



U.S. Citizenship  
and Immigration  
Services

(b)(6)

DATE **DEC 31 2013** OFFICE: NEBRASKA SERVICE CENTER

FILE: [REDACTED]

IN RE: Applicant: [REDACTED]

APPLICATIONS: 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:

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,

Ron Rosenberg  
Chief, Administrative Appeals Office

**DISCUSSION:** The waiver application was denied by the Nebraska Service Center on behalf of the Field Office Director, Ciudad Juarez, and was subsequently appealed to the Administrative Appeals Office (AAO), which dismissed the appeal. The matter is now before the AAO on motion. The motion will be granted and the underlying application remains denied.

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 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 ten years of his last departure from the United States. The record indicates that the applicant is married to a U.S. citizen and he is the father of a U.S. citizen child. He is the beneficiary of an approved Petition for Alien Relative (Form I-130). The applicant 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 in the United States with his spouse and child.

The director found that the applicant had failed to establish that extreme hardship would be imposed on the applicant's qualifying relative and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) accordingly. *Decision of the Field Office Director*, dated November 28, 2011.

The AAO, reviewing the applicant's Form I-601 on appeal, concurred with the Field Office Director that extreme hardship to a qualifying relative had not been established and dismissed the appeal. *Decision of the AAO*, dated January 31, 2013.

On motion, the applicant's wife states that she is six months pregnant and fears that her stress and emotions may cause her to have a miscarriage. The applicant's wife submits copies of ultrasound images with the Form I-290B, Notice of Appeal or Motion (Form I-290B). The applicant's spouse also submits, on motion, copies of financial documentation to support her assertions that she is experiencing financial hardship without the applicant.

According to 8 C.F.R. § 103.5(a)(2), a motion to reopen must state new facts to be proved and be supported by affidavits or other documentary evidence. A motion that does not meet applicable requirements shall be dismissed. 8 C.F.R. § 103.5(a)(4). As the applicant's spouse has submitted new evidence to support the applicant's claim, the motion to reopen will be granted.

The record includes, but is not limited to, statements from the applicant's wife, household bills, letters from the State of Texas Health and Human Services Commission dated 2011 and 2012, and ultrasound images. The 2012 Texas Health and Human Services Commission letter is in Spanish. Because this document is not accompanied by an English-language translation as required by 8 C.F.R. § 103.2(b)(3), it has not been considered. The remaining record was reviewed and considered in arriving at a decision on the motion.

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

(B) Aliens Unlawfully Present.-

- (i) In general.-Any alien (other than an alien lawfully admitted for permanent residence) who-

- (I) was unlawfully present in the United States for a period of more than 180 days but less than 1 year, voluntarily departed the United States (whether or not pursuant to section 244(e)) prior to the commencement of proceedings under section 235(b)(1) or section 240, and again seeks admission within 3 years of the date of such alien's departure or removal

....

is inadmissible.

(iii) Exceptions.-

- (I) Minors.-No period of time in which an alien is under 18 years of age shall be taken into account in determining the period of unlawful presence in the United States under clause (i).

The record indicates that in April 2001, the applicant entered the United States without inspection. In December 2010, the applicant departed the United States. The applicant accrued unlawful presence between March 19, 2002, the date he turned eighteen years old, and December 2010. The applicant is, therefore, 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 more than one year, and he seeks admission within 10 years of his departure from the United States. The applicant does not contest his inadmissibility.

Section 212(a)(9) of the Act further provides, in pertinent part, that:

- (v) Waiver.-The [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 [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.

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 his child can be considered only insofar as it results in hardship to a qualifying relative. The applicant's wife 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 U.S. Citizenship and Immigration Services (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 Appeals (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. INS*, 138 F.3d 1292, 1293 (9<sup>th</sup> Cir. 1998) (quoting *Contreras-Buenfil v. INS*, 712 F.2d 401, 403 (9<sup>th</sup> 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.

On motion, the applicant's spouse states that it is difficult to support herself financially without the applicant, who is the family's sole provider, because she has a son and is pregnant with her second child. The applicant's spouse states that she is unable to find employment. A document in the record from Workforce Solutions indicates that the applicant's spouse is ineligible for unemployment benefits because she did not have enough quarters between October 2011 and September 2012 to qualify. The record also indicates that the applicant's spouse received food stamps.

The AAO noted in its previous decision that the record does not contain sufficient evidence to show that the applicant's spouse is unable to support herself in the applicant's absence. The new evidence the applicant provides on motion does not distinguish his wife's financial challenges from those commonly experienced when a family member remains in the United States. Further, the record does not contain documentary evidence establishing that the applicant is unable to obtain employment in Mexico or financially assist his wife from outside the United States.

The applicant's spouse states that she is suffering from high levels of stress due to her separation from the applicant. However, the applicant has not shown that his spouse's emotional hardship and its effects differ from those typically faced by the loved ones of inadmissible individuals. 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 and does not rise to the level of extreme hardship based on the record.

With respect to hardship that the applicant's spouse would experience upon relocation to Mexico, the AAO found in its previous decision that the applicant failed to establish that his wife's hardship in Mexico would be extreme. On motion, the applicant's spouse does not provide additional information or evidence to describe her hardship if she were to relocate to Mexico. It has not been established that the applicant is unable to support his family were they to relocate to Mexico. Further, the applicant has not addressed whether he and his spouse maintain family ties in Mexico. The AAO is unable to ascertain whether and to what extent the applicant receives assistance from family members there. Based on the evidence in the record, the applicant has not established that his spouse would suffer hardship beyond the common results of removal if she were to relocate to Mexico to reside with him.

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 motion to reopen is granted and the underlying application remains denied.