



U.S. Citizenship  
and Immigration  
Services

(b)(6)

DATE: JAN 31 2013

OFFICE: CIUDAD JUAREZ, MEXICO  
(NEBRASKA SERVICE CENTER)

FILE: [REDACTED]

IN RE: Applicant: [REDACTED]

APPLICATIONS: 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

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**DISCUSSION:** The waiver application was denied by the Nebraska Service Center on behalf of the Field Office Director, Ciudad Juarez, 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 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 and seeking readmission within ten years of his last departure from the United States. The record indicates that the applicant is married to a U.S. citizen and he is the father of a U.S. citizen child. He is the beneficiary of an approved Petition for Alien Relative (Form I-130). 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), in order to reside in the United States with his spouse and child.

The Field Office Director found that the applicant had failed to establish that extreme hardship would be imposed on the applicant's qualifying relatives and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) accordingly. *Decision of the Field Office Director*, dated November 28, 2011.

On appeal, the applicant's wife states being separated from the applicant is causing her extreme hardship because he supports her and their son. *Statement from the applicant's wife, attached to Form I-290B, Notice of Appeal or Motion*, filed December 22, 2011. The applicant's wife also requests 30 days in order to submit a brief or additional evidence. As of the date of this decision, no additional statements or evidence have been submitted; therefore, the record is considered complete, and the AAO shall render a decision based upon the evidence now before it.

The record includes, but is not limited to, statements from the applicant's wife, household bills, and a letter from the State of Texas Health and Human Services Commission. The entire record was reviewed and considered in arriving at a decision on the appeal.

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-

(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 (whether or not pursuant to section 244(e)) prior to the commencement of proceedings under section 235(b)(1) or section 240, and again seeks admission within 3 years of the date of such alien's departure or removal

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.....  
is inadmissible.

(iii) Exceptions.-

(I) Minors.-No period of time in which an alien is under 18 years of age shall be taken into account in determining the period of unlawful presence in the United States under clause (i).

.....  
(v) Waiver.-The [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.

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 wife is the only qualifying relative in this case. If extreme hardship to a qualifying relative is established, the applicant is statutorily eligible for a waiver, and United States Citizenship and Immigration Services (USCIS) then assesses whether a favorable exercise of discretion is warranted. See *Matter of Mendez-Moralez*, 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 (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 v. INS*, 138 F.3d 1292, 1293 (9<sup>th</sup> Cir. 1998) (quoting *Contreras-Buenfil v. INS*, 712 F.2d 401, 403 (9<sup>th</sup> 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 record indicates that in April 2001, the applicant entered the United States without inspection. In December 2010, the applicant departed the United States. The applicant accrued unlawful presence between March 19, 2002, the date he turned eighteen years old, and December 2010. The applicant is, therefore, inadmissible to the United States under section 212(a)(9)(B)(i)(II) of the Act for being unlawfully present in the United States for a period of more than one year, and he seeks admission within 10 years of his departure from the United States. The applicant does not contest his inadmissibility.

The applicant's wife states she cannot "imagine" returning to Mexico. In her statement dated November 5, 2011, the applicant's wife states it will be difficult for the applicant to work in Mexico because the jobs are either unavailable or unsafe. Further, in her statement dated March 3, 2011, the applicant's wife states it would be extremely "chaotic" for them to move to Mexico because of the violence, and as a U.S. citizen, their child will be a target for kidnapping. The AAO notes that on November 20, 2012, the Department of State issued a travel warning to U.S. citizens about the security situation in Mexico. The warning states that "the Mexican government has been engaged in an extensive effort to counter [Transnational Criminal Organizations (TCOs)] which engage in narcotics trafficking and other unlawful activities throughout Mexico.... As a result, crime and violence are serious problems throughout the country and can occur anywhere." The warning also states U.S. citizens have been the victims of "homicide, gun battles, kidnapping, carjacking and highway robbery," and the rise in "kidnappings and disappearances throughout Mexico is of particular concern." The record establishes that the applicant resides in Zacatecas. The warning states that "non-essential travel to the state of Zacatecas" should be deferred, except in the city of Zacatecas where caution should be exercised. Additionally, the warning reports "roadblocks and false checkpoints on highways between the states of Zacatecas and Jalisco," and advises that visitors use extreme caution "when traveling in the remainder of the state."

The AAO acknowledges that the applicant's wife is a U.S. citizen and that relocation abroad would involve some hardship. However, no evidence has been submitted showing that the applicant's wife, a native of Mexico, does not speak Spanish, is unfamiliar with the culture and customs in Mexico, or has no family ties there. Additionally, the record does not contain documentary evidence showing that the applicant's wife would be unable to obtain employment in Mexico. Going on record without supporting documentation is not sufficient to meet the applicant's burden of proof in this proceeding. *See 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)). Further, though the applicant's wife's security concerns about Mexico are corroborated by a U.S. government report, this document alone does not support a finding of extreme hardship to the applicant's wife should she join the applicant in Mexico. Moreover, regarding the hardship that the applicant's child may experience in Mexico, he is not a qualifying relative under the Act, and the applicant has not shown that hardship to their child has elevated his wife's challenges to an extreme level. Therefore, based on the record before it, the AAO finds that, considering the potential hardships in the aggregate, the applicant has failed to establish that his wife would suffer extreme hardship if she relocated to Mexico.

Concerning the applicant's wife's hardship in the United States, the applicant's wife states the applicant is their primary financial support. She claims that she does not work because she cares for their child and her elderly parents, and she needed to ask for government assistance in order to pay the family's expenses. Documentation in the record establishes that the applicant's wife receives food stamps. Additionally, she states their savings account "has been decreasing." She states that they reside with her parents "to save money and help them in return." The applicant's wife also states it will be depressing to live apart from the applicant. She also claims that their son is suffering, he needs the applicant "especially for [his] education," and "a father figure is very important in [their] son's life."

The AAO acknowledges that the applicant's wife may be suffering emotionally in being separated from the applicant. While it is understood that the separation of spouses often results in significant psychological challenges, the applicant has not distinguished his wife's emotional hardship upon separation from that which is typically faced by the loved ones of those deemed inadmissible. The AAO also notes that the applicant's child may be experiencing some hardship in being separated from the applicant; however, the applicant has not shown that their son's hardship has elevated his wife's challenges to an extreme level. Moreover, though the applicant's wife refers to financial difficulties, the record does not contain sufficient evidence showing that she is unable to support herself in the applicant's absence. Additionally, the applicant has not distinguished his wife's financial challenges from those commonly experienced when a family member remains in the United States. Further, the record does not contain documentary evidence establishing that the applicant is unable to obtain employment in Mexico and, thereby, financially assist his wife from outside the United States. Based on the record before it, the AAO finds that the applicant has failed to establish that his wife would suffer extreme hardship if his waiver application is denied and she remains in the United States.

In this case, the record does not contain sufficient evidence to show that the hardships faced by the applicant's 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 his U.S. citizen wife as required under section 212(a)(9)(B)(v) of the Act. Having found the applicant statutorily ineligible for relief, the AAO finds 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. Here, the applicant has not met that burden. Accordingly, the appeal will be dismissed.

**ORDER:** The appeal is dismissed.