualifying family member, no purpose would be served in determining whether he merits a waiver as a matter of discretion.

In proceedings for a waiver of grounds of inadmissibility under sections 212(a)(9)(B)(v) and 212(i) 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.