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U.S. Department of Homeland Security  
U.S. Citizenship and Immigration Services  
Office of Administrative Appeals  
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Washington, DC 20529-2090



U.S. Citizenship  
and Immigration  
Services

**PUBLIC COPY**



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DATE: **MAY 24 2012** OFFICE: MEXICO CITY

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:

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 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 his last 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 child.

The Field Office Director concluded that the applicant failed to demonstrate extreme hardship to a qualifying relative and denied the application accordingly. *See Decision of Field Office Director* dated April 30, 2010.

On appeal, the applicant submits a brief in support as well as bank statements and evidence of his spouse's income. In the brief, the applicant contends his spouse has been affected physically and psychologically given the present separation, especially in light of her history of abusive relationships and depression. The applicant also asserts his spouse has suffered financially without him present. He adds that the applicant's spouse could not relocate to Mexico because of her family ties in the United States, inadequate medical care in Mexico, her Spanish language skills, and the country conditions.

The record includes, but is not limited to, the documents listed above, other financial documents, medical records, evidence of birth, marriage, residence, and citizenship, a statement from the applicant's spouse, letters from employers, educational records, photographs, 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.

(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.

....

(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.

The applicant admitted under oath that he entered the United States without inspection in February 1991, and returned to Mexico in April 2009. Inadmissibility is not contested on appeal. The applicant has accrued more than one year of unlawful presence, from April 1, 1997, the effective date of the unlawful presence provisions, until April 2009. He is therefore inadmissible under section 212(a)(9)(B)(i)(II) of the Act, and requires a waiver of inadmissibility pursuant to section 212(a)(9)(B)(v) of the Act. The applicant's qualifying relative for a waiver of this inadmissibility is his U.S. Citizen 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.

The applicant’s spouse asserts she experiences psychological difficulties without the applicant present. She explains that she suffered from verbal and psychological abuse as a child, and her relationship with the applicant has helped her emotionally because he offers constant love and support. The applicant contends his spouse has financial difficulties without his assistance, and adds that she has had to send money to him because he has been unable to find employment in Mexico. Bank statements, paystubs, and evidence of some household expenses are present in the record.

The applicant’s spouse indicates that living in Mexico is not an option for her and their child. The spouse explains that she was recently promoted, and she has insurance benefits through that job. She asserts that in addition to her job she has a mother, brothers, cousins, and friends in the United States. The applicant adds that his spouse’s father is critically ill, and the spouse would prefer to stay with her father during his last days. The spouse further states she would have difficulty adjusting to life in Mexico because she was born and raised in the United States, she does not read

or write Spanish, and she fears the violence and country conditions in Mexico. She further claims that she would have difficulty raising her child in a country with inadequate medical facilities.

Despite submission of evidence on income, rent, and some household expenses, the record does not support assertions of financial hardship. The record reflects that the applicant's spouse earns a bimonthly gross income of approximately [REDACTED] per year. Evidence of record does not demonstrate that the spouse's income routinely exceeds household expenses. The record also lacks evidence on expenses on trips to visit the applicant in Mexico and the spouse's financial support of the applicant. 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. *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)). Given the evidence of record, the AAO cannot conclude the applicant's spouse would experience financial hardship in the event of continued separation.

The applicant's contention that his spouse has experienced depression in the past because of emotionally abusive family relationships is contradicted by other evidence of record. The spouse states that she was verbally and psychologically abused by her father, but does not claim she experienced depression as a result. Furthermore, the spouse's March 13, 2009 medical record indicates that she has no history of depression. Given this inconsistent evidence, the AAO is unable to evaluate the nature and severity of any continued depression experienced by the applicant's spouse.

While the AAO acknowledges 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 her 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 she would suffer extreme hardship if the waiver application is denied and the applicant remains in Mexico without his spouse.

The applicant's contentions with respect to violence and drug-related crime are not supported by evidence of record. The applicant was born [REDACTED] and his Form G325A, Biographic Information, indicates his parents currently reside there. The record does not contain any evidence to show that conditions [REDACTED] are as stated by the applicant. In fact, the U.S. Department of State indicates that although some areas of Mexico are unsafe, there is no travel warning or advisory in effect for [REDACTED] *U.S. Department of State Travel Warning: Mexico*, February 8, 2012. The record also does not contain evidence to show the applicant's spouse and child would be unable to access needed medical care in that area. Moreover, there is

no evidence of record to support the applicant's assertions that his father in law is in critical health, is on dialysis, or that the applicant's spouse desires to remain with her father, especially in light of her history with her father. As explained above, little weight can be given to assertions without supporting evidence.

The record reflects that the applicant's spouse was born in the United States, has family ties in this country, and has a record of steady employment in the United States. However, the AAO does not find evidence of record to show that the spouse's hardship would rise above the difficulties normally experienced when families relocate as a result of inadmissibility or removal. In that the record lacks sufficient evidence to demonstrate the familial, emotional, or other effects of relocation on the applicant's spouse are in the aggregate above and beyond those commonly experienced, the AAO cannot conclude that she would experience extreme hardship if the waiver application is denied and the applicant's spouse resides in Mexico with the applicant.

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 his 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.