

U.S. Citizenship
and Immigration
Services

H6

DATE: DEC 08 2012

Office: CIUDAD JUAREZ, MEXICO

FILE: [REDACTED]

IN RE: Applicant: [REDACTED]

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 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, 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 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 for more than one year and seeking readmission within ten years of her last departure from the United States. The applicant is a spouse of a U.S. citizen and the beneficiary of an approved Form I-130, Petition for Alien Relative. The applicant seeks a waiver of inadmissibility in order to reside in the United States with her spouse.

In his decision of July 16, 2010, the field office director concluded that the applicant had failed to establish that her spouse would experience extreme hardship if she were denied admission into the United States. Accordingly, the Form I-601, Application for Waiver of Grounds of Inadmissibility, was denied.

On appeal, counsel asserts that the applicant's spouse would suffer extreme hardship if the applicant's waiver application is denied and submits additional evidence for consideration.

The record includes, but is not limited to: counsel's brief, country conditions information on Mexico; an internet article on female infertility from *Wikipedia*; declarations from the applicant's spouse; documents relating to the purchase of the applicant's and her spouse's home; statements of support from acquaintances; a psychotherapy evaluation of the applicant; photographs of the applicant, her spouse and her family; utility, telephone, satellite and mortgage billing statements; a receipt from an insurance payment; an employment verification letter for the applicant's spouse; and a statement, several documents and newspaper articles written in the Spanish language. The entire record was reviewed and all relevant evidence considered in reaching this decision.

Any document containing foreign language submitted to U.S. 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. 8 C.F.R. § 103.2(b)(3). Because the statement, documents and newspaper articles written in the Spanish language are not accompanied by the required English-language translations, they will not be considered in this proceeding.

Section 212(a)(9) states 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 admission within 10 years of the date of such alien's departure or removal from the United States, is inadmissible.

(ii) Construction of unlawful presence.- For purposes of this paragraph, an alien is deemed to be unlawfully present in the United States if the alien is present in the United States after the expiration of the period of stay authorized by the Attorney General or is present in the United States without being admitted or paroled.

The record reflects that the applicant entered the United States in March 2007 without inspection and remained in the United States until February 2010, when she departed voluntarily. Based on the applicant's history, the AAO finds that the applicant accrued unlawful presence of more than one year and because she is seeking admission within ten years of her 2010 departure, she is inadmissible to the United States pursuant to section 212(a)(9)(B)(i)(II) of the Act. The applicant does not contest her inadmissibility.

Section 212(a)(9)(B)(v) of the Act provides for a waiver of section 212(a)(9)(B)(i) inadmissibility as follows:

The Attorney General [now Secretary of Homeland Security] 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 . . . 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 waiver of inadmissibility under section 212(a)(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. In the present case, the applicant's qualifying relative is her U.S. citizen spouse. Hardship to the applicant or other family members can be considered only insofar as it results in hardship to a 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-Morales*, 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 of Immigration Appeals (BIA) 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 BIA 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 a May 6, 2010 statement, the applicant's spouse asserts that he will have to relocate to Mexico if the applicant's waiver application is not approved; that he will have to sell the home he and the applicant purchased; that he will have to seek new employment in Mexico; and that jobs are few in Mexico and will provide him and the applicant with only minimal income.

Counsel, on appeal, asserts that the applicant's spouse will experience extreme hardship if he is forced to move to Mexico. Counsel states that the applicant's spouse is currently employed at a fast food restaurant in Follett, Texas at a rate of \$7.50 per hour¹ and that he has monthly mortgage and vehicle payments. He contends that in Mexico the applicant's spouse will be unable to secure employment sufficient to maintain his financial obligations and will lose his home in the United States; that the current economy in Follett, Texas will not allow the applicant's spouse to sell his home and recoup his investment; that the loss of the applicant's spouse's vehicle will greatly restrict his ability to obtain gainful employment in Mexico; that the minimum wage is low in Mexico; that the applicant's spouse has no close relatives residing in Mexico as they immigrated to the United States over 20 years ago; that the applicant's spouse has never resided in Mexico and has no knowledge of local customs; that, as the applicant's spouse is an American citizen, he will be a potential target for criminal activity; and that drug trafficking organizations are active in the State of Durango (Mexico), where the applicant is living.

The record contains a U.S. Department of State Travel Warning for Mexico, dated February 10, 2010, which indicates that due to recent attacks and persistent security concerns, U. S. citizens should defer unnecessary travel to Durango. The AAO notes that this travel warning was updated on February 8, 2012, reporting an increase in incidents of roadblocks by transnational criminal organizations (TCO) in various parts of Mexico in which both local and expatriate communities have been victimized. It also indicates that U.S. citizens have fallen victim to TCO activity, including homicide, gun battles, kidnapping, carjacking and highway robbery. The report continues to advise against non-essential travel to Durango. The warning further reports that between 2006 and 2010, the number of narcotics-related murders in Durango increased dramatically and that several areas in the state continue to experience high rates of violence and remained volatile and unpredictable.

Having reviewed the evidence of record, the AAO find that when the hardship factors in the applicant's case are considered in the aggregate, she has established that her spouse would experience significant hardship if he relocates to Mexico.

¹ The AAO notes that the record contains an employment letter dated April 7, 2010, from the farm manager [REDACTED] indicating that the applicant's spouse has been in their employ since March 6, 2007.

The AAO will now address the issue of whether the applicant has also established that her spouse would experience extreme hardship if the waiver application is denied and he continues to reside in the United States.

In his May 6, 2010 statement, the applicant's spouse asserts that he and the applicant are having emotional problems dealing with their separation and that they are both under mental health care. He states that due to his long work hours he previously relied on the applicant to pay their bills and to make bank deposits. The applicant's spouse also states that he is concerned for the applicant's safety due to the criminal activity in the State of Durango; and that the applicant has no means of support, depending on him for financial support and on her mother for housing. The applicant's spouse maintains that the effects of separation and the uncertainty of the applicant's safety are making him feel that he has failed her.

Counsel, on appeal, asserts that the applicant's spouse's dream is to live in the United States with the applicant, work, own a home and raise a family. He contends that if the waiver application is not granted, the applicant's prime reproductive years will have passed by the time she is able to reenter the United States and, therefore, that her ability to bear children will have significantly decreased. Counsel states that the applicant's spouse loves the applicant and has never considered divorcing or replacing her with a spouse who is a U.S. citizen.

In support of the preceding claims, the record contains a copy of an online article entitled "Female Infertility" from *Wikipedia*. However, the AAO notes that there are no assurances about the reliability of the content in this open, user-edited internet site.² See *Lamilem Badasa v. Michael Mukasey*, 540 F.3d 909 (8th Cir. 2008). Accordingly, we will not assign weight to information for which *Wikipedia* is the only cited source.

The record also contains a psychotherapy evaluation conducted on March 12, 2010, by [REDACTED] who diagnosed the applicant's spouse with Adjustment Disorder, Dysthymic Disorder, Anxiety Disorder without Panic, and Dependent Personality Disorder. [REDACTED] indicates that the applicant's spouse presented with a significantly

² Online content from *Wikipedia* is subject to the following general disclaimer:

WIKIPEDIA MAKES NO GUARANTEE OF VALIDITY. Wikipedia is an online open-content collaborative encyclopedia; that is, a voluntary association of individuals and groups working to develop a common resource of human knowledge. The structure of the project allows anyone with an Internet connection to alter its content. Please be advised that nothing found here has necessarily been reviewed by people with the expertise required to provide you with complete, accurate or reliable information. . . . **Wikipedia cannot guarantee the validity of the information found here.** The content of any given article may recently have been changed, vandalized or altered by someone whose opinion does not correspond with the state of knowledge in the relevant fields. [Emphasis in the original.]

depressed mood; that he reported feelings of depression and hopelessness, and indicated a fear of abandonment and an inability to manage without the applicant. She also finds that the applicant's spouse is overwhelmed by his separation from the applicant and exhibits poor coping skills. [REDACTED] further states that the applicant's spouse's emotional state is reflected in somatic complaints such as headaches, crying, gastrointestinal problems, a decrease in appetite, hypertension and insomnia. She indicates that she has suggested that the applicant's spouse see his primary care physician for help with his insomnia. [REDACTED] asserts that if the applicant's spouse continues to be separated from the applicant for a lengthy period, his symptoms could develop into more serious clinical presentations such as Post Traumatic Stress Disorder (PTSD), Chronic Major Depressive Disorder with Psychosis and Anxiety Disorder with Panic Attacks.

In considering the record, the AAO notes that the applicant's spouse indicates that he is supporting the applicant in Mexico and that he informed [REDACTED] during the course of their interview that he sends \$200 to the applicant each month. However, the record lacks documentary evidence of this support or that it results in financial hardship for the applicant's spouse. The record also contains contradictory evidence relating to the applicant's spouse's employment, with counsel indicating that he is employed at a fast food restaurant and a letter from [REDACTED] claiming that he is their employee. Moreover, the record offers no documentary evidence, e.g., tax returns or W-2 Wage and Tax Statements, of the applicant's spouse's earned income, thereby precluding any assessment of his financial circumstances, despite the submission of evidence relating to his financial obligations.

The record also fails to establish the emotional impact of separation on the applicant's spouse. Although the AAO acknowledges [REDACTED] diagnosis of Adjustment Disorder, Dysthymic Disorder, Anxiety Disorder without Panic, and Dependent Personality Disorder, we do not find the submitted evaluation to clearly establish the severity or extent of the applicant's spouse's emotional reaction to his separation from the applicant, including the extent to which it has affected his ability to meet his responsibilities at work and in his private life.

[REDACTED] states that the applicant's spouse's depression is reflected in somatic complaints that he has learned to mask by isolating himself, including gastrointestinal problems, hypertension and insomnia. The AAO notes, however, that the record includes no medical evidence that the applicant's spouse suffers from these health problems. 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)). Dr. Hernandez further indicates that as a result of his mental state, the applicant's spouse is functioning at a reduced level of efficiency, as evidenced by his reporting of a significant decrease in his productivity at work and his worry that he will lose his job as a result. The record, however, contradicts the applicant's spouse's account of his decreased productivity. The April 7, 2010 letter from [REDACTED] praises his work and indicates that his employment will be continued indefinitely.

Having considered the record, the AAO does not question that the applicant's spouse is experiencing hardship due to his separation from the applicant. We find, however, that the submitted evidence is insufficient to demonstrate that the hardships of separation for the applicant's spouse, even when considered in the aggregate, exceed those hardships ordinarily associated with inadmissibility or removal.

Accordingly, the AAO finds that the applicant has failed to demonstrate extreme hardship to a qualifying relative as required for a waiver under section 212(a)(9)(B)(v) of the Act. As the applicant has not established statutory eligibility for relief, the AAO finds no purpose would be served in determining whether she 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.