

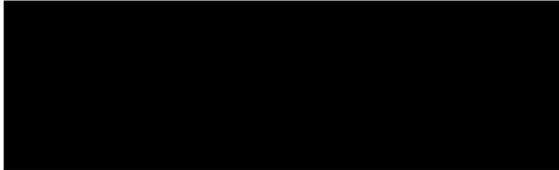
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U.S. Department of Homeland Security  
U.S. Citizenship and Immigration Services  
Office of Administrative Appeals  
20 Massachusetts Ave. NW MS 2090  
Washington, DC 20529-2090



U.S. Citizenship  
and Immigration  
Services



HG

DATE: **FEB 13 2012** OFFICE: MEXICO CITY, MEXICO

File:

IN RE: Applicant:

APPLICATION: Application for Waiver of Grounds of Inadmissibility under § 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, 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 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 her last departure from the United States. The applicant seeks a waiver of inadmissibility in order to reside in the United States with her U.S. citizen spouse and children.

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 September 3, 2009.

On appeal, counsel asserts that if the waiver is not granted, the applicant's spouse "would suffer mentally and financially which would result in Extreme Hardship." See Form I-290B, Notice of Appeal or Motion, received October 14, 2009.

The record contains but is not limited to: counsel's appeal brief and earlier outline; Form I-601 and denial letter; two hardship letters; [REDACTED] character reference letters; marriage and birth records; family photos; immunization records, school certificates and report cards; bank and billing statements; wire transfer and cash receipts; employment letter and pay stubs; tax returns; and Form I-130. The record also contains four Spanish language documents which appear to be prescriptions for the applicant's daughters. These Spanish language documents were not accompanied by full certified English translations as required pursuant to 8 C.F.R. § 103.2(b)(3).<sup>1</sup> Because the applicant failed to submit the required translations of the documents, the AAO cannot determine whether the evidence supports the applicant's claims. *Id.* Accordingly, the Spanish language evidence is not probative and will not be accorded any weight in this proceeding. The entire record, with the exception of the Spanish language documents, was reviewed and considered in rendering a decision on the appeal.

Section 212(a)(9) of the Act provides:

**(B) ALIENS UNLAWFULLY PRESENT.-**

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<sup>1</sup> 8 C.F.R. § 103.2(b)(3). Translations. Any document containing foreign language submitted to 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.

(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.

The record reflects that the applicant entered the United States without inspection on or about January 1, 1998 and remained until August 2008 when she voluntarily departed to Mexico. The applicant accrued unlawful presence from February 18, 2001, the date of her 18<sup>th</sup> birthday, until August 2008 when she departed the United States.<sup>2</sup> As the applicant was unlawfully present in the United States for more than one year and seeks readmission within 10 years of her August 2008 departure she is inadmissible under section 212(a)(9)(B)(i)(II) of the Act, 8 USC § 1182(a)(9)(B)(i)(II). The applicant does not contest this finding on appeal.

A waiver of inadmissibility under section 212(9)(B)(v) of the Act is dependent on a showing that the bar to admission would impose 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 her children can be considered only insofar as it results in hardship to the qualifying relative. The applicant's spouse is the only qualifying relative in this case. 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).

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<sup>2</sup> The Field Office Director erred in finding that the applicant accrued unlawful presence during the entire time she was in the United States. Because the applicant was a 14-year-old minor when she entered the U.S. in January 1998, she did not begin accruing unlawful presence until her 18<sup>th</sup> birthday. The applicant accrued unlawful presence from February 18, 2001 until she departed the U.S. in August 2008. The AAO finds the Field Office Director's error harmless as the applicant is still inadmissible under § 212 (a)(9)(B)(i)(II) for being unlawfully present in the U.S. for more than one year and seeking readmission within 10 years of her August 2008 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.

The record reflects that the applicant's spouse is a 31-year-old native of Mexico and citizen of the United States. The applicant's spouse states that since learning that the waiver was denied, his "health has greatly suffered." See *Hardship Letter*, undated. He states that he has been "unable to sleep thinking of the living conditions and dangers" to which his wife and daughters are exposed, and has lost his appetite and ten pounds because he is "overcome by depression of not having my family by my side." *Id.* The record contains no documentary evidence addressing the medical or emotional health of the applicant's spouse. In a *Letter From* [REDACTED] dated August 4, 2008, [REDACTED] Social Services Coordinator asserts that the applicant has been a consistent and involved participant in the Center's Head Start program since September 29, 2005. She states that [REDACTED] a family service coordinator, "has been meeting with one or both parents an hour a week to provide support, parenting education and information." *Id.* [REDACTED] additionally signs the letter. [REDACTED] assert: "If the family were to be separated, they would suffer emotionally and economically." *Id.* The letter does not address any specific emotional or economic hardship attributed to the applicant's spouse. The evidence is insufficient to establish significant medical, health or emotional hardship to the applicant's spouse beyond that normally associated with the inadmissibility of a family member.

The applicant's spouse states that "it has been difficult to be able to support not only myself but my wife and my two daughters that are away." See *Hardship Letter*, undated. Counsel asserts that the applicant's spouse "has the responsibility of helping support his father-in-law and mother-in-law in the United States and both suffer from diabetes and high cholesterol. He has been helping in supplementing their household bills and medication." See *Counsel's Brief*, undated. The record contains no documentary evidence addressing the health of the applicant's parents or any financial support provided them by the applicant's spouse. Going on record without supporting documentation is not sufficient to meet the applicant's burden of proof in this proceeding. 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)). The applicant's spouse states that due to economic concerns, he had no choice but to leave his two young daughters in Mexico with the applicant when he returned to the U.S. in August 2008. See *Hardship Letter*, undated. He states that both his and the applicant's parents live in the U.S. *Id.* Counsel asserts that "the applicant's father, mother, brother, sisters, uncles, and aunts all reside here in the United States." See *Counsel's Brief*, undated. Neither counsel nor the applicant's spouse address whether any of these family members could assist the applicant in Mexico or assist in the care of the applicant's daughters were they to return to the U.S. *Id.* The record contains an *Employment Letter*, dated February 11, 2008 from [REDACTED] asserting that the applicant's spouse

has been employed since July 2005, “is in charge of Sales Department,” and “receiving US\$ 500.27 per week.” A number of supporting *Paycheck Stubs*, various dates, have also been submitted. Internal Revenue Service Form 1040A, *Individual Tax Returns* and Form W-2, *Wage and Tax Statements* have additionally been submitted for tax years 2001 through 2007. Counsel asserts that the applicant’s spouse, with the applicant’s constant support, was “able to take the crucial steps in order to open their own business.” See *Counsel’s Brief*, undated. The record contains no documentary evidence of said business or of any income derived therefrom by the applicant’s spouse. The applicant submits a *Western Union Receipt*, dated September 9, 2008 showing a monetary transfer from [REDACTED] to the applicant’s spouse. The purpose of this wire transfer to the applicant’s spouse is unclear as is whether the \$1,500 transferred was in U.S. dollars or Mexican pesos. The applicant submits various *Bank and Billing Statements*, various dates, on appeal along with three *Cash Receipts*, various dates, which appear to reflect rent payments. The record contains no complete budget delineating the applicant’s spouse’s monthly expenses and income, nor does it contain a descriptive narrative explaining the receipts described or others. While the AAO recognizes that sending financial support to the applicant in Mexico has likely increased the applicant’s spouse’s expenses, the evidence is insufficient to establish significant or uncommon economic hardship.

Assertions have been made concerning hardship to the applicant’s children. As discussed above, hardship to the applicant’s children can be considered only insofar as it results in hardship to the applicant’s qualifying relative – here the applicant’s spouse. The applicant’s spouse states that the health of his children is at risk in Mexico. See *Hardship Letter*, undated. He states that his daughters became very sick when the applicant’s waiver was not granted, suffered vomiting and diarrhea, and it was discovered during a September 17, 2008 doctor’s visit that they had intestinal parasites. *Id.* The applicant’s spouse states: “The doctor in Mexico has told my wife that Emely is under weight for her age.” *Id.* The record contains no reviewable documentary evidence in this regard. The applicant’s spouse states that Emely was diagnosed previously in the U.S. with anemia and that his daughters are currently “under a strict diet with plenty of iron.” *Id.* No evidence of an anemia diagnosis has been submitted, and whether the health of the applicant’s children has improved since 2008 is not addressed. The applicant’s spouse states that his daughters “have mosquito bites all over their legs and arms.” *Id.* No documentary evidence has been submitted in this regard. *Id.* He states that his wife and daughters are living in his mother-in-law’s abandoned home without hot water or furniture, and they either have to take public transportation or walk 30 minutes to the local commercial area. *Id.* The applicant’s spouse describes these living conditions as “frightening” and states that he is also fearful of the “dangers” to which his wife and daughters are being exposed. *Id.* The AAO has reviewed the printout of the U.S. State Department’s *Mexico Country Specific Information*, dated August 6, 2008 submitted by the applicant. While no portions have been highlighted, the AAO acknowledges that “violence by criminal elements affects many parts of the country” and “crime in Mexico continues at high levels.” *Id.* While the AAO recognizes that crime is a problem in Mexico, the evidence does not show that the applicant’s children have been or would be particularly susceptible to criminal acts such that it would cause extreme hardship to the applicant’s spouse. The AAO also recognizes that: “Adequate medical care can be found in major cities,” and while “Excellent health facilities

are available in Mexico City,” “Care in more remote areas is limited.” *Id.* The evidence does not establish that the applicant’s children have or would be unable to secure medical attention or health care when needed such that it would cause extreme hardship to the applicant’s spouse. While the AAO recognizes that the applicant’s spouse has faced difficulties as a result of his decision to leave his young daughters in Mexico with the applicant, the applicant has failed to establish that such difficulties are uncommon or extreme such that they will cause extreme hardship to the applicant’s spouse.

The AAO acknowledges that separation from the applicant may 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.

While the applicant’s spouse does not address the possibility of relocating to Mexico, counsel asserts “extreme hardship stemming from his separation from his mother, father-in-law and mother-in-law and close family in the U.S.” See *Counsel’s Brief*, undated. Counsel asserts that the applicant’s spouse “has the responsibility of helping support” his in-laws and has been “helping in supplementing their household bills and medication.” *Id.* Counsel asserts that conditions in Mexico are “inadequate” for the applicant’s spouse’s “parent’s-in-law who require constant medical attention due to their diabetic condition.” *Id.* As noted previously, the record contains no documentary evidence concerning the health of the applicant’s parents or any ongoing financial contribution provided to them by the applicant’s spouse. Counsel asserts that the applicant’s spouse will not be able to maintain a steady job in Mexico since she has not been there since 1998. See *Counsel’s Earlier Brief*, undated. The record contains no documentary evidence supporting this assertion. The AAO recognizes the inherent difficulty in choosing between separating from a spouse or other family members in the U.S. This difficulty, however, is one typically associated with the inadmissibility of a loved one.

The AAO has considered cumulatively all assertions of relocation-related hardship to the applicant’s spouse including adjustment to a country he has not resided in for some time; separation from family, friends, and community in the United States; loss of current employment; and health and safety concerns. Considered in the aggregate, the AAO finds the evidence insufficient to demonstrate that the applicant’s U.S. citizen spouse would suffer extreme hardship if he were to relocate to Mexico to be with the applicant.

The applicant has, therefore, failed to demonstrate the challenges her 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.