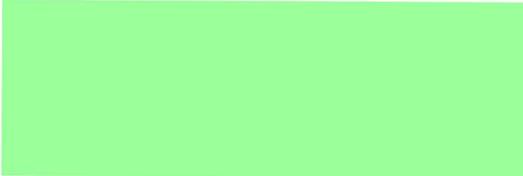


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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
20 Massachusetts Avenue NW
Washington, DC 20529-2090



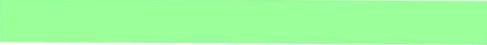
U.S. Citizenship
and Immigration
Services



DATE: JUL 12 2013

Office: ANAHEIM

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 (the 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.


f-

Ron Rosenberg
Acting Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the International Adjudications Support Branch on behalf of the Field Office Director, Ciudad Juarez, Mexico, and it 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 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. He is seeking a waiver of inadmissibility in order to immigrate to the United States as the beneficiary of the approved Petition for Alien Relative (Form I-130) filed by his wife.

The field office director concluded the applicant had failed to establish that extreme hardship would be imposed on a qualifying relative and, accordingly, denied the Application for Waiver of Ground of Inadmissibility (Form I-601). *Decision of the Field Office Director, September 26, 2012.*

On appeal, the applicant provides a brief and additional evidence that a qualifying relative would suffer extreme hardship due to the waiver denial. The record on appeal consists of an updated hardship statement of the applicant's wife, as well as additional financial and medical documentation. The record contains financial evidence, including receipts for household expenses such as utilities and renovations, loan documents, and remittance receipts; medical evidence, including lab reports, a medical letter, prescription and general information; a psychological evaluation; support statements; birth, death, marriage, and naturalization certificates; photographs; and country condition information.

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

(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....

The record indicates the applicant entered the United States without admission or parole in March 2009 and remained here until January or February 2012, when he departed to apply for an immigrant

visa. The field office director therefore found him inadmissible for having accrued unlawful presence of one year or more.

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 U.S. citizen 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 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 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 (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.

Regarding hardship from separation, although the qualifying relative contends her husband's absence is difficult for her and offers a January 2012 psychological report to show the emotional impact, there is little to substantiate that his departure has caused any specific harm. Diagnosing the applicant's wife with depression, the psychologist attributes her problems to the combination of damage to her home from Hurricane Irene (August 2011), her father's death (December 2011), and her children leaving home to attend college. While the report notes the existence of significant psychological evidence that separation will cause hardship to the qualifying relative, it largely fails to identify such evidence. The evaluation occurred before the applicant's departure and no updated evidence has been submitted documenting the actual effect of separation on the qualifying relative. The psychologist recommends no treatment and offers no prognosis beyond concluding her condition could worsen if she were separated from her husband. Over 15 months after his departure, the applicant provides no evidence that the psychologist's concerns have been realized, aside from her 19-year-old son's support letter stating how he considers the applicant a father figure and affirming that his mother and the entire family miss the applicant. The record indicates the applicant's wife maintains a close relationship with her two children from a prior marriage -- besides the son, she has a 20 year old daughter -- and that they together with the qualifying relative's three sisters and their children living in New Jersey comprise a support network. She claims to be unable to afford to travel to visit her husband, but the record reflects that she met her husband while vacationing in Mexico in 2008. There is no documentary evidence of her income or of the cost of traveling to his location.

Regarding financial hardship, the record contains no documentation of the qualifying relative's claimed monthly earnings of about \$1,800 from waitressing or of her husband's claimed monthly earnings of \$1,600. Despite this lack of income evidence, the record reflects that the applicant's wife was able to obtain a mortgage loan with a current monthly payment of about \$1,250, became a co-signatory for one of her children on a more than \$4,000 student loan over three months after the applicant's departure, and is paying several recurring utility bills. While the qualifying relative has documented having incurred late charges on her mortgage, the record does not establish she has had any ongoing difficulties making payments or that the bank has sought to foreclose. The sole

evidence of the applicant's purported U.S. employment is a letter indicating he worked for an unnamed company as a landscaper for an unspecified period of less than one year ending in July 2011, and not mentioning any compensation. There is no documentation showing the applicant's financial contribution toward household expenses, or that loss of his income resulted in financial hardship to his wife. We note the evidence reflects that his wife's full-time waitressing job made her the breadwinner and provided her with health insurance.

The record contains documentation of a homeowner's insurance settlement for damages sustained during Hurricane Irene, as well as of contractor's costs and receipts for materials from building supply retailers. The qualifying relative's assertion that the applicant is skilled enough in home repair to have spared her many of these expenses is unsupported by the record, which contains only the unsubstantiated claims that her husband graduated from high school in Mexico and worked briefly here as a landscaper. Remittance receipts demonstrate that the applicant's wife is sending him money at regular intervals, but there is no indication of his living expenses in Mexico and no showing he has been unable to find work to help defray those expenses. The record reflects that, prior to entering the United States, he worked as a waiter in his home country. Without evidence of the applicant's pre-departure financial contribution to the household, his current expenses, or his wife's present employment and economic resources, we are unable to determine that she is unable to support herself financially. While we are sensitive to the effects of the applicant's departure on his wife, the applicant has provided insufficient evidence to show that his absence has caused her economic problems.

Documentation on record, when considered in its totality, does not show that the applicant's wife is suffering extreme hardship due to the applicant's inability to reside in the United States. The AAO recognizes that the qualifying relative will endure some hardship as a result of separation from the applicant. However, their situation is typical of individuals separated as a result of removal or inadmissibility, and the AAO therefore finds that the applicant has failed to establish hardship to a qualifying relative that rises to the level of "extreme" under the Act.

Regarding relocation, counsel states that the qualifying relative has safety and security concerns. Although official U.S. government reporting and country condition information reflect that personal safety is an issue in many parts of Mexico, there is no indication that the applicant resides where violence has been a problem. *See Travel Warning—Mexico*, U.S. Department of State (DOS), November 20, 2012. The travel warning states that "No advisory is in effect" for the state of Puebla, including the address listed on the applicant's 2012 Form I-601, which is where he lived for over 40 years before leaving in 2009. Besides the general danger represented by crime and violence, the applicant's wife reports concern about the availability of medical care for her health problems, including high blood pressure, type 2 (non-insulin dependent) diabetes, and high cholesterol. Although she claims to be receiving regular care for high blood pressure and to have recently been diagnosed with diabetes, there is no indication of the severity of these conditions or that treatment would be lacking. While evidence confirms the applicant's wife has been prescribed medication for the first two conditions, the record does not show these cannot be obtained in Mexico and there is no evidence she takes medication for the third condition. The record contains copies of medical records, including hand-written progress notes containing medical terminology and abbreviations that are not easily understood, and laboratory results. The documents submitted were prepared for

review by medical professionals or are otherwise illegible or indiscernible and do not contain a clear explanation of the current medical condition of the patient. Absent an explanation in plain language from the treating physician of the exact nature and severity of any condition and a description of any treatment needed, the AAO is not in the position to reach conclusions concerning the severity of a medical condition or the treatment needed.

The applicant's wife contends that moving to Mexico would involve going to a place where she has never lived and has no connection besides her husband, sever ties with the country where she naturalized over 10 years ago and has lived since 1986, entail loss of her job, and remove access to her support network (including her two children, three sisters, and six nieces/nephews). Having been raised in a Spanish-speaking country, she would encounter no communication problems in Mexico. There is no evidence that the wife of a Mexican citizen would not qualify for health and social benefits. Regarding her children, the record is inconclusive regarding whether either still lives at home with their mother, and shows both are no longer minors and that both are receiving post-secondary education.

The record reflects that the applicant's wife emigrated from her native El Salvador to the United States at the age of 19, is an experienced waitress, and that her husband worked as a waiter in Mexico before emigrating. The AAO is sensitive that moving to Mexico might be disruptive for the qualifying relative, require economic sacrifices, or entail loss of contact with her children. However, without evidence showing how relocating will adversely impact his wife, the applicant cannot show hardship that rises to the level of "extreme." The AAO thus concludes that, were the applicant unable to reside in the United States due to his inadmissibility, the record does not establish that a qualifying relative would suffer extreme hardship if she relocated to live with the applicant.

The documentation on record, when considered in aggregate, reflects that the applicant has not established his wife will suffer extreme hardship if he is unable to live in the United States. The AAO recognizes that the applicant's wife will endure hardship as a result of the applicant's inability to immigrate. However, her situation is typical of individuals affected by removal or inadmissibility, and the AAO thus finds that the applicant has failed to establish extreme hardship to his wife as required under the Act.

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.