



U.S. Citizenship
and Immigration
Services



H6

DATE: NOV 13 2012 Office: CIUDAD JUAREZ, MEXICO

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:



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 in accordance with the instructions on 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,

Ron Rosenberg
Acting Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Field Office Director, Ciudad Juarez, Mexico, and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native and a 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 admission within 10 years of his last departure.¹ The applicant is the spouse of a U.S. citizen and the beneficiary of an approved *Petition for Alien Relative*. He seeks a waiver under section 212(a)(9)(B)(v) of the Act, 8 U.S.C. § 1182(a)(9)(B)(v), in order to reside in the United States with his spouse.

The director concluded that the applicant had failed to establish that the bar to his admission would impose extreme hardship on a qualifying relative and denied the Form I-601, *Application for Waiver of Grounds of Inadmissibility*, accordingly. See *Field Office Director's Decision*, dated September 23, 2010.

On appeal, counsel enumerates hardship factors for the applicant's spouse and states that factors presented "should be sufficient to establish extreme hardship." See *Form I-290B, Notice of Appeal or Motion*, dated October 19, 2010.

The evidence of record includes, but is not limited to: counsel's brief, a statement from the applicant's spouse, a psychological evaluation for the applicant's spouse, letters from friends, and financial evidence. The entire record was reviewed and considered in rendering a decision on the appeal.

Section 212(a)(9) states 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

¹ The director also found the applicant inadmissible under section 212(a)(9)(A) of the Act, for departing after the period indicated in the applicant's voluntary departure order, but he did not request Form I-212, *Application for Permission to Reapply for Admission after Deportation or Removal*, because it would serve no purpose given the denial of the applicant's waiver.

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 that the applicant entered the United States in September 1991 without inspection. On October 4, 2001, the applicant filed Form I-589, Application for Asylum and/or Withholding of Removal. On July 8, 2002, an immigration judge denied the applicant's asylum application and granted him voluntary departure on or before September 6, 2002. The applicant's appeal of the judge's decision was dismissed by the Board of Immigration Appeals (the Board) on November 14, 2003, granting him 30 days from the date of the decision to depart. However, the applicant failed to depart timely. On May 23, 2005, the applicant filed Form I-485, Application to Register Permanent Resident or Adjust Status, which was denied on October 31, 2005. The applicant departed the United States in January 2009. Based on the applicant's history, the AAO finds that the applicant accrued unlawful presence of more than one year, and because he is seeking admission within 10 years of his 2009 departure, he is inadmissible to the United States pursuant to section 212(a)(9)(B)(i)(II) of the Act. Counsel does not contest the applicant's inadmissibility.

Section 212(a)(9)(B)(v) of the Act provides for a waiver of section 212(a)(9)(B)(i) inadmissibility as follows:

The Attorney General [now Secretary of Homeland Security] 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 . . . 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.

A waiver of inadmissibility under section 212(a)(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 other family members can be considered only insofar as it results in hardship to a 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-Moralez*, 21 I&N Dec. 296, 301 (BIA 1996). In the instant case, the applicant's U.S. citizen spouse is the qualifying relative.

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, 631-32 (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, "[r]elevant factors, though not extreme in themselves, must be considered in the aggregate in determining whether extreme hardship exists." *Matter of O-I-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., In re 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 AAO now turns to the question of whether the applicant in the present case has established that a qualifying relative would experience extreme hardship as a result of his inadmissibility.

Counsel and the applicant's spouse state that the applicant's spouse is diagnosed with anxiety disorder and such condition is "shunned and culturally stigmatized in Mexico." They also assert that the applicant's spouse would have problems in Mexico because she is from [REDACTED] the applicant's wife is "scared to death" that she would not be treated well in Mexico because she is [REDACTED]. Counsel states that the applicant's spouse "has no work, no place to live, no ties, no family" in Mexico. Counsel further states that the applicant would have difficulty finding employment in Mexico, because he has been absent from the workforce there for many years. Additionally, his spouse is not licensed there and would lose her job in the United States. Counsel states that both the applicant and his spouse would be "extremely depressed and lonely" if they separate.

The applicant's spouse states that she is a licensed daycare provider, earning approximately \$21,000 annually. She states that the thought of the applicant's absence exacerbates the stress caused by the responsibility for caring for young children. The applicant's spouse has never lived in Mexico, has no family ties there, and she states that it would "be stressful to uproot" herself from their home in the United States. She believes that she would not get the needed treatment for her anxiety in Mexico. She feels herself "slipping out of control" and becoming depressed again, as she was during her first marriage.

In her 2007 and 2008 psychological evaluations, [REDACTED] diagnoses the applicant's spouse with anxiety disorder based on her symptoms of sleep disturbance, concentration difficulties, and restlessness. According to [REDACTED] the thought of losing the applicant terrifies his spouse. [REDACTED] states that the applicant's spouse does not want to take medication for her anxiety, because of the cultural stigma attached to mental illness; she prefers "drinking herbal teas, praying, and practicing conscious relaxation exercises."

Letters from friends attest to the loving relationship the applicant and his spouse have. They also attest to the applicant's good character.

The AAO concludes that the applicant has failed to demonstrate extreme hardship to his spouse resulting from their separation. With respect to his spouse's emotional condition, the applicant submits his spouse's psychological evaluations from 2007 and 2008. However, record contains no medical documents or objective reports corroborating his spouse's claims that she continues to experience anxiety and depression since the applicant's departure in 2009. The record also is silent on whether the applicant's spouse continues to control her stress and the effectiveness of her approach. The assertions of the applicant's spouse are relevant evidence and have been considered.

However, absent supporting documentation, these assertions are insufficient proof of hardship. *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 generally 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 AAO notes that the applicant makes no hardship claims to his spouse other than emotional hardship resulting from their separation. The AAO concludes that the evidence submitted is insufficient to demonstrate that the applicant’s absence has caused his spouse extreme hardship.

The AAO finds that the applicant has also failed to demonstrate that his spouse would experience extreme hardship if she joins him in Mexico. We note that although the applicant’s spouse is not a native of Mexico, she speaks Spanish. The record also fails to provide documentary evidence to establish that the applicant and his spouse would be unable to obtain employment in Mexico. The applicant fails to corroborate counsel’s assertion that his spouse would be unable to receive adequate care in Mexico because she would be stigmatized by her anxiety. Without documentary evidence, the assertions of counsel will not satisfy the applicant’s burden of proof. The unsupported assertions of counsel do not constitute evidence. *See Matter of Obaighena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980). Furthermore, the record indicates that the applicant’s spouse is not comfortable with medically treating her psychological conditions. The applicant also failed to corroborate counsel’s and his spouse’s claims that she would be mistreated in Mexico because of her national origin. We acknowledge that separation from other family members caused by relocation can be emotionally difficult for the applicant’s spouse; however, the AAO notes that the common results of deportation or exclusion are insufficient to prove extreme hardship. *See Hassan v. INS*, 927 F.2d 465 (9th Cir. 1991).

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. Accordingly, the applicant has not established eligibility for a waiver of inadmissibility under section 212(a)(9)(B)(v) of the Act.

In proceedings for 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. 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.