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

(b)(6)

U.S. Citizenship and Immigration Services

Date: AUG 0 1 2013 Office: ANAHEIM 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:

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office (AAO) in your case.

This is a non-precedent decision. The AAO does not announce new constructions of law nor establish agency policy through non-precedent decisions. If you believe the AAO incorrectly applied current law or policy to your case or if you seek to present new facts for consideration, you may file a motion to reconsider or a motion to reopen, respectively. Any motion must be filed on a Notice of Appeal or Motion (Form I-290B) within 33 days of the date of this decision. **Please review the Form I-290B instructions at http://www.uscis.gov/forms for the latest information on fee, filing location, and other requirements.** *See also* 8 C.F.R. § 103.5. **Do not file a motion directly with the AAO.**

Thank you,

for

Ron Rosenberg
Acting Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the International Adjudications Support Branch on behalf of the Field Office Director, Ciudad Juarez, Mexico. The matter 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 under 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 again seeking admission within 10 years of his last departure from the United States.[1] The record reflects that the applicant entered the United States without inspection in February 1999 and remained until departing in August 2011. The applicant is the beneficiary of an approved Form I-130 and seeks a waiver of inadmissibility to remain in the United States with his U.S. citizen spouse.

The field office director found that the applicant failed to establish that his qualifying relative spouse would experience extreme hardship as a consequence of his inadmissibility. The application was denied accordingly. *See Decision of the Field Office Director* dated September 27, 2012.

On appeal counsel for the applicant contends in the Notice of Appeal (Form I-290B) that USCIS erred by not finding the qualifying spouse would suffer extreme hardship as a consequence of the applicant's inadmissibility. Counsel also asserts that USCIS erred in stating the applicant was inadmissible for fraud as the applicant was a victim who testified against the perpetrators of a fraud ring. With the appeal counsel submits a document from the Federal Bureau of Prisons. The record contains affidavits from the applicant and spouse; a psychiatric evaluation of the applicant's spouse; letters of support from friends; a letter from the applicant's employer in Mexico; a letter from the spouse's employer; a psychiatric evaluation of the applicant in Mexico; and country information for Mexico. The entire record was reviewed and considered in rendering a decision on the appeal.

Section 212(a)(9)(B) 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.

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

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[1] The field office director also stated that the applicant may be inadmissible due to a fraudulent application for adjustment of status and I-130 petition submitted on behalf of the applicant in 2007.

> 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.

Section 212(a)(6)(C) of the Act provides, in pertinent part:

> (i) Any alien who, by fraud or willfully misrepresenting a material fact, seeks to procure (or has sought to procure or has procured) a visa, other documentation, or admission into the United States or other benefit provided under this Act is inadmissible.

Counsel asserts that USCIS erred in stating the applicant is subject to inadmissibility for fraud as he was a victim of fraud by a perpetrator convicted in Federal Court where the applicant testified, being influential in assisting prosecution of a large fraud ring. Counsel submitted on appeal a letter from the Federal Bureau of Prisons that indicates it had been notified that the applicant was a "victim/victim contact" and that the applicant would be notified of release proceedings for an inmate who appears to be the individual identified by government officials as the perpetrators of the fraud. Further, the AAO notes the record reflects that documents submitted in 2007, including forms I-485, I-130, and G-325 Biographic Information, include the applicant's written name on the signature lines, but the signature does not match the applicant's signature as it appears on subsequent applications based on the documentation in the record. It does not appear that the applicant knowingly sought to procure an immigration benefit through fraud or misrepresentation or that he was aware of the contents of the Forms I-485 and I-130 or fraudulent supporting documents submitted on his behalf.

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. The applicant's spouse is the only 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-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 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. *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 asserts the psychiatric report shows the applicant's spouse experiences high anxiety and depression due to separation from the applicant and that all elements of hardship considered in the aggregate establish she will endure hardship in Mexico.

In her affidavit the applicant's spouse states separation from the applicant brings many challenges, such as dealing with sorrow and taking on finances by herself. She states that some days she is unable to work because of the tension, but needs to work extra shifts in her job as a waitress to keep up with expenses. She states that she is overwhelmed by the applicant's absence and sees a counselor. She states that her entire family is in United States, either as legal residents or U.S. citizens. She also states that she does not write or speak Spanish well and has no relatives in Mexico but her mother's elderly parents.

The applicant states that he is financially limited in Mexico and that he had grown accustomed to the culture and tradition of America while there. He states that he and his spouse are delaying having children because of his immigration process. He states that Mexico has crime and there is no guarantee of security and contends that he has been assaulted and robbed, so he fears having his spouse there. A friend of the applicant's spouse states that separation from the applicant is taking a physical and emotional toll on the spouse as she has become depressed and careless and is overwhelmed with obligations and financial responsibilities.

A psychiatric assessment states that the applicant's spouse reports having headaches, changes in appetite, chest pains, urination problems, nervousness, and less energy. The assessment states that tests show slight to moderate anxiety, slight depression, and moderate to severe hopelessness. It further states that it would be difficult for the applicant's spouse in Mexico because her family is in the United States, she would have trouble finding jobs because there are few restaurants there, and due to expensive bottled water she would have to drink tap water, which could damage her intestines. The assessment instructs the applicant's spouse to receive therapy for four weeks and prescribes medication.

The AAO finds that the record fails to establish that the qualifying spouse will suffer extreme hardship as a consequence of being separated from the applicant. The applicant's spouse states she has stress-related symptoms and a psychiatric assessment describes her as having anxiety, but the applicant failed to explain how such emotional hardships are outside the ordinary consequences of separation to rise to the level of extreme. Nor has it been established that the applicant's spouse would be unable to travel to Mexico on a regular basis to visit the applicant.

The applicant's spouse indicates that she is suffering financially, but other than a 2010 letter from her employer the record contains no documentation establishing her current income, expenses, assets, and liabilities, or her overall financial situation, or the applicant's prior financial contribution, to establish that without the applicant's physical presence in the United States the applicant's spouse will experience financial hardship. Further, courts considering the impact of financial detriment on a finding of extreme hardship have repeatedly held that, while it must be considered in the overall determination, "[e]conomic disadvantage alone does not constitute "extreme hardship." *Ramirez-Durazo v. INS*, 794 F.2d 491, 497 (9th Cir. 1986).

The AAO recognizes that the applicant's spouse will endure hardship as a result of separation from the applicant. However, her situation if she remains in the United States is typical to individuals separated as a result of removal or inadmissibility and does not rise to the level of extreme hardship

based on the record. The difficulties that the applicant's spouse faces as a result of her separation from the applicant, even when considered in the aggregate, do not rise to the level of extreme as contemplated by statute and case law.

The AAO also finds the record fails to establish that the applicant's spouse will experience extreme hardship if she were to relocate to Mexico to reside with the applicant. The applicant notes crime and financial limitations in Mexico and the spouse states she has family in the United States with few ties to Mexico, but the documentation in support of hardship is general in nature and does not specifically establish that the applicant's spouse will experience extreme hardship were she to relocate. The psychiatric assessment states that the applicant's spouse will have trouble finding a job and could become sick due to drinking tap water, but the record contains no documentation in support of this hardship. The record also contains country conditions information, but these reports describe generalized country conditions and the record does not indicate how they specifically affect the applicant's spouse, and therefore fails to establish that safety and economic concerns rise to the level of extreme hardship. The record indicates that the applicant lives in Guadalajara in the state of Jalisco. Although the U.S. Department of State suggests deferring non-essential travel to areas bordering the states of Michoacán and Zacatecas, there is no recommendation against travel to Guadalajara and no recommendation against travel on principal highways to Guadalajara. *See U.S. Department of State, Bureau of Consular Affairs, Travel Warning – Mexico*, November 20, 2012.

The record, reviewed in its entirety and in light of the *Cervantes-Gonzalez* factors, cited above, does not support a finding that the applicant's U.S. citizen spouse will face extreme hardship if the applicant is unable to reside in the United States. Rather, the record demonstrates that she will face no greater hardship than the unfortunate, but expected disruptions, inconveniences, and difficulties arising whenever a spouse is removed from the United States and/or refused admission. Although the AAO is not insensitive to the spouse's situation, the record does not establish that the hardship he would face rises to the level of "extreme" as contemplated by statute and case law. 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 application proceedings, it is the applicant's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361. Here, that burden has not been met.

ORDER: The appeal is dismissed.