



(b)(6)

DATE: **APR 25 2013** OFFICE: ANAHEIM

FILE: [REDACTED]

IN RE: Applicant: [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 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,

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 August 27, 2012.

On appeal, counsel contends the U.S. Citizenship and Immigration Services (USCIS) failed to adequately consider all evidence of hardship submitted in support of the wavier application. *See Form I-290B, Notice of Appeal or Motion*, dated September 26, 2012.

The record includes, but is not limited to a brief from counsel; correspondence and letters of support; identity, psychological, medical, employment, and financial documents; photographs; and documents on conditions in Mexico.<sup>1</sup> The entire record, with the exception of the Spanish-language documents, 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.-**

---

<sup>1</sup> 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 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 establishes the applicant entered the United States without inspection by immigration officials around April 1993 and remained until she voluntarily left around January 2012. The record reflects the applicant has remained outside the United States to date. The applicant accrued unlawful presence from April 1, 1997, the effective date of the unlawful presence provisions in the Act, until January 2012, 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 and her children can be considered only insofar as it results in hardship to a qualifying relative. The applicant's husband is the only demonstrated qualifying relative in this case.<sup>2</sup> 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).

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 Appeals (the 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

---

<sup>2</sup> The record reflects the applicant has additional qualifying relatives, her U.S. citizen father and lawful permanent resident mother. However, the applicant's appeal only discusses hardship to the applicant's spouse. Accordingly, the AAO will only consider hardship to the applicant's spouse.

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 has been suffering extreme physical, emotional, and financial hardship in the applicant's absence as: he has been diagnosed with vertigo, which has increased in frequency to once a week; he suffers from insomnia, which has affected his work habits as he "drifts off" while at work and at home; he is raising the applicant's daughter as a single parent; he struggles in his attempts to be a committed parent while working 12 – 13 hours/day; he made it a priority to talk with his children every day and to see them every other weekend, but his work obligations on Saturday and overtime shifts are negatively impacting his ability to participate in family activities; his family depended on the applicant's income to help "make ends meet", and he is unable to keep up with the bills and to provide basic comforts as their combined income was \$90,529.95 and his monthly expenses are \$4,945; and he serves as his family's primary breadwinner, and he would be able to return to a regular work schedule given he currently is working an unhealthy 60 to 70 hours/week. Counsel also contends the applicant's child has been suffering from emotional hardship as she is struggling in the applicant's absence: she has become reserved, gained weight, and dropped out of band, her only extracurricular activity.

The applicant further discusses: her spouse is the sole financial provider and has increased his work hours to keep up with their household finances; her child keeps asking when she will be home and is struggling without her; and she needs to be with her child as her child is becoming a young woman and will be making decisions that "will greatly affect her future." The applicant's spouse also discusses: he has lost not only a huge financial part of his household, but also a piece of his heart; his pride in the applicant as she has "worked so hard to get to where she is today", and if permitted to return to the United States, she would positively contribute; he is averaging four hours of sleep/night; debt collectors are calling every day because he can only afford to pay the mortgage, utilities, and grocery bills; and he and the applicant have sacrificed all of their "emergency" money, including his absence from work for a week, to attend their immigration appointment in Juarez, Mexico. He further discusses the effect the applicant's absence has on her child: she is becoming more depressed each day as she "misses her mother more than [] can possibly be imagined"; she is alone for four to five hours/day, and her biological father has never been a part of her life; and there is no substitute for her mother being home every day. Additionally, the applicant's child discusses the activities she misses doing with her mother while at home, and her desires to see her mother at various events such as soccer games, parades, and band concerts.

Although the applicant's spouse and child 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 is being treated for vertigo by [REDACTED] M.D. See *Medical Letters*, dated May 17 and September 24, 2012. However, [REDACTED] letters fail to indicate the particular course of treatment or discuss how the applicant's participation would be advantageous in such treatment. Rather, they only contain general statements, "During these episodes, my patient needs for his wife, [the applicant], to assist him ... He is currently on treatment for this condition and will remain on it as long as he needs it." *Id.* Also, the record is sufficient to establish the applicant's spouse is exhibiting depressive symptoms and experiencing

stress and worry in the applicant's absence. See *Psychological Letter Issued by* [REDACTED] LCSW, dated September 25, 2012. However, [REDACTED] letter does not include any discussion of treatment for his symptoms or a detailed discussion how the applicant's participation would be advantageous in such treatment. Rather, it contains a general statement, "My professional clinical opinion is that [the applicant's spouse's] separation from [the applicant] has caused him tremendous stress and worry[,] and [] a long[-]term separation will have a devastating effect on his psychological well[[]being." *Id.* Absent an explanation in plain language from the treating physician or 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 medical or mental health condition or the treatment needed.

Moreover, the AAO notes the record includes a psychological letter issued by [REDACTED] Ph.D., Clinical Psychologist, indicating [REDACTED] anticipates the applicant's spouse "will participate in individual psychotherapy for at least four more weekly sessions and probably intermittent sessions as needed over the next several months." *Psychological Letter*, dated February 22, 2012. However, the record does not include any evidence of the applicant's spouse's treatment for his mental health until his visit seven months later with [REDACTED]. The AAO also notes the record includes a referral for the applicant's child to receive an evaluation for individual therapy and medication management related to depression. See *Internal PCP Outpatient Behavioral Health Referral Form*, dated February 21, 2012. However, the record does not include any indication of follow-up, demonstrating the applicant's child's current mental health and the impact this has on the applicant's spouse, the qualifying relative. Accordingly, the AAO cannot conclude the record establishes the hardship experienced by the applicant's spouse and child as related to their mental health would go beyond the normal consequences of inadmissibility.

Additionally, the AAO finds the record is sufficient to establish the applicant's spouse is currently employed by [REDACTED] earning an hourly salary of \$18.00 and that he has worked overtime. See *Earnings Statements*, dated August 24 and September 7, 2012. And, the record contains some evidence of his financial obligations including, but not limited to: child support obligation, remittances to Mexico, his residential mortgage, utilities, and credit cards. However, the AAO notes the record does not contain evidence of his accounts in arrears other than what has been self-reported. 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)). And, without documentary evidence to support the claim, the assertions of counsel will not satisfy the applicant's burden of proof. The unsupported assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 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). Moreover, the record does not include evidence of labor or employment conditions in the screen printing industry in Mexico, indicating the applicant's inability to contribute to the maintenance of her and her spouse's households. 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's hardship, but finds even when evidence of 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.

Counsel contends the applicant's spouse would suffer extreme hardship upon relocating to Mexico to be with the applicant as: he is 50 years-old and has lived his entire life in the United States; he does not have any family in Mexico; he holds a high school diploma and does not speak or understand Spanish, and thereby, it would be highly unlikely he would be able to secure the same level of employment; he would experience cultural separation; his vertigo would inhibit him from performing any physical labor; he would suffer an extreme financial loss if he sold his family's home as he owes more on the mortgage than what is the current estimated value of the home, and in the alternative, he would be unable to support two homes if he lived in Mexico; he shares joint custody of his children, with whom he maintains a close relationship; and he would be unable to financially support them, which would subjugate him to criminal and civil charges in Wisconsin. In support of his contentions, counsel references an unpublished decision of the AAO, indicating the AAO has previously found emotional and financial circumstances to be contributing factors in finding extreme hardship. The AAO notes its unpublished decision is not binding, and accordingly, has no bearing on the present matter.<sup>3</sup>

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 steady employment and close community and family relationships, including joint custody of his two children. Although the U.S. Department of State has indicated "no advisory is in effect" for Guanajuato, Mexico,<sup>4</sup> where the applicant's spouse would presumably relocate, the AAO finds, in the aggregate, 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

---

<sup>3</sup> While 8 C.F.R. § 103.3(c) provides that precedent decisions of the Secretary, or specific officials of the Department of Homeland Security designated by the Secretary, with concurrence of the Attorney General, are binding on all USCIS employees in the administration of the Act, unpublished decisions are not similarly binding. Precedent decisions must be designated and published in bound volumes or as interim decisions. 8 C.F.R. § 103.10.

<sup>4</sup> *Travel Warning, Mexico*, issued November 20, 2012.

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.