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U.S. Department of Homeland Security  
U.S. Citizenship and Immigration Services  
Office of Administrative Appeals  
20 Massachusetts Ave. NW MS 2090  
Washington, DC 20529-2090



U.S. Citizenship  
and Immigration  
Services

DATE: OFFICE: NEBRASKA SERVICE CENTER

**AUG 22 2013**

FILE: [REDACTED]

IN RE: APPLICANT: [REDACTED]

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

ON BEHALF OF APPLICANT:

SELF-REPRESENTED

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,

A handwritten signature in black ink that reads "Ron Rosenberg".

Ron Rosenberg  
Chief, Administrative Appeals Office

**DISCUSSION:** The waiver application was denied by the Director, Nebraska Service Center, 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 more than one year and seeking readmission within 10 years of her last departure from the United States. The applicant seeks a waiver of inadmissibility in order to reside in the United States with her lawful permanent resident spouse.

The director concluded that the applicant failed to demonstrate the existence of extreme hardship to a qualifying relative and denied the application accordingly. *See Decision of director* dated November 2, 2012.

On appeal, the applicant's spouse submits an updated psychological evaluation, statements from the applicant and her spouse, and letters from family and friends. In the psychological evaluation, the psychotherapist contends the spouse experiences anxiety and depression without the applicant present.

The record includes, but is not limited to, the documents listed above, an earlier psychological evaluation, other statements from the applicant's spouse and the applicant, additional letters from family and friends, evidence of birth, marriage, and residence, and other applications and petitions. The entire record 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.-**

(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.

(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.

....

(v) Waiver.-The Attorney General 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 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 regarding a waiver under this clause.

The record reflects the applicant admitted under oath that she entered the United States without inspection in February 2002 and returned to Mexico in June 2011. Inadmissibility is not contested on appeal. The AAO therefore finds the applicant accrued more than one year of unlawful presence, and is inadmissible pursuant to section 212(a)(9)(B)(i)(II) of the Act. The applicant's qualifying relative for a waiver of this inadmissibility is her lawful permanent resident spouse.

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 v. I.N.S.*, 138 F.3d 1292 (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.

The applicant’s spouse contends he experiences emotional and financial hardship without the applicant present. He explains he cannot visit her as often as he likes because of his job, and that his job performance has been suffering as well. Letters from his employer are submitted in support. The spouse states he experiences depression as a result of the separation. Letters from family and friends are submitted, indicating the spouse has had emotional difficulties without the applicant present in the United States. In an updated psychological evaluation, a psychotherapist indicates the spouse’s emotional condition and appearance have deteriorated since their first meeting in 2011. The psychotherapist reports the spouse worries about the applicant’s safety in Mexico given the violence and drug wars. The psychotherapist additionally indicates the spouse almost got fired from his construction job due to his emotional state. Lastly, the psychotherapist concludes the spouse suffers from clinical depression, suggesting he should obtain treatment.

The spouse asserts he cannot relocate to Mexico, as he will not be able to find sufficient employment to support himself and the applicant. The psychotherapist indicates in an earlier evaluation that the spouse has been living in the United States for over 12 years, and that there is insufficient medical care in Mexico.

The spouse’s assertions on difficulties with his employment are supported by conflicting evidence. One letter, dated September 24, 2012 and written by the operations manager, indicates although the applicant is a competent and reliable employee, his multiple absences and missed time from visiting the applicant in Mexico is beginning to affect his employment, and that he might be let go. Another letter, dated less than a month prior, and signed by the office manager and the office

team, indicates they are very happy with the spouse's dedication and reliability, adding he was recently promoted. The record is therefore unclear on whether the spouse has difficulties performing at his job, as he and the psychotherapist claim, or whether the spouse's reliability and work was sufficient to earn him a promotion. Given this somewhat contradictory evidence, the AAO is unable to evaluate the effect of the applicant's absence on her spouse's job performance and his finances.

The applicant has demonstrated her spouse experiences psychological hardship without her present. The record reflects that the spouse experiences depression, and that his friends and family have noted the spouse's emotional difficulties. However, while the AAO acknowledges that the applicant's spouse would face difficulties as a result of the applicant's inadmissibility, we do not find evidence of record to demonstrate that his hardship would rise above the distress normally created when families are separated as a result of inadmissibility or removal. In that the record fails to provide sufficient evidence to establish the financial, emotional, or other impacts of separation on the applicant's spouse are cumulatively above and beyond the hardships commonly experienced, the AAO cannot conclude that he would suffer extreme hardship if the waiver application is denied and the applicant remains in Mexico without her spouse.

Furthermore, the applicant has failed to submit sufficient evidence of hardship upon relocation to Mexico. The spouse contends that he would be unable to find adequate employment in Mexico, but he has provided no evidence in support. Although these assertions are relevant and have been taken into consideration, little weight can be afforded them in the absence of supporting evidence. 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 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)). Nor is there documentation indicating the spouse has a medical condition which he would be unable to treat in Mexico. Furthermore, though the spouse indicates he worries about the applicant's safety in Aguascalientes, Mexico, the record reflects that she lives in Jesus Maria, Aguascalientes, Mexico, which is not an area of concern as stated by the U.S. Department of State's current travel warning.<sup>1</sup> See *travel warning: Mexico*, U.S. Department of State, July 12, 2013. Lastly, the applicant has not demonstrated that the spouse would be specifically subject to any threats if he relocated there, where he was born.

The AAO notes that relocation to Mexico would entail separation from family members who live in the United States as well as other difficulties. However, we do not find evidence of record to

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<sup>1</sup> The travel warning indicates, "[y]ou should exercise caution when traveling to the areas of the state that border the state of Zacatecas, as TCO activity in that region continues. There is no advisory in effect for daytime travel to the areas of the state that do not border Zacatecas; however, intercity travel at night is not recommended." See *travel warning: Mexico*, U.S. Department of State, July 12, 2013. The record reflects that the applicant lives in Jesus Maria, Aguascalientes, Mexico, which is located in the center of Aguascalientes, not near the Zacatecas border.

show that the spouse's difficulties would rise above the hardship commonly created when families relocate as a result of inadmissibility or removal. In that the record lacks sufficient evidence to demonstrate the emotional, financial, or other impacts of relocation on the applicant's spouse are in the aggregate above and beyond the hardships normally experienced, the AAO cannot conclude that he would experience extreme hardship if the waiver application is denied and the applicant's spouse relocates to Mexico.

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. The AAO therefore finds that the applicant has failed to establish extreme hardship to her lawful permanent resident 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 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.