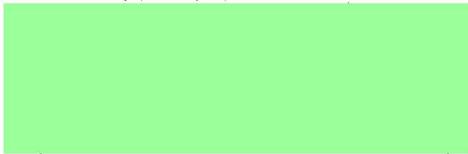


(b)(6)



U.S. Citizenship
and Immigration
Services



Date: Office: MEXICO CITY FILE:

IN RE: **FEB 13 2013** 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

DISCUSSION: The waiver application was denied by the District Director, Mexico City, 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 more than one year. 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). The district director concluded that the applicant had failed to establish that his bar to admission would impose extreme hardship on a qualifying relative, and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) accordingly.

On appeal, counsel asserts that the applicant's wife is experiencing severe financial and emotional hardship since the applicant left the United States. Counsel contends that the applicant's wife takes has a history of depression and takes medication for high blood pressure. Counsel states that the applicant's wife is stressed from the instability of her employment, her daughter's poor scholastic performance, and concern about the applicant's welfare in Mexico. Counsel states that the applicant's wife was on disability for inflammation of her right hand, and thus did not work from July 3, 2012 until August 8, 2012. Counsel declares that the applicant's wife and stepson pay a monthly mortgage, and the applicant's wife worries about becoming a burden to her son if she loses her job. Counsel asserts that the applicant's wife would not relocate to Mexico because she would lose her home in the United States, be exposed to violence and poverty in Mexico, and lack access to healthcare and job prospects in Mexico. Counsel argues that if the applicant's stepson and stepdaughter relocated to Mexico they would not know the language and culture of Mexico.

We will first address the finding of inadmissibility for unlawful presence under section 212(a)(9)(B) of the Act. That section provides, in part:

(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 . . . and again seeks admission within 3 years of the date of such alien's departure or removal, or

(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.

U.S. Citizenship and Immigration Services (USCIS) records reflect that the applicant entered the United States without inspection in December 1999 and left the country in August 2008. The applicant therefore accrued unlawful presence from December 1999 until August 2008, and triggered the ten-year bar when he left the United States, rendering him inadmissible under section 212(a)(9)(B)(i)(II) of the Act.

The waiver for unlawful presence is under section 212(a)(9)(B)(v) of the Act. That section provides:

- (v) Waiver. – The Attorney General [now Secretary, 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.

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 U.S. citizen spouse is the 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 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*, 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 rendering this decision, the AAO will consider all of the evidence in the record.

The applicant’s wife declared in the letters dated August 2, 2011, November 2, 2010, and February 10, 2009, and the application dated October 11, 2008 that her hardships in remaining in the United States while her husband lives in Mexico are emotional and financial in nature. The applicant’s wife asserted that she would experience financial hardship to her employer’s reduction of her work hours, and she submitted a copy of her work schedule to demonstrate her work hours as a certified nursing assistant (CNA). Even though the submitted document shows the applicant’s wife’s work schedule, the applicant has not established that his wife would not be able to obtain full-time work elsewhere as a CNA or in another position for which she is qualified. Moreover, the applicant’s stepson may be able to financially support his mother and sister while his mother seeks other employment, a possibility not addressed. The applicant’s wife asserts that she has a close relationship with her husband and she is experiencing stress and depression due to their separation. The record reflects that the applicant has been married to his wife since March 31, 2007 and has a 28-year-old stepson and 13-year-old stepdaughter from their relationship. The submitted psychological evaluation from [REDACTED] is consistent with the claim that the applicant’s wife has depression. [REDACTED] stated that the applicant’s wife has a history of clinical depression, and prior to meeting the applicant had suicidal thoughts. However, [REDACTED] in describing the applicant’s wife’s prior two marriages, concluded that “it is not unusual for battered women to experience reactive, event based depression that becomes chronic

depression if not treated as is the case with [the applicant's wife]." The applicant's wife's depression seems to stem from prior abusive relationships. The letter from [REDACTED] dated October 11, 2010 is also in accord with the claim that the applicant's wife has depression for [REDACTED] stated that she was diagnosed on October 8, 2010 with depression and hypertension. However, though we acknowledge this diagnosis, it is unclear the severity of the depression and the extent to which it creates hardship, as the applicant's wife apparently has been able to function as a CAN, while managing her household and taking care of her young daughter. The submitted school records are not in agreement with the claim that the applicant's stepdaughter is failing in school. The report card for August 2011 shows her lowest mark, a "D," was in Science. The documents from the school do state the reason or cause for that grade, and the consent form conveys she will receive academic support services. While we recognize that the applicant's wife will experience emotional and financial hardship from separation from her husband, when the asserted hardship factors are considered together, they fail to demonstrate her hardship will be extreme.

The applicant's wife contended in her letters and waiver application that the hardships in relocating to Mexico are not being able to find employment or provide food and shelter for her family, hindering her daughter's education, not having access to healthcare, having their lives placed in jeopardy from violent crime, and losing her home in the United States. Counsel cites *Tukhowinich v. I.N.S.*, 64 F.3d 460 (9th Cir. 1995), and contends that the Ninth Circuit stated that the hardship assessment must include conditions in the applicant's native country and a complete lack of employment in the home country was not necessary. In light of the evidence submitted of three money grams totaling \$580, which were sent to the applicant by his wife in 2009; the applicant has not shown an inability to support himself during his two years in Mexico. The applicant has not provided any documentation in accord with the assertion that they will not have access to healthcare or his stepdaughter's education in Mexico will be inferior to that which she now receives. We recognize that the applicant's stepdaughter may struggle academically while adjusting to the Spanish language and culture. The submitted news articles about graffiti messages, the death of suspected drug cartel members near the Texas border, and drug-related violence in Mexico are in accord with the claim of violent crime in Mexico. Nevertheless the applicant has not indicated that his wife and stepchildren will reside in an area where their personal safety will be in jeopardy. When the asserted hardship factors are considered together, they fail to demonstrate that the applicant's wife will experience extreme hardship in relocating to Mexico to reside with her husband. While counsel indicated that the applicant's stepson and stepdaughter might not join their mother to live in Mexico, the applicant's wife has not asserted an intention to live apart from her minor daughter.

Having found the applicant statutorily ineligible for relief, no purpose would be served in discussing whether he 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. See Section 291 of the Act, 8 U.S.C. § 1361. The applicant has not met that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.