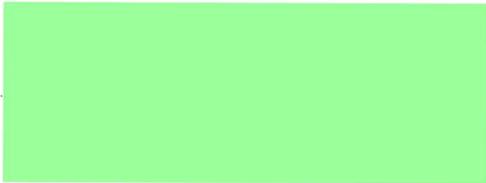




U.S. Citizenship
and Immigration
Services

(b)(6)



DATE: FEB 26 2013

OFFICE: CIUDAD JUAREZ (ANAHEIM)

FILE: 

IN RE: 

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:

SELF-REPRESENTED

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 Form I-601, Application for Waiver of Grounds of Inadmissibility (Form I-601) was denied by the Field Office Director, Ciudad Juarez, 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 remaining in the United States unlawfully for more than a year and seeking admission within ten years of his departure. The applicant is married to a U.S. citizen and he is the beneficiary of an approved Form I-130, Petition for Alien Relative. He seeks a waiver of inadmissibility under section 212(a)(9)(B)(v) of the Act, 8 U.S.C. § 212(a)(9)(B)(v), in order to reside in the United States with his U.S. citizen wife and child.

In a decision dated April 20, 2012, the director determined the applicant had failed to establish that his U.S. citizen spouse would experience extreme hardship if he were denied admission into the United States. The Form I-601 waiver application was denied accordingly.

On appeal, the applicant asserts that his wife will experience extreme emotional, physical, and financial hardship if he is denied admission into the United States. In support of these assertions the applicant submits letters from his wife, medical information, and financial evidence.

The record includes letters from family members, photographs, academic records, and Spanish language documents. The regulations provide at 8 C.F.R. § 103.2(b)(3):

Any document containing foreign language submitted to USCIS shall be accompanied by a full English language translation which the translator has certified as complete and accurate, and by the translator's certification that he or she is competent to translate from the foreign language into English.

Because the Spanish-language documents are not accompanied by certified English translations, they cannot be considered in the applicant's case. The entire remaining record was reviewed and considered in rendering a decision on the appeal

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

(i) [A]ny 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.

The record reflects the applicant entered the United States without inspection or admission on or about June 10, 2006. He remained in the United States until March 2, 2009, when he departed

pursuant to a grant of voluntary departure.¹ Inadmissibility under section 212(a)(9)(B)(i)(II) of the Act, which is triggered upon departure, remains in force until the alien has been absent from the United States for ten years. Here, the applicant was unlawfully present in the United States for over one year, and he has remained outside of the country for less than ten years. He is therefore inadmissible under section 212(a)(9)(B)(i)(II) of the Act. The applicant does not contest his inadmissibility.

Section 212(a)(9)(B)(v) of the Act provides in pertinent part:

Waiver.-The Attorney General [now, Secretary, Department 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 [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.

Section 212(a)(9)(B)(v) of the Act provides that a waiver of the bar to admission is dependent first upon a showing that the bar imposes an extreme hardship on a qualifying family member. Once extreme hardship is established, it is but one favorable factor to be considered in the determination of whether the Secretary should exercise discretion. *Matter of Mendez-Morales*, 21 I&N Dec. 296 (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*, 22 I&N Dec. 560, 565 (BIA 1999), 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. 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

¹ The director states in the denial decision that the applicant entered the United States without inspection in May 2005, and that he remained unlawfully in the country until February 2009. The applicant's Form I-213, Record of Deportable Alien, and Form I-862, Notice to Appear reflect, however, that he entered the United States without inspection on or about June 10, 2006. His Form I-210, Voluntary Departure and Verification of Departure shows that he departed the United States on March 2, 2009. The erroneous dates contained in the denial decision are harmless, as they do not change the analysis or outcome of the director's decision.

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).

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.

The applicant's U.S. citizen spouse is his qualifying relative under section 212(a)(9)(B)(v) of the Act. The applicant refers to hardship their U.S. citizen child would experience if the waiver application is denied. It is noted however, that Congress did not include hardship to an alien's child as a factor to be considered in assessing extreme hardship under section 212(a)(9)(B)(v) of the Act. Hardship to the applicant's child will therefore not be considered, except as it may affect the applicant's qualifying family member.

The applicant's wife states in letters that she and the applicant met in 2007 and married in Mexico on October 2, 2009. The applicant helped her financially when she attended community college, and he helped with car repairs. He also helped care for their son and provided emotional support. She now works and attends nursing classes, as corroborated by evidence in the record. She relies on her parents for assistance with their son. She struggles to pay her expenses on her own, and she is unable to visit the applicant often in Mexico due to the costs and her inability to take time off from

work. She has seen a doctor for depression, suffers from headaches, is unable to sleep, and has lost weight due to her separation from the applicant. Medical evidence reflects the applicant's wife was seen for "headaches and stress" in May 2012 and that she was prescribed medication for depression at that time. She is afraid to move to Mexico to be with the applicant due to high crime there. In addition, her entire family is in the United States, she would lose her job, and she would be unable to continue her nursing studies if she moved to Mexico. Academic and loan documents confirm the applicant's wife's claims concerning her nursing-school attendance and student loan debt.

The applicant's in-laws attest to the applicant's wife's emotional and financial hardship; they also state that they are a close family and that the applicant's wife and son are unfamiliar with the culture and language in Mexico. Moreover, the record shows that the applicant's wife shares legal and physical custody of her 16 year-old son with his biological father and, according to her family, she would face difficulties bringing him to Mexico.

Upon review, the AAO finds that the evidence in the record, when considered in the aggregate, establishes the applicant's wife would experience hardship that rises above the common results of removal or inadmissibility if the applicant were denied admission into the United States and she relocated to Mexico to be with him. The applicant's wife was born and raised in the United States, where she has lived her entire life; she is unfamiliar with the language and culture in Mexico. Moreover, moving to Mexico would require her to stop her nursing studies and she would lose her employment in this country. She also would be separated from her family and friends and face legal difficulties if she sought to bring their minor-aged son to Mexico.

The AAO finds, however, that the evidence in the record, when considered in the aggregate, fails to establish the applicant's wife would experience hardship that rises beyond the common results of removal or inadmissibility if the applicant were denied admission and she remained in the United States. The medical evidence fails to clarify the severity of, or reasons for, the applicant's wife's headaches and stress and fails to corroborate assertions that the applicant's wife is being treated for depression due to separation from the applicant. Moreover, the evidence fails to establish the applicant's wife would experience emotional or physical hardship beyond that normally experienced upon inadmissibility or removal of a family member if she remained in the United States. The record also lacks evidence to corroborate assertions that the applicant's wife was financially dependent on the applicant before his departure and does not establish that she cannot meet her financial obligations in the United States due to her separation from the applicant.

We can find extreme hardship warranting a waiver of inadmissibility only where an applicant has demonstrated extreme hardship to a qualifying relative in the scenario of separation *and* the scenario of relocation. A claim that a qualifying relative will relocate and thereby suffer extreme hardship can easily be made for purposes of the waiver even where there is no actual intention to relocate. *Cf. Matter of Ige*, 20 I&N Dec. 880, 886 (BIA 1994). Furthermore, to relocate and suffer extreme hardship, where remaining in the United States and being separated from the applicant would not result in extreme hardship, is a matter of choice and not the result of inadmissibility. *Id.*, also *cf. Matter of Pilch*, 21 I&N Dec. 627, 632-33 (BIA 1996). As the applicant has not demonstrated extreme hardship from separation, we cannot find that refusal of admission would result in extreme hardship to the qualifying relative(s) in this case. Furthermore, because the applicant has not established extreme

hardship to a qualifying family member upon relocation, no purpose would be served in determining whether the applicant merits a waiver as a matter of discretion.

In proceedings for an 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. Here, the applicant has not met that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.