

**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  
Administrative Appeals Office  
20 Massachusetts Avenue, NW, MS 2090  
Washington, DC 20529-2090  
**U.S. Citizenship  
and Immigration  
Services**

H6

[REDACTED]

DATE: MAR 30 2012

Office: PHOENIX, AZ

FILE: [REDACTED]

IN RE: [REDACTED]

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

ON BEHALF OF APPLICANT:

[REDACTED]

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,

A handwritten signature in black ink that reads "Perry Rhew".

Perry Rhew  
Chief, Administrative Appeals Office

**DISCUSSION:** The Form I-601, Application for Waiver of Grounds of Inadmissibility was denied by the District Director, Phoenix, Arizona, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The record indicates that the applicant is a native and citizen of Mexico who entered the United States with a Border Crossing Card (BCC) with authorization to remain in the U.S. until April 2005. The applicant resided unlawfully in the U.S. until February 2007, when she departed the country. The applicant reentered the U.S. with her BCC in March 2007. She has remained in the country since that time. The applicant 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 departure from the U.S. The applicant is married to a U.S. citizen, and she is the beneficiary of an approved Form I-130, Petition for Alien Relative (Form I-130). She 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 a decision dated January 6, 2009, the director concluded the applicant had failed to establish her husband would experience extreme hardship if she were denied admission into the United States. The waiver application was denied accordingly.

Former counsel for the applicant asserts on appeal that the applicant's husband will experience extreme emotional and financial hardship if the applicant is denied admission into the United States. In support of these assertions, former counsel submits an affidavit written by the applicant's husband, a psychological evaluation, and an AAO decision finding, in pertinent part, that separation of family must be given "appropriate weight under Ninth Circuit law" in determining hardship to a qualifying relative.

The entire record was reviewed and considered in rendering a decision on the appeal

Section 212(a)(9)(B) of the Act provides in pertinent part:

(i) [A]ny 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.

(ii) Construction of unlawful presence.- For purposes of this paragraph, an alien is deemed to be unlawfully present in the United States if the alien is present in the United States after the expiration of the period of stay authorized by the Attorney General or is present in the United States without being admitted or

paroled.

The record reflects the applicant was unlawfully present in the U.S. for over a year between April 2005 and February 2007, at which time she departed the country. Inadmissibility under section 212(a)(9)(B)(i)(II) of the Act, which is triggered upon departure, remains in force until the alien has been absent from the United States for ten years. In the present matter, the applicant has remained outside of the U.S for less than ten years. She is therefore inadmissible under section 212(a)(9)(B)(i)(II) of the Act. The applicant's inadmissibility under section 212(a)(9)(B)(i)(II) of the Act is uncontested.

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

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 applicant is married to a U.S. citizen. The applicant's qualifying relative is her spouse.

Section 212(a)(9)(B)(v) of the Act provides that a waiver of the bar to admission is dependent first upon a showing that the bar imposes an extreme hardship on a qualifying family member. Once extreme hardship is established, it is but one favorable factor to be considered in the determination of whether the Secretary should exercise discretion. *Matter of Mendez*, 21 I&N Dec. 296 (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*, 22 I&N Dec. 560, 565 (BIA 1999), the BIA provided a list of factors it deemed relevant in determining whether an alien has established extreme hardship to a qualifying relative. 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 BIA 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 BIA 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).

Though hardships may not be extreme when considered abstractly or individually, the BIA 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 husband states in his affidavit that he loves the applicant and her two children, he does not want to lose his family, his work requires him to travel and work long hours, and it would be difficult for him to visit the applicant in Mexico without losing his job. He states that he also hopes to go to college one day with the applicant's financial support, and that due to his work schedule it would be difficult for him to raise the applicant's children if they remained in the U.S. with him. The applicant's husband states that it also would be financially difficult to support the applicant and the children, whether he remains in the United States or joins the family in Mexico. He states that he was born and raised in the U.S. and that he does not believe he would be able to

find work in Mexico. He also worries about corruption, violence, and access to healthcare in Mexico.

A psychological evaluation contained in the record indicates the applicant's husband appears to have "strong affection needs and concerns for deep relationships", and that there is a high probability he will have serious emotional adjustment issues if he lives separately from his wife and family.

In addition to the evidence submitted in support of the applicant's Form I-601 waiver application, the record contains a copy of a "Petition for Dissolution of Marriage" between the applicant and her husband, filed September 21, 2009, nine months after this appeal was received. Superior Court of Maricopa County public records reflect that the divorce has not been finalized, but that an application for a default judgment has been filed and is pending.

Upon review, the AAO finds that the evidence in the record, when considered in the aggregate, fails to establish the applicant's husband would experience hardship that rises beyond the common results of removal or inadmissibility if the applicant were denied admission into the United States and he remained in the United States.

Although the input of a mental health professional is respected and valuable, it is noted that the psychological report submitted in this case is based on one initial interview with the applicant's husband and fails to reflect an ongoing relationship between a mental health professional and the qualifying spouse. There is no indication that the evaluator independently verified the information provided to him, or that independent diagnostic testing was conducted before reaching his conclusions. Furthermore, the report fails to provide detail or supporting evidence explaining how the applicant's husband's emotional and psychological hardships are outside the ordinary consequences of removal or inadmissibility. The record contains no other evidence to corroborate the assertions made in the report. The record additionally contains no evidence to corroborate the U.S. employment and educational aspiration assertions made by the applicant's husband in his affidavit.

Although the applicant's assertions are relevant and have been taken into consideration, little weight can be afforded them in the absence of supporting evidence. *See Matter of Kwan*, 14 I&N Dec. 175 (BIA 1972) ("Information in an affidavit should not be disregarded simply because it appears to be hearsay; in administrative proceedings, that fact merely affects the weight to be afforded it."). Going on record without supporting documentary evidence 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 record also contains no evidence to corroborate the general assertions made by the applicant's husband regarding employment options or the safety conditions in Mexico. The evidence in the record, when considered in the aggregate, thus also fails to establish that the applicant's husband

would experience hardship that rises beyond the common results of removal or inadmissibility if the applicant were denied admission and he moved to Mexico.

Moreover, as stated above, after the present waiver appeal was filed, the applicant's husband filed for divorce against the applicant, and an application for a default dissolution judgment is presently pending. This information further diminishes the claim that the applicant's husband would suffer extreme hardship due to separation or relocation if the applicant's waiver application is denied.

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 an 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. *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.