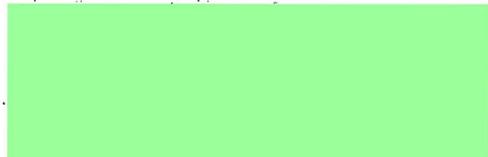


(b)(6)

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

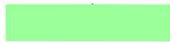


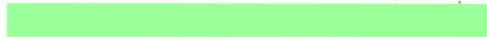
**U.S. Citizenship
and Immigration
Services**



DATE: **JAN 03 2013**

Office: CIUDAD JUAREZ

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,

A handwritten signature in black ink, appearing to read "Ron Rosenberg".

Ron Rosenberg
Acting Chief, Administrative Appeals Office

DISCUSSION: The waiver application 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 record reflects that the applicant is a native and citizen of Mexico who entered the United States without authorization in February 1998 and did not depart the United States until September 2010. The applicant was thus found to be inadmissible to the United States pursuant to section 212(a)(9)(B)(i)(II) of 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 does not contest this finding of inadmissibility. Rather, she seeks a waiver of inadmissibility under 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 her U.S. citizen spouse.

The field office director concluded that the applicant had failed to establish that extreme hardship would be imposed on a qualifying relative and denied the Application for Waiver of Ground of Inadmissibility (Form I-601) accordingly. *Decision of the Field Office Director*, dated February 23, 2012.

In support of the appeal, the applicant submits the Form I-290B, Notice of Appeal, medical documentation pertaining to the applicant's spouse's mother and a letter from the applicant's spouse. The entire record was reviewed and considered in rendering this decision.

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

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...

To begin, in his decision the field office director notes that the applicant is also inadmissible to the United States under section 212(a)(6)(C)(i) of the Act, for fraud or willful misrepresentation. The field office director outlines that the applicant was denied a visa in Mexico City in November 1997 because it was determined that she had misrepresented a material fact in an attempt to gain an immigration benefit. *Id.* at 3. On appeal, counsel contends that the applicant never applied for an immigrant visa in 1997 and thus, she is not subject to section 212(a)(6)(C)(i) of the Act. *See Form I-290B*, dated March 16, 2012. The record does not contain any documentation establishing the field office director's finding that the applicant is subject to section 212(a)(6)(C)(i) of the Act. Nevertheless, because the applicant is inadmissible under section 212(a)(9)(B)(i)(II) of the Act and demonstrating eligibility for a waiver under section 212(a)(9)(B)(v) also satisfies the requirements for a waiver for fraud or willful misrepresentation under section 212(i) of the Act, the AAO will not determine whether the applicant is also inadmissible under section 212(a)(6)(C)(i) 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. The applicant's U.S. citizen spouse is the only qualifying relative in this case. Hardship to the applicant or her husband's mother or son can be considered only insofar as it results in hardship to a qualifying relative. 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 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 at 1293 (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 asserts that he will suffer extreme hardship were he to remain in the United States while the applicant continues to reside abroad due to her inadmissibility. In a declaration he contends that he is suffering due to long-term separation from his wife. He explains that he intended for them to be together and not be separated. In addition, the applicant’s spouse details that his mother is elderly and ill and he needs his wife to help care for her while he works. Further, the applicant’s spouse details that he has a child from a previous marriage, born in 1999, and when he has to work, his wife helps care for the child and her absence is causing the child and him hardship. Finally, the applicant’s spouse details that he is experiencing financial hardship as a result of having to support two households, one in the United State and one in Mexico. *Declaration and Translation from* [REDACTED] In a separate statement, the applicant’s spouse details that his wife assisted him with the running of his business but as a result of her residence abroad, he has been forced to take on more of the administrative tasks and this has diminished his ability to focus on obtaining more work projects. *Affidavit of* [REDACTED] dated July 1, 2011.

To begin, the record contains no supporting evidence concerning the emotional hardship the applicant’s spouse states he will experience due to long-term separation from his wife. Nor has any documentation been provided establishing the hardships the applicant’s spouse’s son is experiencing as a result of long-term separation from the applicant. Moreover, no documentation has been

provided establishing that the applicant's spouse is unable to travel to Mexico to visit his wife. As for the applicant's spouse's mother's medical conditions, including dementia, hypertension and aortic valve disease, it has not been established that the applicant's spouse's four siblings, all of whom reside in San Antonio, are unable to assist their mother should the applicant's spouse be unable to do so. 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)).

In regards to the financial hardship referenced, no documentation has been provided on appeal establishing the applicant spouse's current income and expenses and assets and liabilities and complete financial picture, to establish that as a result of the applicant's residence abroad, the applicant's spouse is experiencing financial hardship. The AAO notes that the applicant's spouse owns his own home and has operated his own lawn business for over thirty years. Nor has it been established that the applicant is unable to obtain gainful employment in Mexico, thus ameliorating the financial hardships referenced by the applicant's spouse with respect to having to maintain two households. Finally, no documentation has been provided regarding the applicant's business to establish that as a result of his wife's relocation abroad, his business is suffering to an extent that he is experiencing hardship. As noted above, assertions without supporting documentation do not suffice to establish extreme hardship.

The AAO recognizes that the applicant's spouse will endure hardship as a result of long-term separation from the applicant. However, his situation, if he 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. The AAO concludes that based on the evidence provided, it has not been established that the applicant's U.S. citizen spouse will experience extreme hardship were he to remain in the United States while the applicant continues to reside abroad due to her inadmissibility.

The applicant's spouse contends that he would experience hardship were he to relocate abroad. To begin, he explains that he was born in the United States and has no ties to Mexico and unfamiliarity with the country, culture, language and customs would cause him hardship. In addition, the applicant's spouse notes that he has been self-employed for over thirty years and he would not be able to relocate abroad and still maintain his business, thereby causing him financial hardship. Moreover, the applicant's spouse details that his son, his elderly mother, his four siblings and numerous nieces and nephews reside in the San Antonio area and long-term separation from them would cause him hardship. Finally, the applicant's spouse maintains that he has a number of medical conditions as a result of a severe truck accident and were he to relocate abroad, he would not be able to receive effective and affordable medical treatment. *Affidavit of* [REDACTED] dated December 28, 2010.

The record establishes that the applicant's spouse was born in the United States and has no ties to Mexico. Were he to relocate abroad, he would have to leave the home he has owned since 1993, his community, his son, his elderly mother, his siblings and extended relatives, and his long-term self-employment as a lawn business operator. It has thus been established that the applicant's spouse

would suffer extreme hardship were he to relocate abroad to reside with the applicant due to her inadmissibility.

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 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 in this case.

The record, reviewed in its entirety, does not support a finding that the applicant's spouse will face extreme hardship if the applicant is unable to remain in the United States. Rather, the record demonstrates that he will face no greater hardship than the unfortunate, but expected, disruptions, inconveniences, and difficulties arising whenever a spouse is removed from the United States or is refused admission. There is no documentation establishing that the applicant's spouse's hardships are any different from other families separated as a result of immigration violations. Although the AAO is not insensitive to the applicant's spouse's situation, the record does not establish that the hardships he would face rise to the level of "extreme" as contemplated by statute and case law. Having found the applicant statutorily ineligible for relief, no purpose would be served in discussing whether the applicant merits a waiver as a matter of discretion.

In proceedings for application for waiver of grounds of inadmissibility, 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 appeal will be dismissed.

ORDER: The appeal is dismissed. The waiver application is denied.