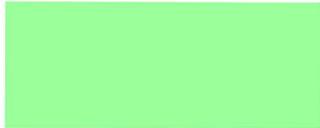


U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090
**U.S. Citizenship
and Immigration
Services**



(b)(6)



Date: **APR 04 2013** Office: DENVER, COLORADO 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:

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, Denver, Colorado. 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 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 in order to reside with her husband in the United States.

The field office director found that the applicant failed to establish extreme hardship to a qualifying relative and denied the application accordingly.

On appeal, counsel contends the applicant established extreme hardship and warrants a favorable exercise of discretion.

The record contains, *inter alia*: a copy of the marriage certificate of the applicant and her husband, an affidavit from the applicant; a declaration from a letter from I mother's physician; letters of support; copies of tax records and other financial documents; a letter from employer; copies of photographs 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.

....

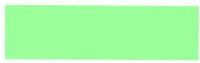
(v) Waiver. - The Attorney General [now the Secretary of Homeland Security (Secretary)] has sole discretion to waive clause (i) in the case of an immigrant who is the spouse or son or daughter of a United States citizen or of an alien lawfully admitted for permanent residence, if it is established to 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 that the applicant entered the United States in 1993 when she was five years old. The record also shows that on May 18, 2001, when the applicant was thirteen years old, she was ordered removed by an immigration judge. The applicant remained in the United States and married a U.S. citizen in 2008. The applicant appeared for an adjustment of status interview in March 2009, and was taken into custody and removed from the United States on March 19, 2009. The record shows that the applicant reentered the United States on August 17, 2009, as a parolee. Therefore, the record shows that the applicant accrued unlawful presence beginning on January 1, 2006, when she turned eighteen years old, until her removal in March 2009. She now seeks admission within ten years of her 2009 departure. Accordingly, the record shows, and counsel does not contest, that the applicant 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.

To the extent counsel contends the field office director erred in noting that the applicant showed a blatant disregard for U.S. laws because she reentered the United States without applying for permission to reapply for admission, the AAO finds counsel's contention that the applicant does not need to file a Form I-212 to be persuasive. As counsel correctly points out, according to the Board of Immigration Appeals, "[a]n in absentia deportation order issued in proceedings of which the respondent had no notice is voidable from its inception and becomes a legal nullity upon its rescission, with the result that the respondent reverts to the same immigration status that he or she possessed prior to entry of the order." *Matter of Bulnes-Nolasco*, 25 I&N Dec. 57, 59 (BIA 2009). The record shows that counsel argued before an immigration judge that the applicant had no notice of her removal order and the applicant's case was ultimately terminated by the immigration judge. Therefore, the in absentia removal order is voidable from its inception and the applicant need not file a Form I-212.

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, the applicant's husband, [REDACTED] states that he and his wife began dating in high school. He states that after they were married, he began the paperwork to adjust her status, but that his wife was arrested and taken into custody for a deportation order neither of them knew existed. He contends that he went to Mexico to be with his wife, but that he had to leave her there in order to take a job in [REDACTED]. He contends that he was worried about his wife every day they were apart and that he was unable to sleep peacefully knowing she was living in such a violent place. According to [REDACTED], his wife was able to return to the United States as a parolee and since her return, their lives have improved drastically. He states they do everything together, have plans to attend college, and

want to start a family. [REDACTED] contends that if they relocated to Mexico, their ability to study would be severely impaired. In addition, he states that they both have lived most of their lives in the United States and have very limited knowledge of life in Mexico. He states that they both speak Spanish fluently, but would nonetheless struggle in a Spanish-speaking classroom. He also states that during his three months in Mexico with his wife, he searched unsuccessfully for a job. Furthermore, [REDACTED] claims that their future children would not receive proper health care or a good education in Mexico, and that he fears the violence in Mexico. Moreover, he states that his mother was diagnosed with a tumor in her head and that he has been taking her to her medical appointments. He contends she will need him to care for her. Additionally, he states that one of his passions in life has been soccer and he has the opportunity to try out to play soccer at [REDACTED], an opportunity that would be severed if he moved to Mexico.

After a careful review of the record, the AAO finds that if [REDACTED] returned to Mexico, where he was born, to avoid the hardship of separation, he would experience extreme hardship. The record shows that [REDACTED] has lived in the United States since he was a child, becoming a naturalized U.S. citizen when he was eleven years old. The record also shows that his entire family resides in the United States and that he has received a scholarship to attend the [REDACTED]. The AAO recognizes that returning to Mexico would mean leaving his family and the opportunity to attend college in the United States. In addition, the AAO recognizes that the U.S. Department of State has issued a Travel Warning urging U.S. citizens to defer travel to parts of Mexico, including Chihuahua, where both the applicant and her husband were born. *U.S. Department of State, Travel Warning, Mexico*, dated November 20, 2012. Considering these unique circumstances cumulatively, the AAO finds that the hardship [REDACTED] would experience if he relocated to Mexico to be with his wife is extreme, going beyond those hardships ordinarily associated with inadmissibility.

Nonetheless, [REDACTED] has the option of remaining in the United States and the record does not show that he will experience extreme hardship if he remains in the United States without his wife. If [REDACTED] decides to remain in the United States without his wife, their situation is typical of individuals separated as a result of inadmissibility or exclusion and does not rise to the level of extreme hardship based on the record. Although the AAO is sympathetic to the couple's circumstances, there is insufficient evidence in the record to 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 (9th Cir. 1996) (holding that the common results of deportation are insufficient to prove extreme hardship and defining extreme hardship as hardship that was unusual or beyond that which would normally be expected). The AAO notes that although the record contains financial documents, neither the applicant nor her husband make a financial hardship claim. Even considering all of the factors in this case cumulatively, there is insufficient evidence showing that the hardship [REDACTED] will experience if he remains in the United States without his wife amounts to extreme hardship.

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 [REDACTED] the qualifying relative in this case.

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.