

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

**PUBLIC COPY**

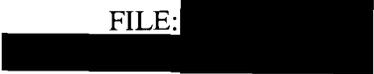


**U.S. Department of Homeland Security**  
U.S. Citizenship and Immigration Services  
*Office of Administrative Appeals*  
20 Massachusetts Ave. NW MS 2090  
Washington, DC 20529-2090  
**U.S. Citizenship  
and Immigration  
Services**



H6

DATE: **MAR 29 2012** OFFICE: CIUDAD JUAREZ, MEXICO

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:

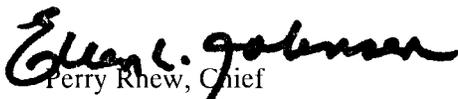


INSTRUCTIONS:

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,

  
Perry Rhew, 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 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 there was insufficient evidence of extreme hardship to a qualifying relative and denied the application accordingly. *See Decision of Field Office Director* dated September 30, 2009.

On appeal, counsel for the applicant submits a brief in support as well as other documents. In the brief, counsel contends the applicant's spouse suffers from extreme emotional, physical, educational, and economic hardship without the applicant. Counsel adds that this hardship would exist given the current separation, and in the event of relocation to Mexico.

The record includes, but is not limited to, evidence of birth, marriage, death, residence, and citizenship, statements from the applicant and her spouse, pictures and photographs, medical records, a mental health assessment, educational documents, letters from physicians, financial documents, articles on family relationships and country conditions in Mexico, and other applications and petitions filed on behalf of the applicant. The entire record was reviewed and considered in rendering a decision on the appeal.

Section 212(a)(9) 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.

....

(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.

In an immigration interview, the applicant admitted under oath that she entered the United States without inspection in April 2000, remaining until she returned to Mexico in August 2008. The applicant is therefore inadmissible under section 212(a)(9)(B)(i)(II) of the Act because she has accrued more than one year of unlawful presence. The applicant's qualifying relative for a waiver of this inadmissibility is her U.S. Citizen spouse.

The record contains references to hardship the applicant's children would experience if the waiver application were denied. It is noted that Congress did not include hardship to an alien's children as a factor to be considered in assessing extreme hardship. In the present case, the applicant's spouse is the only qualifying relative for the waiver under section 212(a)(9)(B)(v) of the Act, and hardship to the applicant's children will not be separately considered, except as it may affect the applicant's spouse.

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.

Counsel contends the applicant and her spouse have a strong emotional bond, and that the spouse has experienced extreme emotional, physical, and financial hardship given the current separation from the applicant. The applicant’s spouse explains that he has sought the help of a mental health professional, for emotional and psychological difficulties due to the applicant’s absence, such as sleeping problems, eating issues, and feelings of isolation. A licensed clinical psychologist opines that the applicant’s spouse has a diagnosis of general anxiety disorder and dysthymic disorder. An internal medicine physician indicates that the spouse has been diagnosed for depressive symptoms secondary to adjustment disorder based on new stresses.

The applicant’s spouse states that although his employer has suggested he go to college, and would reimburse the spouse for some of the expenses, he cannot afford the additional expense because he has supported two households for the last three years. He adds that the applicant and their two daughters do not have health insurance in Mexico, and consequently their medical expenses add to his financial difficulties. Counsel states that not only is the spouse supporting himself, paying the bills, and helping his father financially, he has also sent money to the applicant every month for three years for her rent, utilities, groceries, and medical expenses. Counsel contends that the spouse’s income is being stretched beyond its capacity. Evidence of the spouse’s income and some household expenses are submitted in support.

With respect to the scenario of relocation, counsel asserts that the applicant's spouse would still suffer extreme emotional, physical, educational, and economic hardship. Counsel explains that the spouse would lose his job and benefits, and he would have to forgo education paid for by his employer's tuition reimbursement program. The applicant's spouse indicates he would be unable to assist his recently widowed father. Counsel adds that his psychological and medical health would be jeopardized in Mexico because he would not have access to his doctor, psychologist, or medication, and he would have no health insurance with which to defray costs of medical care. Moreover, counsel indicates that the spouse would lose his job as a welder, and no means to support his family in Mexico. The applicant's spouse explains he also fears living in [REDACTED], where the applicant and his children reside, because he witnessed a violent shooting during a visit there.

Counsel's contention that the spouse's expenses exceed his income is not supported by evidence of record. It is noted that the applicant's spouse's income as stated on the letter from his employer is above 125% of the minimum income requirement listed on the USCIS poverty guidelines. Additionally, despite submission of income evidence and documentation of some household expenses, the record does not demonstrate that household expenses exceed income. Furthermore, evidence does not show that the applicant's spouse would have to forgo his educational goals without the applicant present, especially in light of his employer's offer to reimburse some of those education related expenses. Upon review of the evidence of record, the AAO cannot determine the nature and extent of financial hardship, if any, the applicant's spouse will face.

The record reflects that the applicant's spouse experiences some psychological hardship without the applicant present. While the AAO acknowledges that the applicant's spouse would face difficulties as a result of the applicant's inadmissibility, we do not find evidence of record to demonstrate that his hardship would rise above the distress normally created when families are separated as a result of inadmissibility or removal. In that the record fails to provide sufficient evidence to establish the financial, emotional, or other impacts of separation on the applicant's spouse are cumulatively above and beyond the hardships commonly experienced, the AAO cannot conclude that he would suffer extreme hardship if the waiver application is denied and the applicant remains in Mexico without her spouse.

It is noted that the applicant's spouse is a native of Mexico, and that he came to the United States when he was 13 years old. However, evidence of record shows that the spouse's mother recently passed away, and that in addition to dealing with his own grief without the applicant present, he has also assisted his father. Furthermore, although evidence of record does not support a conclusion that the applicant's spouse would be unable to find employment as a welder and financially support the household in Mexico upon relocation, the spouse would have to leave his current job, medical benefits, and possibility of tuition reimbursement if he moved to Mexico. The spouse's fear of country conditions in [REDACTED] Mexico given his own experiences is supported by a travel warning issued by the U.S. Department of State, which indicates:

You should defer non-essential travel to the state of [REDACTED], except the city of [REDACTED] where you should exercise caution. The entire stretch of highway [REDACTED] and portions of the state east of highway [REDACTED] are particularly dangerous. In February 2011, one U.S. government employee was killed and another wounded when they were attacked in their U.S. government vehicle on [REDACTED]. [REDACTED] violence and highway lawlessness are a continuing security concern...

*Travel Warning: Mexico, U.S. Department of State, February 8, 2012.* In light of the spouse's fear for his safety, financial hardships, the loss of his mother, and the length of his time spent in the United States, the AAO finds that the applicant has shown her spouse would experience hardships which are in the aggregate and beyond the hardships commonly experienced by relatives of inadmissible aliens upon relocation to Mexico. Therefore, the AAO concludes that he would suffer extreme hardship if the waiver application is denied and the applicant's spouse joins the applicant in [REDACTED] Mexico.

We can find extreme hardship warranting a waiver of inadmissibility only where an applicant has demonstrated extreme hardship to a qualifying relative in the scenario of separation *and* the scenario of relocation. 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 separation, we cannot find that refusal of admission would result in extreme hardship to the qualifying relative in this case.

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 U.S. Citizen spouse as required under section 212(a)(9)(B)(v) 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 a 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.