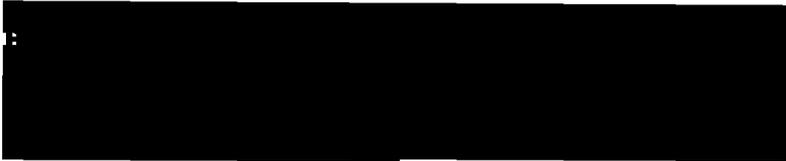


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U.S. Department of Homeland Security  
U.S. Citizenship and Immigration Services  
Administrative Appeals Office (AAO)  
20 Massachusetts Ave., N.W., MS 2090  
Washington, DC 20529-2090  
**U.S. Citizenship  
and Immigration  
Services**



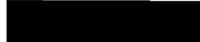
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H6

Date: **MAR 19 2012**

Office: CIUDAD JUAREZ

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:

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 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, 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, 8 U.S.C. § 1182(a)(9)(B)(i)(II), for having been unlawfully present in the United States for more than one year. The applicant is married to a U.S. citizen and seeks a waiver of inadmissibility pursuant to section 212(a)(9)(B)(v) of the Act, 8 U.S.C. § 1182(a)(9)(B)(v), in order to reside with her husband and children in the United States.

The field office director found that the applicant failed to establish extreme hardship to a qualifying relative and found that the application should be denied as a matter of discretion. The field office director denied the application accordingly. *Decision of the Field Office Director*, dated August 21, 2009.

On appeal, the applicant's husband states that being away from his wife is causing him extreme economic and psychological hardship, and that their two daughters need their mother.

The record contains, *inter alia*: a copy of the marriage certificate of the applicant and her husband, [REDACTED] indicating they were married on March 22, 2006; copies of the birth certificates of the couple's two U.S. citizen children; a statement from [REDACTED] a report from a counselor; letters of support; pictures of the applicant and her family; and an approved Petition for Alien Relative (Form I-130). 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.

....

(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 she entered the United States in August 2004 without inspection and remained until July 2008. The applicant accrued unlawful presence of four years. She now seeks admission within ten years of her 2008 departure. Accordingly, she 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 her 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, [REDACTED] states that since his wife’s departure from the United States, he has been taking care of his two daughters with his family’s help. According to [REDACTED] he has seen a psychiatrist because he is sick, nervous, afraid, and depressed. He states that it is vital to his daughters’ development to be with their mother and that they will be psychologically affected without her. In addition, [REDACTED] states that he has to cover expenses both in the United States and for his wife in Mexico. He states that his wife is living in very poor physical and economic conditions in Mexico.<sup>1</sup>

After a careful review of the record, there is insufficient evidence to show that [REDACTED] has suffered or will suffer extreme hardship if his wife’s waiver application were denied. Regarding the emotional hardship claim, the record contains a letter from a counselor that describes [REDACTED] high levels of stress, severe depression, anxiety, and the physical symptoms he is experiencing as a result, such as headaches and difficulty sleeping. The letter also describes the difficulties the couple’s daughters are experiencing as a result of being separated from their mother. Although the AAO is sympathetic to the family’s circumstances, and recognizes that the input of any medical professional is respected and valuable, the letter does not show that the applicant’s situation is unique or atypical compared to other individuals in similar circumstances. *See Perez v. INS*, 96 F.3d 390 (9<sup>th</sup> Cir. 1996) (holding that the common results of deportation are insufficient to prove extreme hardship

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<sup>1</sup> Although the record contains other statements from [REDACTED] the documents 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 statements cannot be considered.

and defining extreme hardship as hardship that was unusual or beyond that which would normally be expected). Similarly, the letters of support in the record that describe [REDACTED] suffering do not show that his hardship is unusual or beyond that which would normally be expected after a spouse's separation. Regarding the financial hardship claim, the record does not contain any supporting documentation to corroborate this claim. For example, there is no evidence addressing the applicant's wages and although a copy of a water bill is contained in the record, there is insufficient documentation addressing [REDACTED] regular, monthly expenses, such as rent or mortgage. Although the AAO does not doubt that [REDACTED] will suffer some financial hardship, without additional information addressing his wages and monthly expenses, there is insufficient documentation in the record to evaluate the extent of his hardship. The AAO notes that the record shows that [REDACTED] uncle and other family members help take care of the couple's daughters. Therefore, it is unclear whether [REDACTED] has any child care expenses and the record indicates he has family support. Considering all of these factors cumulatively, there is insufficient evidence showing that the hardship [REDACTED] has experienced or will experience amounts to extreme hardship.

Furthermore, the record does not show that [REDACTED] would suffer extreme hardship if he relocated to Mexico to be with his wife. The record shows that [REDACTED] is currently twenty-six years old, works in construction, and lived in Mexico from the age of four until he was sixteen years old. He does not contend that he does not speak Spanish and he does not claim that he, or either of his children, suffer from any medical or mental health condition that would make their adjustment to living in Mexico any more difficult than would normally be expected. There is no evidence in the record suggesting that [REDACTED] could not find employment in Mexico and according to the counselor, the applicant is working for a clothing company in Mexico. To the extent the counselor contends the family would have to live in a "shed" that is not secure and in an unsafe environment, there is no documentation in the record to support this contention and [REDACTED] himself does not address where he would live if he relocated to Mexico. In sum, even considering all of the evidence cumulatively, the record does not show that [REDACTED] hardship would be extreme, or that his 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 husband 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 she 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.