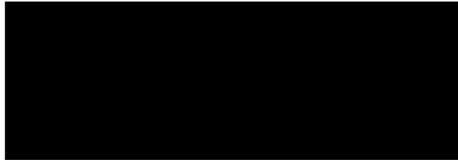


U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services

H6



Date: **DEC 08 2012** Office: NEBRASKA SERVICE CENTER FILE:

IN RE: Applicant:

APPLICATION: Application for Waiver of Grounds of Inadmissibility pursuant to section 212(a)(9)(B)(v) of the Immigration and Nationality Act (the 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 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, Ciudad Juarez. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The record reflects that 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 Act for having been unlawfully present in the United States for more than one year. The applicant is married to a lawful permanent resident and seeks a waiver of inadmissibility pursuant to section 212(a)(9)(B)(v) of the Act in order to reside with his wife and children in the United States.

The field office director found that the applicant failed to establish extreme hardship to a qualifying relative and denied the application accordingly.

On appeal, the applicant submits additional evidence of hardship, including an updated affidavit from the applicant's wife.

The record contains, *inter alia*: an affidavit and letters from the applicant's wife, Ms. [REDACTED] copies of medical records and prescription medications; a psychological evaluation; copies of bank account statements; documentation from the couple's children's school; a letter from Ms. [REDACTED] father; letters of support; photographs of the applicant and his family; and an approved Petition for Alien Relative (Form I-130).¹ The entire record was reviewed and considered in rendering this decision on the appeal.

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

(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 record also contains three letters that are written in Spanish and have not been translated into English. The regulation at 8 C.F.R. § 103.2(b)(3) requires that any document containing foreign language submitted to United States Citizenship and Immigration Services 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. Consequently, these letters cannot be considered.

(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.

In this case, the record shows, and the applicant does not contest, that he entered the United States without inspection in July 2001 and remained until his departure in October 2010. The applicant accrued unlawful presence of more than one year. He now seeks admission within ten years of his 2010 departure. Accordingly, he 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 one year or more and seeking admission to the United States within ten years of his last departure.

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.

In this case, the applicant’s wife, Ms. [REDACTED] states that since her husband’s departure from the United States, she has been in dire financial straights. According to Ms. [REDACTED] she is now living with her father so that she does not have to pay rent. She contends she cannot provide food for her children on a regular basis and has had to resort to food stamps. Ms. [REDACTED] also states that she recently got a job paying \$350 per week. She states she lives in total desperation, and that her husband’s immigration problems have aggravated her feelings of insecurity, depression, and anxiety such that she sought the help of a family counselor at her church. She contends she cannot afford a professional psychologist. Ms. [REDACTED] also contends that the children are suffering as well, and that the couple’s son is having attitude issues and his grades have dropped. Furthermore, she states her husband is unemployed in Mexico and she fears she would not survive in Mexico. She states she cannot raise her two children in Mexico and is afraid of being robbed or killed there. In addition, she states that all of her siblings now live in the United States and that she has no family remaining in Mexico.

After a careful review of the record, there is insufficient evidence to show that the applicant’s wife, Ms. [REDACTED] has suffered or will suffer extreme hardship if her husband’s waiver application were denied. If Ms. [REDACTED] decides to stay in the United States, their situation is typical of individuals separated as a result of inadmissibility or exclusion and does not rise to the level of extreme hardship based on the record. Regarding financial hardship, there is insufficient documentation in the record to assess the extent of her hardship. Although a letter from Ms. [REDACTED] father corroborates her claim that she and her children are living with him, there is no evidence, such as a copy of a pay stub or a letter from her employer, addressing her income or wages. Similarly, although the decision from the field office

director specified that there was no documentary evidence addressing Ms. [REDACTED] contention that she earns only \$40 each time she cleans a house, or evidence that she receives or applied for food stamps, the applicant has not submitted evidence with the appeal to address these deficiencies. Without documentary evidence to substantiate Ms. [REDACTED] claim, there is insufficient information in the record to evaluate the extent of her hardship. Regarding emotional hardship, the AAO notes that the only qualifying relative in this case is Ms. [REDACTED]. The record contains a copy of the couple's U.S. citizen son's report card from October-November 2010, indicating his grades dropped immediately after the applicant departed the United States. However, there is nothing more recent in the record addressing how the couple's son is currently doing in school and the AAO notes that there is no suggestion in the record either of the couple's children have any physical or mental impairment, or any special needs. Regarding the psychological evaluation, although the AAO recognizes the credentials of the counselor, the letter from the counselor describes Ms. [REDACTED] symptoms of depressions including, but not limited to: constant sadness, fear, loneliness, irritability, hopelessness, trouble sleeping, and concentration problems. The counselor contends these symptoms can be categorized as depression and panic disorder. Although the AAO is sympathetic to the family's circumstances, the record does not show that Ms. [REDACTED] situation, or the symptoms she is experiencing, are unique or atypical compared to other individuals in similar circumstances. See *Perez v. INS*, 96 F.3d 390 (9th Cir. 1996) (holding that the common results of deportation are insufficient to prove extreme hardship and defining extreme hardship as hardship that was unusual or beyond that which would normally be expected). To the extent Ms. [REDACTED] submits notes from an emergency room visit for strep throat, receipts for doctor's visits, and copies of prescriptions, she does not specify how she or her children have any medical problems that cause her extreme hardship. In any event, there is no letter in plain language from any health care professional addressing the diagnosis, prognosis, treatment, or severity of any medical problem. Without more detailed and specific information, the AAO is not in the position to reach conclusions regarding the severity of any medical condition or the treatment and assistance needed. Even considering all of the factors in this case cumulatively, there is insufficient evidence showing that the hardship Ms. [REDACTED] has experienced or will experience amounts to extreme hardship.

Furthermore, the record does not show that Ms. [REDACTED] would suffer extreme hardship if she returned to Mexico to be with her husband. The record shows that Ms. [REDACTED] was born in Mexico. Although she contends that all of her siblings now live in the United States, the record does not contain any letters from any of Ms. [REDACTED] siblings or any other evidence corroborating this contention. Regarding her contention that she would suffer extreme financial hardship if she relocated to Mexico, there is no evidence in the record to corroborate this claim. Although the AAO acknowledges that Ms. [REDACTED] standard of living may decrease in Mexico, and that she has two U.S. citizen children, the record does not show that her situation is unique or atypical. Furthermore, although the AAO recognizes the U.S. Department of State has issued a Travel Warning urging caution to some parts of Mexico, including San Luis Potosi, where the applicant was born and is currently living, *U.S. Department of State, Travel Warning, Mexico*, dated November 20, 2012, the Travel Warning alone is insufficient to show extreme hardship. In sum, the record does not show that Ms. [REDACTED] readjustment to living in Mexico would be any more difficult than would normally be expected. Even considering all of the evidence cumulatively, the record does not show that Ms. [REDACTED] hardship would be extreme, or that their situation is unique or atypical compared to others in similar circumstances. *Perez v. INS, supra*.

A review of the documentation in the record fails to establish the existence of extreme hardship to the applicant's wife 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, 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.