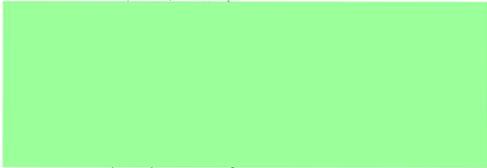




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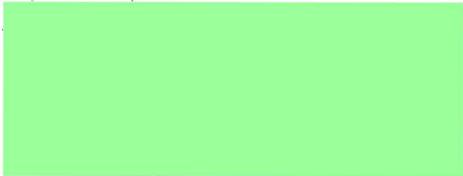


DATE: **JAN 08 2013** OFFICE: NEBRASKA (CIUDAD JUAREZ) FILE:

IN RE:

APPLICATION: Application for Waiver of Grounds of Inadmissibility pursuant to 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 with the field office or service center that originally decided your case by filing a 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 Field Office Director, Ciudad Juarez, Mexico. The application 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 one year or more and seeking readmission within 10 years of departure from the United States. The applicant is the beneficiary of an approved Petition for Alien Relative (Form I-130) filed on her behalf by her U.S. lawful permanent resident spouse. The applicant 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 a decision dated January 4, 2012, the Field Office Director concluded that the applicant did not establish that her qualifying relative would suffer extreme hardship and the application for a waiver of inadmissibility was denied accordingly.

On appeal, the applicant does not contest her inadmissibility, but states that her spouse will in fact suffer from extreme hardship as a result of her inadmissibility.

In support of the waiver application, the record includes, but is not limited to a brief by counsel for the applicant, letters from the applicant's spouse, a letter from the applicant, documentation regarding the applicant's spouse's mental health, a bank statement regarding foreclosure of the applicant's spouse's home, letters from family and friends of the applicant and her spouse, letters regarding the applicant's children's education, documentation of remittances sent to the applicant, country conditions information on Mexico, and documentation of the applicant's immigration history.

The AAO conducts appellate review on a *de novo* basis. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). The entire record was reviewed and considered in rendering a decision on the appeal.

The applicant is inadmissible under section 212(a)(9)(B)(i)(II) of the Act for having been unlawfully present in the United States for one year or more. 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-

...

(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 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 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 regarding a waiver under this clause.

The applicant states that she entered the United States without inspection in July 2005 and remained in the United States unlawfully until her departure in December 2010, accruing unlawful presence during this entire period. As the period of unlawful presence accrued is one year or more, the applicant is inadmissible to the United States under section 212(a)(9)(B)(i)(II) of the Act for a period of 10 years from her departure from the United States. She does not contest this ground of inadmissibility on appeal.

The applicant is eligible to apply for a waiver of inadmissibility pursuant to section 212(a)(9)(B)(v) of the Act, as the spouse of a U.S. lawful permanent resident. In order to qualify for this waiver, however, she must first prove that the refusal of her admission to the United States would result in extreme hardship to her qualifying relative. Hardship to the applicant or the applicant's U.S. citizen child will not be separately considered, except as it is shown to affect the applicant's spouse. 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 deportation, 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, 885 (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.

On appeal, counsel states the cumulative hardship to the applicant’s spouse as a result of the applicant’s inadmissibility is extreme. In particular, counsel states that the applicant’s spouse has suffered from emotional and financial hardship as a result of separation from the applicant. In regards to the emotional hardship, counsel states that the applicant’s spouse has been “emotionally devastated” as a result of separation from his spouse and their four children. Counsel states that “the physician’s medical opinion” is that the applicant’s spouse suffers from depression and that his “symptoms are aggravated by being separated from his family.” In support of that statement the record contains a letter from Nurse Practitioner [REDACTED] Family Health Care Center. Ms. [REDACTED] states that the applicant’s spouse is under medical management for his depression and the record includes prescriptions that the applicant’s spouse received for medication to treat anxiety and depression. There is no additional information in the record regarding the applicant’s spouse’s symptoms or the impact of his depression on his ability to carry

out his daily activities. The record contains statements from the applicant's spouse, supported by letters from family and friends, stating that he and the applicant had a close relationship prior to her departure to Mexico and that he is suffering emotional and financial hardship in her absence. The applicant's spouse also states that he worries about his spouse and children's safety, as well as has concerns for their health and education. The record indicates that the applicant and the couple's four children reside in [REDACTED] Jalisco, Mexico. The record also contains country conditions information in the record concerning Mexico. The AAO also takes note of the November 20, 2012 U.S. Department of State Travel Warning for Mexico. There is no documentation in the record, however, to indicate that the applicant's spouse or children have been negatively affected by the country conditions in Mexico. A letter from the principal of the applicant and her spouse's children's school states that the applicant's spouse left Mexico to work in the United States in order to pay tuition for the school. The principal also indicated that the couple's youngest daughter was not attending pre-school due to economic concerns. There is no indication in the record whether non-private pre-schools are available for the applicant's child in Mexico. The AAO also notes that the applicant indicates that her youngest child is a U.S. citizen. Yet, there is no indication in the record why the child is not able to attend pre-school in the United States and reside with her father. The AAO also notes that hardship to the applicant's children is only relevant under statute insofar as it is shown to cause hardship to the applicant's qualifying relative, her spouse. Here, the applicant's qualifying relative states that worrying about his children's educational situation in Mexico causes him stress.

The applicant's spouse also states that his children have suffered from food poisoning in Mexico and have had to see a doctor, increasing his expenses. There is no documentation in the record, however, of the children's medical issues or the expenses associated with those illnesses. Although the applicant's spouse's assertions are relevant and have been taken into consideration, little weight can be afforded them in the absence of supporting evidence. *See Matter of Kwan*, 14 I&N Dec. 175 (BIA 1972) ("Information in an affidavit should not be disregarded simply because it appears to be hearsay; in administrative proceedings, that fact merely affects the weight to be afforded it."). 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)). Moreover, counsel states that the applicant's spouse has suffered from financial hardship as a result of the applicant's inadmissibility. In addition to the medical expenses noted by the applicant's spouse, but not supported by evidence, counsel states that the applicant's spouse lost his home to foreclosure. A notice from Bank of America indicates that the applicant's spouse's home was in foreclosure. This information, however, is the only documentation in the record regarding the applicant's spouse's financial situation. There is no other documentation in the record regarding the applicant's spouse's income and expenses, aside from the documentation of the remittances that the applicant's spouse has sent to the applicant in Mexico. This limited information does not provide enough information to assess the degree of financial hardship suffered by the applicant's spouse. The AAO recognizes the impact of separation on families, and there is an indication in the record that the applicant's spouse has suffered from emotional and financial hardship as a result of separation from the applicant, but the evidence in the record, when

considered in the aggregate, does not indicate that the hardship in this case is extreme. *Matter of O-J-O-*, 21 I&N Dec. at 383.

Counsel for the applicant states that the applicant's spouse would also suffer extreme hardship were he to relocate to Mexico to reside with the applicant. In particular, counsel states that at age 50, the applicant's spouse would not be able to find employment in Mexico to support his family. In support of that statement, the record contains an article stating that labor laws in Mexico are rarely enforced and that it is difficult for individuals over age 35 to find employment. Counsel also notes that the applicant's spouse has extensive family ties in the United States including five siblings and nephews and nieces. The record contains brief letters from members of the applicant's spouse's family in the United States as well as documentation of their immigration status. The AAO also notes that the applicant has been a lawful permanent resident of the United States since December 1, 1989. Nonetheless, the applicant's spouse is a native of Mexico, speaks Spanish, and has not provided documentation that he is unable to support his family financially in Mexico. The AAO also notes that the applicant is 34-years-old and there is no indication in the record why she is unable to find employment in Mexico to support her husband and family. Again, 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 at 165. Again, the AAO notes the U.S. Department of State Travel Warning for Mexico, which was updated on November 20, 2012, however, the record does not document how the applicant's spouse, in particular, would face hardship as a result of the safety concerns in Mexico. Based on the information provided, considered in the aggregate, the evidence does not illustrate that the hardship suffered in this case, should the applicant's spouse relocate to Mexico, would be beyond what is normally experienced by families dealing with removal or inadmissibility. *Matter of O-J-O-*, 21 I&N Dec. at 383.

Although the applicant's spouse's concern over the applicant's immigration status is neither doubted nor minimized, the fact remains that Congress provided for a waiver of inadmissibility only under limited circumstances. In nearly every qualifying relationship, whether between husband and wife or parent and child, there is a deep level of affection and a certain amount of emotional and social interdependence. While, in common parlance, the prospect of separation or involuntary relocation nearly always results in considerable hardship to individuals and families, in specifically limiting the availability of a waiver of inadmissibility to cases of "extreme hardship," Congress did not intend that a waiver be granted in every case where a qualifying relationship, and thus the familial and emotional bonds, exist. The point made in this and prior decisions on this matter is that the current state of the law, viewed from a legislative, administrative, or judicial point of view, requires that the hardship, which meets the standard in section 212(a)(9)(B)(v), of the Act, be above and beyond the normal, expected hardship involved in such cases.

In this case, the record does not contain sufficient evidence to show that the hardships faced by the qualifying relative, considered in the aggregate, rise 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 a qualifying relative as required under

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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 she 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. 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.