

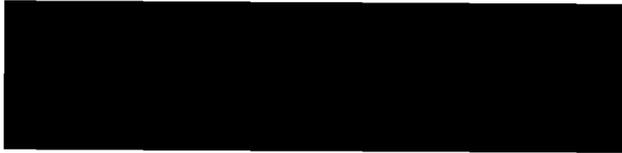
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U.S. Department of Homeland Security
U. S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services

PUBLIC COPY



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Date: **JAN 09 2012**

Office: CIUDAD JUAREZ

FILE: 

IN RE: Applicant: 

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

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,

for
Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Field Office Director, Ciudad Juarez, Mexico. The matter 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 again seeking admission within ten years of her last departure from the United States. The applicant is the spouse of a United States citizen. She seeks a waiver of inadmissibility in order to reside in the United States.

In a decision dated May 20, 2009, the Field Office Director found that the applicant failed to establish that her qualifying relative would experience extreme hardship as a consequence of her inadmissibility. The application was denied accordingly. *See Decision of the Field Office Director* dated May 20, 2009.

On appeal, the applicant's attorney contends that the qualifying spouse will suffer extreme hardship if the applicant is not granted a waiver. The applicant's attorney asserts that the qualifying spouse is suffering emotional, psychological, medical and financial hardships due to his separation from the applicant. The applicant's attorney also indicates he has family and community ties to the United States. Further, the applicant's attorney asserts that the qualifying spouse would suffer financial hardships upon relocation to Mexico.

The record contains an Application for Waiver of Grounds of Inadmissibility (Form I-601), the Notice of Appeal (Form I-290B), briefs from the applicant's attorney, affidavits from the applicant and qualifying spouse, an affidavit from the qualifying spouse's brother, letters from a therapist, a letter from the applicant and qualifying spouse's church, a document indicating that the applicant has no criminal history where she lives in Mexico, letters from friends, an affidavit and school records regarding the applicant and qualifying spouse's child, medical documentation for the qualifying spouse and child, documentation regarding the cost of child care in North Carolina, a copy of the qualifying spouse's naturalization certificate, country condition materials, a birth certificate for the qualifying spouse, an approved Petition for Alien Relative (Form I-130) and documentation submitted in conjunction with the Application to Adjust Status (Form I-485).

Section 212(a)(9)(B) of the Act provides, 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.

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. The applicant's husband 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).

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 applicant’s qualifying relative in this case is her husband, who is a United States citizen. The record indicates that the applicant entered the United States in April of 2001 without inspection and remained until January of 2008, when she voluntarily departed. The applicant accrued unlawful presence from April 2001 until January 2008 when she voluntarily departed, a period in excess of one year. In applying for an immigrant visa, the applicant is seeking admission within ten years of her departure from the United States. The applicant has not disputed her inadmissibility. Therefore, the applicant is inadmissible to the United States under section 212(a)(9)(B)(i)(II) of the Act for having been unlawfully present in the United States for a period of more than one year.

The record contains Form I-601, Form I-290B, briefs from the applicant’s attorney, affidavits from the applicant and qualifying spouse, an affidavit from the qualifying spouse’s brother, letters from a therapist, a letter from the applicant and qualifying spouse’s church, letters from friends, an affidavit and school records regarding the applicant and qualifying spouse’s child, medical documentation for the qualifying spouse and child, documentation regarding the cost of child care in North Carolina, country condition materials and documentation submitted in conjunction with Form I-485. The entire record was reviewed and considered in rendering a decision on the appeal.

As previously stated, the applicant’s attorney asserts that the qualifying spouse is suffering emotional, psychological, medical and financial hardships due to his separation from the applicant. The applicant’s attorney also indicates he has family and community ties to the United States.

Further, the applicant's attorney asserts that the qualifying spouse would suffer financial hardships upon relocation to Mexico.

The AAO finds that the applicant has failed to establish that her qualifying spouse will suffer extreme hardship as a consequence of being separated from her. The applicant's spouse indicates that he is experiencing emotional and psychological hardships as a result of the applicant's inadmissibility. The statements made by the qualifying spouse and his brother indicate that the qualifying spouse is suffering from anxiety, depression and insomnia. The record also contains two letters from a therapist that indicate that the qualifying spouse is experiencing psychological difficulties due to his separation from the applicant, but the letters deal primarily with their child's potential issues with separation. Further, the record fails to provide detail explaining how the qualifying spouse's emotional and psychological hardships are outside the ordinary consequences of removal. The applicant's attorney also asserts that the qualifying spouse is suffering from anxiety because of his daughter's medical struggles with obesity. The record contains medical documentation confirming that the qualifying spouse's daughter is obese. However, there was no evidence provided to demonstrate that the qualifying spouse is experiencing anxiety as a result of his daughter's medical issues. The applicant also provided an affidavit in which she contends that her daughter's diet is better in the United States due to the availability of fruits and vegetables. However, from the country condition materials on the record it is unclear why the daughter's diet would suffer in Mexico for lack of healthy foods. Similarly, the qualifying spouse in his affidavit indicates that he also has medical issues, including an early onset of diabetes. The record contains medical records analyzing his blood. However, no explanation by a doctor or medical professional was submitted to confirm that such records indicate that he has diabetes or that his diabetes would require the assistance of his wife.

With regard to the qualifying spouse's financial hardships, the applicant's attorney also contends that the qualifying spouse cannot afford to visit Mexico due to the expense of travel, and that the cost of telephone calls is also expensive. However, there was no evidence provided to support such assertions. The applicant's attorney also indicates that the cost of child care, provided formerly by the applicant, is very expensive where they live in North Carolina. This assertion was supported with evidence detailing the cost of childcare where they lived in North Carolina. Further, the qualifying spouse's affidavit indicates that he is suffering financially in the United States because he lost his job and was removed from his apartment. However, there is no documentary evidence to confirm the qualifying spouse's income or expenses, other than the potential cost of childcare, to demonstrate that he is experiencing financial hardships. Although the qualifying spouse and his brother state that the qualifying spouse lost his job and that he moved in with his brother, there is no additional documentary evidence, such as tax returns, bank statements or proof of expenses, to support these assertions. Assertions are evidence and will be considered. However, 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)).

The applicant also failed to establish that the qualifying spouse would experience hardship upon relocation to Mexico. The applicant's spouse indicates that he has family and community ties to the

United States. The applicant's attorney indicates that the qualifying spouse's brothers, who are lawful permanent residents, live in the United States. However, the record only contains a letter from one of his brothers, which indicates that he is a lawful permanent resident. There is no evidence confirming that the qualifying spouse's other brothers live or have status in the United States. Moreover, the applicant's attorney indicates that the applicant's spouse no longer has family ties to Mexico. However, there was no documentation to support such assertions. As previously stated, 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, supra*, at 165. The applicant's attorney also indicates that the qualifying spouse would suffer financial hardships upon relocation to Mexico. The applicant's attorney contends that he and his family would suffer a reduced standard of living because he is a skilled manufacturing laborer and Michoacan, the area in Mexico where they are from, does not have any manufacturing jobs. The record contains country condition materials indicating that Michoacan's economy centers around the agriculture, mining and tourism industries. The record also contains a letter from the qualifying spouse that indicates that he "would not be able to find steady reliable work in Mexico," yet there is no documentary evidence to support the assertion that the qualifying spouse is a skilled manufacturing laborer. Further, the affidavits from the qualifying spouse and his brother provided on appeal indicate that the qualifying spouse is no longer employed in the United States and has not been able to find a job in the United States. The affidavits also indicate that the qualifying spouse lost his apartment and is living with his brother. As such, there was no explanation or documentation provided to demonstrate that the qualifying spouse will face a reduced standard of living in Mexico or that he would be unable to find employment there.

In this case, the record does not contain sufficient evidence to show that the hardships faced by the qualifying relative, considered in the aggregate, rise beyond the common results of removal or inadmissibility to the level of extreme hardship. The AAO therefore finds that the applicant has failed to establish extreme hardship to her qualifying spouse as required under section 212(a)(9)(B) of the Act. 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) of the Act, 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.