

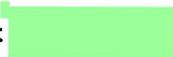


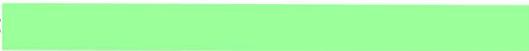
U.S. Citizenship
and Immigration
Services

(b)(6)



DATE: FEB 01 2013 OFFICE: MEXICO CITY, MEXICO

FILE: 

IN RE: 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

(b)(6)

DISCUSSION: The Field Office Director, Mexico City, Mexico, denied the waiver application. The applicant, through counsel, appealed the Field Office Director's decision, and the Administrative Appeals Office (AAO) dismissed the subsequent appeal. On April 5, 2012, the applicant filed a motion to reopen the AAO's decision in accordance with 8 C.F.R. § 103.5. The motion will be granted. The previous decision of the AAO will be affirmed.

The record reflects that the applicant is a native and citizen of Mexico who was found by the Field Office Director to be inadmissible to the United States pursuant to section 212(a)(9)(B)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(9)(B)(i), 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 Field Office Director concluded that the applicant had failed to establish that extreme hardship would be imposed upon a qualifying relative, and denied her Application for Waiver of Grounds of Inadmissibility (Form I-601) accordingly. The AAO affirmed the Field Office Director's decision on appeal.

On motion, the applicant's spouse states that all of the hardships originally referenced in the waiver application have come to fruition and that the lengthy, forced separation of his family has caused further severe, exceptional, unusual and extreme hardship. The applicant's spouse also states that other applicants with fewer and lesser hardships qualify for a waiver without an unusual delay and that his family's situation has been overly scrutinized.

The record includes, but is not limited to: briefs, motions, and correspondence from counsel; letters of support; identity, psychological, medical, employment, financial, and academic documents; and photographs. The entire record was reviewed and considered in rendering a decision on the motion.

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.

...

(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 Field Office Director found the applicant inadmissible for accruing unlawful presence from April 1, 1997, the effective date of the unlawful provisions in the Act, until around July 2008, when she voluntarily departed to Mexico. On motion, the applicant does not contest the finding of inadmissibility. Accordingly, the applicant is inadmissible under section 212(a)(9)(B)(i)(II) of the Act, and she requires a waiver under section 212(a)(9)(B)(v) 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 children 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 Appeals (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 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 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; *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 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., *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.

In support of the applicant’s motion, the applicant’s spouse contends that his family has suffered extreme financial, economic, medical, cultural, and educational hardship in the applicant’s absence as: he is suffering from mental ailments, including severe depression and anxiety due to separation from and the inability to protect and care for his family; his older children are growing up without their younger sibling, and they miss the applicant; and he and his older children have visited the applicant and his younger child only two times in the past four years because of his work schedule and financial obligations.

Although the applicant’s spouse may be experiencing hardship in the applicant’s absence, the AAO finds that the record does not establish that the hardship goes beyond what is normally experienced by qualifying relatives of inadmissible individuals. The applicant’s motion does not include any additional evidence demonstrating a change in the applicant’s spouse’s mental or financial situations. 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)). The AAO is thus unable to conclude that the record establishes that the applicant's spouse's hardship would go beyond that which is commonly expected.

The AAO notes the hardships that the applicant's spouse has been experiencing in the applicant's absence, but when considered in the aggregate, the record fails to establish that the applicant's spouse would suffer extreme hardship as a result of separation from the applicant.

In support of the applicant's motion, the applicant's spouse contends that he and his children are unable to move to Mexico as it is crime-ridden, and he would lose his family home to foreclosure, which would cause his brother and his family to live on the streets.

Although the applicant's spouse may experience some hardship if he were to relocate with his family to Mexico, the AAO finds that the record does not establish that the hardship goes beyond what is normally experienced by qualifying family members of inadmissible individuals. The record reflects that the applicant continues to reside in Pacuenco, Guanajuato, Mexico. The AAO notes that the U.S. Department of State's current Travel Warning for Mexico continues to identify several areas of concern in Mexico; however, Guanajuato is not one of the areas listed. Rather, the Travel Warning indicates that "no advisory is in effect" for Guanajuato. *Travel Warning, Mexico*, issued November 20, 2012. Moreover, the record does not include any evidence that the applicant's spouse would have to sell his family home in the United States given that he co-owns it with his brother.

Although the applicant's spouse may experience hardship as a result of relocation to Mexico, the AAO finds that even when this hardship is considered in the aggregate, the record fails to establish that the applicant's spouse would suffer extreme hardship as a result of residing with the applicant and their children there.

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 that 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 motion will be granted and the previous decision of the AAO will be affirmed.

ORDER: The motion is granted, the previous decision of the AAO is affirmed, and the application remains denied.