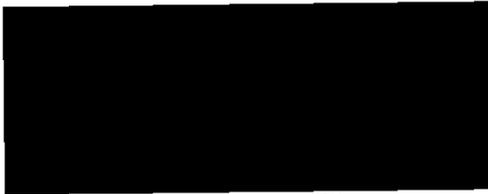


identifying data deleted to  
prevent clearly unwarranted  
invasion of personal privacy  
**PUBLIC COPY**

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**



H6

DATE: JUL 31 2012

OFFICE: MEXICO CITY, MEXICO

File: 

IN RE:

Applicant: 

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

ON BEHALF OF APPLICANT:

SELF-REPRESENTED

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 with the field office or service center that originally decided your case by filing a 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,

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 under 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 departure from the United States. The applicant seeks a waiver of inadmissibility in order to reside in the United States with his U.S. citizen spouse and stepson.

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 August 3, 2010.

On appeal the applicant's spouse states that if the waiver is not granted, she will suffer extreme hardship of an emotional and economic nature. *See Attachment to Form I-290B, Notice of Appeal or Motion*, received August 31, 2010.

The record contains, but is not limited to: Form I-290B; various immigration applications and petitions; two hardship letters; two paycheck stubs; a letter from the applicant's spouse's youngest son and his 2009-2010 high school transcript; a joint settlement stipulation; medical-related records; supporting letters from a family, friends and a pastor; and family photos. The entire record was reviewed and considered in rendering this decision on the appeal.

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

(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.

The record reflects that the applicant entered the United States without inspection in or about July 2003 and remained until November 2009, when he departed voluntarily to Mexico. The applicant accrued unlawful presence in the United States for a period in excess of one year. As the applicant is seeking admission within 10 years of his departure, he was found to be inadmissible pursuant to section 212(a)(9)(B)(i)(II) of the Act, 8 U.S.C. § 1182(a)(9)(B)(i)(II). The record supports this finding, the applicant does not contest inadmissibility, and the AAO concurs that the applicant is inadmissible under section 212(a)(9)(B)(i)(II) of the Act.

A waiver of inadmissibility under section 212(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. Hardship to the applicant or his children can be considered only insofar as it results in hardship to a qualifying relative. In the present case, the applicant's spouse is the only 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 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 40-year-old native of Mexico and citizen of the United States who has been married to the applicant since August 2006. She contends that separation from her husband has affected her so much that she lost her job of more than 14 years with [REDACTED], which paid \$18 per hour. The applicant's spouse does not explain how the job loss is related to separation from the applicant. A May 23, 2008 paystub confirms employment with [REDACTED] at that time, but no documentary evidence has been submitted that demonstrates she is no longer so employed or that addresses the circumstances under which she lost her job. The applicant's spouse states that she now works 40 hours per week at Bodeans where her income has decreased to \$12.50 per hour. A corroborating August 20, 2010 paystub was submitted. She explains that she pays \$680 per month for her home, \$180 for electricity, \$80 for water, \$140 for insurance, about \$600 for groceries and all of her son's expenses as she has received no child support from his father in more than a year. The record contains no employment, wage, tax or financial information or documentation for the applicant demonstrating his income or economic contribution to the household prior to departing to Mexico in November 2009. While the AAO recognizes that the applicant's spouse has experienced some reduction in household income as a result of the applicant's absence, the evidence in the record is insufficient to demonstrate significant economic difficulties beyond those ordinarily associated with a spouse's removal or inadmissibility.

The applicant's spouse indicates that her three children from prior relationships (two adults and a 17-year-old son), love the applicant and respect him as a father, have been greatly affected by not having him in the United States to support them, and do not want to see the separation continue. The effects on her elder children are not described and no documentary evidence has been submitted. The applicant's spouse's 17-year-old son, [REDACTED] writes that he feels very sad and worried because he sees his mother struggling and depressed all the time without the applicant, whom he describes as a very supportive and lovable stepfather who has been like a father to him. The applicant's spouse states that watching the applicant "go through all this in Mexico by himself" affects her emotionally so much that she never has peace within herself. She maintains that she has not "been this stressed out since eight years ago when I was on treatment for being too stressed out." In a December 13, 2002 letter, [REDACTED] writes that the applicant's

spouse was having some difficulties with anxiety, panic attacks, difficulty sleeping and stress at work. [REDACTED] prescribed Paxil for anxiety/depression with instructions to return the following week. In a December 19, 2002 letter, [REDACTED] states that the applicant's spouse was feeling much calmer, was concentrating a little more easily, but still had difficulty sleeping and complained of recurrent headaches. [REDACTED] recommended that the applicant's spouse continue taking Paxil and return in one month. The record contains no evidence or indication of further treatment or follow-up. The applicant's spouse maintains that she feels very depressed because her husband cannot be with her and she fears she will fall back into stress and require treatment again. She also expresses that she is worried for her husband because Mexico is a country with a lot of violence. The record contains no documentary evidence addressing country conditions in Mexico. While the AAO recognizes that the applicant's spouse has suffered emotional challenges related to separation from her husband during his temporary period of inadmissibility, the evidence in the record is insufficient to demonstrate that these challenges go beyond those ordinarily associated with a spouse's inadmissibility.

The AAO acknowledges that separation from the applicant has caused and may continue to 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.

Addressing relocation, the applicant's spouse states that she has lived in the United States since she was 10-years-old, considers this her country, and is very close to her three children, three grandchildren and five siblings, all of whom reside lawfully in the United States and from whom she does not wish to be separated. She explains that she owns a house in the United States, is gainfully employed, and supporting letters from others show that she is involved in her church and community. The applicant's spouse contends that there are no job opportunities in Mexico which she describes as a very dangerous and violent country in which she does not wish her 17-year-old son, [REDACTED] to live. As noted, the record contains no documentary evidence addressing country conditions of any kind in Mexico. The applicant's spouse asserts that she is legally restricted by her divorce agreement from bringing [REDACTED] to Mexico in the event she relocates. The AAO has reviewed the joint settlement stipulation, finds no such restriction, and notes that [REDACTED] will celebrate his 18<sup>th</sup> birthday on November 22, 2012. The applicant's spouse does not address the possibility of [REDACTED] residing in the United States with his father or another family member.

The AAO has considered cumulatively all assertions of relocation-related hardship to the applicant's spouse including her adjustment to a country in which she has not lived for many years; her lengthy residence in the United States; separation from close family and community ties during the applicant's remaining period of inadmissibility; and her emotional, familial, economic, employment and safety concerns regarding Mexico. The AAO finds that, considered in the aggregate, the evidence is sufficient to demonstrate that the applicant's U.S. citizen spouse would suffer extreme hardship were she to relocate to Mexico to be with the applicant.

Although the applicant has demonstrated that his qualifying relative spouse would experience extreme hardship if she were to relocate to Mexico to join him, we can find extreme hardship warranting a waiver of inadmissibility only where an applicant has shown extreme hardship to a

qualifying relative in the scenario of relocation *and* the scenario of separation. The AAO has long interpreted the waiver provisions of the Act to require a showing of extreme hardship in both possible scenarios, as 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 in 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 relocation, we cannot find that refusal of admission would result in extreme hardship to the qualifying relative in this case.

In these proceedings, the burden of establishing eligibility for the waiver rests entirely with the applicant. *See* section 291 of the Act, 8 U.S.C. § 1361. Here, the applicant has not met that burden. 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. Accordingly, the appeal will be dismissed.

**ORDER:** The appeal is dismissed.