

(b)(6)

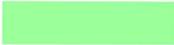
U.S. Department of Homeland Security  
U.S. Citizenship and Immigration Services  
*Office of Administrative Appeals*  
20 Massachusetts Avenue, N.W., MS 2090  
Washington, DC 20529-2090

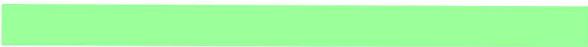


U.S. Citizenship  
and Immigration  
Services



DATE: **JUL 09 2013** OFFICE: MEXICO CITY

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,

A handwritten signature in black ink, appearing to read "Ron Rosenberg", with a long, sweeping underline.

Ron Rosenberg  
Acting Chief, Administrative Appeals Office

**DISCUSSION:** The waiver application was denied by the District Director, Mexico City, Mexico and an appeal was dismissed by the Administrative Appeals Office (AAO). This matter is now before the AAO on a motion to reopen and reconsider. The motion will be granted and the underlying application will remain denied.

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 10 years of his last departure from the United States. The applicant seeks a waiver of inadmissibility in order to reside in the United States with his U.S. citizen spouse.

The Field Office Director concluded that the record failed to establish the existence of extreme hardship for a qualifying relative and denied the application accordingly. *See Decision of the District Director*, dated October 19, 2010. On appeal, the AAO determined that the applicant does not merit a favorable exercise of discretion and dismissed the appeal accordingly. *See Decision of the AAO*, dated December 8, 2012.

The applicant has submitted a motion to reopen the dismissal of his appeal. Based on the updated information including an updated criminal record from Mexico, the motion to reopen will be granted. In the applicant's motion to reopen, the applicant's spouse asserts that the applicant is suffering hardship in Mexico and that she needs him with her to take care of her in the United States

In support of the applicant's motion to reopen, the applicant submitted a letter from his spouse, a document concerning his criminal record in Mexico, a letter from the applicant, documents concerning the applicant's criminal record in the United States, and an updated letter concerning the applicant's spouse's medical condition. The entire record was reviewed and considered in rendering this decision.

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

**(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 is a native and citizen of Mexico who entered the United States without admission or parole on May 15, 1990 and departed from the United States pursuant to a grant of voluntary departure on November 6, 2008. The applicant began to accrue unlawful presence in the United States from April 1, 1997, the effective date of the unlawful presence provisions, until his departure on November 6, 2008. Accordingly, the applicant accrued over one year of unlawful presence in the United States. As he now seeks readmission within 10 years of his last departure, he is inadmissible under section 212(a)(9)(B)(i)(II) 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, parent, son or daughter of the applicant. Hardship to the applicant can be considered only insofar as it results in hardship to a qualifying relative. The applicant's spouse 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 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 record reflects that the applicant is a 40-year-old native and citizen of Mexico. The applicant’s spouse is a 62-year-old native and citizen of the United States. The applicant is currently residing in Mexico and his spouse is residing in Gainesville, Georgia.

The AAO previously determined, in its December 8, 2012 decision, that the applicant has demonstrated extreme hardship to his spouse upon separation if his waiver application were denied. The evidence in the record indicates that the applicant’s spouse currently resides on an income consisting of social security, social security insurance, and food subsidies. The applicant’s spouse asserts that she has lost her home and car due to the financial hardship of separation from applicant and that she is barely able to purchase her necessary food and medications. The

applicant's spouse also submitted medical documentation indicating that she suffers from atrial fibrillation, degenerative osteoarthritis, venous varicosity, hypertension, paroxysmal nocturnal dyspnea, sleep apnea, cervicalgia, and vitamin D deficiency. An updated letter from [REDACTED] lists 15 medications that have been prescribed for the applicant's spouse and current diagnoses including CHF, arrhythmia, hypertension, pulmonary hypertension, abnormal exercise nuclear study, mitral and tricuspid valve regurgitation, chest pain precordial, morbid obesity, and sleep apnea.

The AAO also previously determined that the applicant has demonstrated that his spouse would suffer extreme hardship if she relocated to Mexico to join the applicant. The evidence in the record indicates that the applicant's spouse is a native and citizen of the United States who has never resided in Mexico. The applicant's spouse asserts that she is not familiar enough with the language or culture of Mexico to reside in that country and that she fears the conditions in Mexico. The AAO took notice of the most recent U.S. Department of State travel warnings concerning Mexico, dated November 20, 2012, stating that crime and violence are serious problems in the country. The applicant's spouse also indicates that she cannot leave the United States because she will lose her social security insurance benefits, family ties, and access to specialized care for her medical conditions. The applicant's spouse contends that the applicant currently resides in conditions in which she could not survive, with seven others in a home lacking amenities such as heat, cooling, and often running water.

As such, the AAO determined that the applicant had established extreme hardship to his U.S. citizen spouse as required under section 212(a)(9)(B)(v) of the Act, but that this applicant, as a matter of discretion, does not merit approval of this waiver.

The negative discretionary factors against this applicant include both immigration and criminal violations. The applicant entered the United States without admission or parole and accrued unlawful presence in the United States. The applicant's spouse asserts that the applicant was employed in the United States and there is no indication that the applicant was authorized to work in the United States. There is also no financial documentation indicating that the applicant paid taxes on his employment earnings in the United States.

The applicant has extensive criminal contacts in the United States spanning a decade, from a driving under the influence arrest in 1996 to an arrest for battery against his spouse in 2006. The AAO previously determined that the applicant does not merit a favorable grant of discretion due to an extensive criminal history demonstrating dangerous behavior involving alcohol combined with disorderly and violent conduct in the United States.

The applicant's criminal contacts in the United States include a conviction for driving under the influence of alcohol from 1998 and a conviction for simple battery against an individual in 1999. The plea statement for the applicant's simple battery conviction indicates that the defendant, the applicant, was drinking. The applicant was subsequently arrested for two counts of public drunkenness in 2001, which resulted in a public indecency conviction. The applicant was also convicted of disorderly conduct in 2003. In the same year, the applicant was arrested for willful

obstruction of law enforcement officers, cruelty to children, and assault in the same year, resulting in an assault conviction. The applicant was then convicted of criminal trespass in 2004. In 2006, the applicant was charged with battery and reckless conduct against his spouse and obstructing his spouse from making an emergency call. It is noted that the applicant's spouse, in 2007, invoked marital privilege and did not testify against the applicant. It is also noted that the applicant, in a prior application for cancellation of removal, also indicated that his criminal contacts have involved two separate driving under the influence incidents, driving on the wrong side of the road, driving without insurance or driver's license, and providing false information to police.

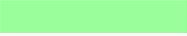
The favorable discretionary factors for this applicant are the extreme hardships that would be suffered by his U.S. citizen spouse whether she remains separated from the applicant in the United States or relocates to Mexico, as detailed above; the letters of support submitted on behalf of the applicant; the letters submitted by the applicant's spouse; the evidence submitted by the applicant's spouse that the applicant does not have a criminal record in the state of Guanajuato, Mexico; and the applicant's spouse's assertion that the applicant was receiving treatment in 2004, with no supporting documentation.

The applicant, in a recent letter submitted with his motion to reopen and reconsider, asserts that his charges from 2003 resulted from speaking too loud with a woman, with children playing nearby. The applicant contends that he was only charged with disorderly conduct based upon that incident. The applicant further asserts that he does not know why he ended up in jail for an incident that took place with another woman in 1997. The applicant's spouse also submitted a recent letter asserting that the criminal matter in which she was the victim was based on a mistake. The applicant's spouse contends that she pressed the wrong number on the phone and that the applicant was not hitting her. It is noted that even as the applicant requests forgiveness for his 2003 arrest, he inaccurately states that he was only charged with disorderly conduct. The record reflects that the applicant was convicted of assault, following charges including obstruction, disorderly conduct, and assault. The applicant, in his letter, demonstrates an unwillingness to take responsibility for his actions that satisfy the statutory elements of his 2003 assault conviction, states that he does not understand the basis for his 1999 battery conviction, and does not address any of his other criminal contacts.

The immigration and criminal violations committed by the applicant are serious in nature and cannot be condoned. In addition, the applicant has not demonstrated sufficient evidence of reformation or rehabilitation. As such, the AAO finds that the applicant has not established that the favorable factors in his application outweigh the unfavorable factors. Therefore, a favorable exercise of the Secretary's discretion is not warranted.

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. Section 291 of the Act, 8 U.S.C. § 1361. Here, the applicant has not met that burden. Accordingly, the prior decision of the AAO will be affirmed and the underlying application will remain denied.

(b)(6)



Page 7

**ORDER:** The motion to reopen is granted, the prior decision of the AAO is affirmed, and the application remains denied.