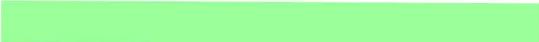




**U.S. Citizenship
and Immigration
Services**

(b)(6)

DATE: OFFICE: ANAHEIM, CALIFORNIA File: 
IN RE: **APR 05 2013** Applicant: 

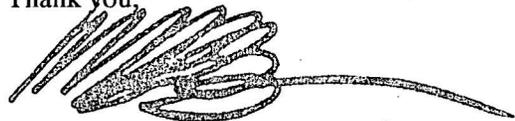
APPLICATION: Application for Waiver of Grounds of Inadmissibility under Section 212(a)(9)(B)(v) of the Immigration and Nationality Act, 8 U.S.C. § 1182(a)(9)(B)(v)

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 International Adjudications Support Branch, Anaheim, California, on behalf of 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 one year or more and seeking admission within 10 years of her last departure from the United States. The applicant is the spouse of a U.S. citizen and is the beneficiary of an approved Petition for Alien Relative (Form I-130). The applicant, through counsel, does not contest this finding of inadmissibility. Rather, 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 order to reside with her husband and child in the United States.

The International Adjudications Support Branch concluded the applicant failed to establish extreme hardship would be imposed on a qualifying relative and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) accordingly. *See Decision on Behalf of the Field Office Director*, dated September 7, 2012.

On appeal, the applicant, through counsel, asserts her U.S. citizen spouse and child would suffer extreme hardship because of her inadmissibility. *See Form I-290B, Notice of Appeal or Motion*, dated September 26, 2012.

The record includes, but is not limited to: a brief and correspondence from counsel; letters of support; identity, medical, financial, and academic documents; civil court documents; and photographs.¹ The entire record, with the exception of Spanish-language documents without translations, was reviewed and considered in rendering a decision on the appeal.

Section 212(a)(9) of the Act provides, in relevant part:

(B) ALIENS UNLAWFULLY PRESENT.-

¹ The AAO notes the record contains some documents in the Spanish language. 8 C.F.R. § 103.2(b)(3) states:

Translations. Any document containing foreign language submitted to USCIS shall be accompanied by a full English language translation which the translator has certified as complete and accurate, and by the translator's certification that he or she is competent to translate from the foreign language into English.

As a certified translations have not been provided for all of the foreign-language documents, as required by 8 C.F.R. § 103.2(b)(3), the AAO will not consider these untranslated documents in support of the appeal.

(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. No court shall have jurisdiction to review a decision or action by the Attorney General [Secretary] regarding a waiver under this clause.

The record reflects the applicant entered the United States without inspection by immigration officials around September 1997, and remained until she voluntarily departed around December 2011.² The applicant accrued unlawful presence from September 1997 until December 2011, a period in excess of one year. As the applicant is seeking admission within 10 years of departure, she is inadmissible pursuant to section 212(a)(9)(B)(i)(II) of the Act.

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 her child can be considered only insofar as it results in hardship to a qualifying relative. The applicant's U.S. citizen spouse is the only demonstrated qualifying relative in this case. 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-Morales*, 21 I&N Dec. 296, 301 (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*, the Board of Immigration

² The AAO notes that, in its decision, the International Adjudications Support Branch erroneously stated the applicant entered the United States around November 2004 and remained until April 2010, pursuant to her grant of voluntary departure. However, the AAO finds the incorrect reference to the applicant's period of unlawful presence and the reason for her departure from the United States to be harmless error.

Appeals (BIA) 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 U.S. 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; *In re 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 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., In re Bing Chih Kao and Mei Tsui Lin*, 23 I&N Dec. 45, 51 (BIA 2001) (distinguishing *In re 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 v. I.N.S.*, 138 F.3d 1292, 1293 (9th Cir. 1998) (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's spouse would suffer extreme emotional and financial hardship in the applicant's absence as: the applicant and her spouse have built a life in the United States, where they have purchased a home; the applicant plays a key role in her family by maintaining the household while her spouse works to pay their bills; they recently lost a child, which has been a great sadness for them; they hope to start a family, but have decided to wait due to the current stressors; the applicant's spouse is deeply worried and stressed; the applicant feels vulnerable without her spouse and believes she is in danger in Mexico as she previously suffered from domestic violence by her ex-husband and fears he may return to harm or kill her upon realizing she is in Mexico; and it would be a great financial burden to maintain separate households. The applicant also indicates: she and her husband work together to make their dreams come true, they do not ask the government for any assistance, they own their home, have their own vehicles, and pay for her husband's schooling and will pay for her child's as well; they likely will need medical assistance to have a baby, and they are anxiously awaiting the process to do so; her husband is suffering from a lot of stress as he goes to college, raises her child, and works a full-time job; she lives in fear every day and does not like going anywhere because she sees men drive by her home with guns, and she is afraid her ex-husband will realize she is in Mexico; and her child needs her as she has worked hard for her child to go to college so that she does not have to be dependent on a man or go through abuse.

The applicant's spouse further states: some extreme hardships are not easily proven; he is "drained" and fighting for his family's life as the applicant has held their family together, she is the most amazing woman, and she has been a great inspiration since they met; his family loves her very much, and she participates in all of their activities; he depends on her to assist him with his medical conditions; he wants nothing more than to build a family with her, and he has insurance which would cover her and their children; she is suffering from depression; although he and her daughter get along, the applicant plays a key role in their home as she does the cooking, cleaning, and keeping-up with her child; he does not know how to raise a child alone or understand how it would be possible for the applicant's child to go to college without the applicant as there is not a hardship worse than a child living without her "natural" parents; his mind is "racked" with the dangers the applicant faces on a daily basis as she fears her ex-husband and the drug cartels; he is devastated as she received a strange call, and subsequently, masked-men with guns drove by her house, and he fears for her as she may be targeted because she just came from America; it has been very hard on him financially, he works a lot at a job he has held for the past eight years to provide for his and the applicant's households, and he needs to save money so that he can afford to bring the applicant home. Additionally, the applicant's child states: everything was great when her family was together; she is under constant stress, her life is empty without her mother, and she feels hopeless; she fears for her mother's safety, and the nights are the hardest as she cries herself to sleep; and her father was an alcoholic and tried to kill the applicant many times.

Although the applicant's spouse may be experiencing hardship in the applicant's absence, the AAO finds the record does not establish the hardship goes beyond what is normally experienced by qualifying relatives of inadmissible individuals. The record is sufficient to establish the applicant's spouse's medical history includes reflux, gastroesophageal reflux disease (GERD), and throat clearing, and he has been treated for bilateral adhesive middle ear disease, bilateral Eustachian tube dysfunction, allergic rhinitis, chronic tonsillitis, tonsillar hypertrophy, and a deviated septum. See

Medical Report Issued by [REDACTED] M.D., dated October 7, 2011; see also Medical Reports Issued by Dr. [REDACTED] M.D., dated August 12, 2009 and October 18, 2010. However, the AAO notes the applicant's spouse's conditions appear to be controlled by prescriptive medications and routine follow-up, and Drs. [REDACTED] and [REDACTED]'s reports do not include any indication the applicant's presence would be advantageous in his treatment. Additionally, the record does not include any evidence of the applicant's spouse's current mental health or his inability to function in the applicant's absence. And, the record does not include any evidence of the applicant or her child's current mental health. Absent an explanation in plain language from the treating mental health professional of the nature and severity of any condition and a description of any treatment or family assistance needed, the AAO is not in the position to reach conclusions concerning the severity of a mental health condition or the treatment needed.

Further, the record is sufficient to establish the applicant's spouse began the Fundamental Electricity Program at the [REDACTED] on May 8, 2012, and was scheduled to complete the program on August 9, 2012. *See Letter of Support Issued by [REDACTED] Coordinator of Student Services and Financial Aid, dated June 5, 2012.* The record also is sufficient to establish he has received training certificates in welding as well as hydraulics and pneumatics, and that he has submitted remittances to the applicant in Mexico. However, the AAO finds the record does not include sufficient evidence of his employment and his current financial obligations or his inability to meet those obligations in the applicant's absence. Accordingly, the AAO cannot conclude the record establishes the applicant's spouse's financial hardship would go beyond the normal consequences of inadmissibility.

The AAO notes the concerns regarding the applicant's spouse, but finds even when this hardship is considered in the aggregate, the record fails to establish he would suffer extreme hardship as a result of separation from the applicant.

The applicant contends her family would suffer extreme hardship upon relocating to Mexico to be with her as: her family would like to be together and to have the opportunities that are only available in the United States; her child is doing great in school and has plans to go to college, and in Mexico, she would not have this option; and she does not want to subject her child to the violence she sees every day. The applicant's spouse indicates: he and the applicant have built a comfortable life together which he should not have to leave as a U.S. citizen; they should not have to leave his family in the United States; he would be in danger due to the violence in Mexico; the applicant is safe and has opportunities in the United States that she will never have in Mexico; prenatal care is limited; and he wants their children to have a future and an education in the United States.

The record is sufficient to establish the applicant's spouse would suffer hardship if he were to relocate to Mexico. The record demonstrates he has continuously resided in the United States and maintains close family and community relationships. Additionally, the U.S. Department of State has issued a Travel Warning for San Luis Potosi, Mexico, where the applicant's spouse would presumably relocate: "defer non-essential travel to the state of San Luis Potosi, except the city of San Luis Potosi where you should exercise caution. The entire stretch of highway 57D in San Luis Potosi and portions of the state east of highway 57D towards Tamaulipas are particularly dangerous ... Cartel violence and highway lawlessness are a continuing security concern." *Travel Warning,*

Mexico, issued November 20, 2012. In the aggregate, the AAO finds the applicant's spouse would suffer extreme hardship if he were to relocate to 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. In re Pilch*, 21 I&N Dec. at 632-33. 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 hardship faced by the qualifying relative, considered in the aggregate, rises beyond the common results of removal or inadmissibility to the level of extreme hardship. The AAO therefore finds 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 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.