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U.S. Department of Homeland Security  
U.S. Citizenship and Immigration Service  
Office of Administrative Appeals  
20 Massachusetts Ave. N.W. MS 2090  
Washington, D.C. 20529-2090



U.S. Citizenship  
and Immigration  
Services



DATE: JUN 10 2013 OFFICE: SAN DIEGO, CALIFORNIA

FILE: [REDACTED]

IN RE: Applicant: [REDACTED]

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 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,

A handwritten signature in black ink that reads "Ron Rosenberg".  
Ron Rosenberg

Acting Chief, Administrative Appeals Office

**DISCUSSION:** The Field Office Director, San Diego, California, denied the waiver application. The applicant appealed the Field Office Director's decision, and the Administrative Appeals Office (AAO) rejected the appeal as untimely. The matter was returned to the Field Office Director to determine whether the appeal met the requirements of a motion. The Field Office Director reopened the matter and concluded that the prior denial stands. Based on evidence the applicant submitted directly to the AAO showing that the appeal had been filed timely, the AAO withdraws its previous decision rejecting the appeal. The San Diego Field Office Director's decision on motion also is withdrawn. The AAO, on its own motion, will reopen the matter in accordance with 8 C.F.R. § 103.5(a)(5). 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 admission within 10 years of his last departure from the United States. The Field Office Director concluded the applicant failed to establish extreme hardship to a qualifying relative and denied his Application for Waiver of Grounds of Inadmissibility (Form I-601) accordingly. The AAO rejected the applicant's appeal, concluding it was filed untimely. *See Decision of the AAO*, dated July 27, 2012.

The applicant has provided new evidence that supports withdrawing the AAO's previous rejection decision and reopening the matter. Specifically, on August 17, 2012, the applicant's spouse, through counsel, corresponded with the AAO regarding the timeliness of the appeal. The applicant's spouse asserts she timely filed an appeal on the applicant's behalf and provided a Federal Express delivery confirmation form, signed by the U.S. Citizenship and Immigration Services (USCIS) San Diego Field Office on June 10, 2011. *See Applicant's Spouse's Letter*, dated August 17, 2012.

The record includes, but is not limited to: correspondence from counsel; letters of support; identity, medical, psychological, employment, and financial documents; photographs; and Internet articles about international health statistics and the applicant's spouse's medical conditions. The entire record was reviewed and considered in rendering a decision on the appeal.

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

(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 [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. No court shall have jurisdiction to review a decision or action by the Attorney General [Secretary] regarding a waiver under this clause.

The record reflects the applicant entered the United States without inspection by immigration officials around April 2006 and remained until June 26, 2010; he departed pursuant to a voluntary-departure order issued by an immigration judge on March 1, 2010. The record also reflects the applicant has remained outside the United States to date. The applicant accrued unlawful presence from April 2006 until March 1, 2010, a period in excess of one year. As the applicant is seeking admission within 10 years of departure, he is inadmissible pursuant to section 212(a)(9)(B)(i)(II) of the Act. The applicant does not contest his inadmissibility.

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 in-laws can be considered only insofar as it results in hardship to a qualifying relative. The applicant's U.S. citizen spouse is the only demonstrated 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-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 (BIA) 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 U.S. 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 BIA 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 BIA 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; *In re 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 BIA 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., In re Bing Chih Kao and Mei Tsui Lin*, 23 I&N Dec. 45, 51 (BIA 2001) (distinguishing *In re 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. I.N.S.*, 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.

Counsel contends that separation from the applicant resulted in his spouse becoming unable to pursue further educational and long-term employment opportunities because she would visit the applicant in Mexico “whenever she [had] sufficient funds”; the demands of her work as a sleep technician did not allow her to visit for more than one week; and she was “so distraught over her separation” from the applicant that she quit her job and moved to Mexico. The applicant’s spouse also indicates: the risks involved with her medical condition; she is suffering from polycystic ovarian syndrome (PCOS), stress, anxiety, and depression; if she and the applicant had children, she “would essentially be a single mother on [a] very low income,” and they would be unable to “afford the financial, physical, and emotional toll of transporting [their] children” between Alaska and Mexico; her decision to join the applicant in Mexico was “heartbreaking” because it “forced

[her] to give up” employment that provided her with health insurance, vacation, and retirement benefits; she has postponed plans to pursue a nursing degree; her parents depended on her financial contributions when she was working; and the applicant’s income as a welder is insufficient, whereas in the United States, he would have a job working for his uncle, he would be able to continue his education, and he would assist her in paying their debts, including her student loan. Additionally, the applicant’s spouse’s parents discuss the positive impact the applicant has made on their family and their home, their financial burdens, and the mental-health issues the applicant’s mother-in-law is experiencing.

Although the applicant’s spouse may experience some hardship in the applicant’s absence, the AAO finds the record does not establish the hardship goes beyond what is normally experienced by qualifying relatives of inadmissible individuals. The record includes a letter from the applicant’s spouse’s physician assistant, [REDACTED] indicating the applicant’s spouse has been diagnosed with PCOS. The record also includes Internet articles that describe the causes, symptoms, and treatments for PCOS as well as the possibility of infertility for individuals diagnosed with PCOS. However, the AAO notes Ms. [REDACTED] letter generally describes the applicant’s spouse’s diagnosis, and it does not specifically discuss ongoing symptoms and treatment or indicate that the applicant’s presence would be advantageous in his spouse’s treatment.

The record also includes a letter from the applicant’s mother-in-law’s licensed therapist, [REDACTED] stating his mother-in-law is anxious and depressed as a result of the applicant’s departure, because they have a “very close” relationship. Ms. [REDACTED] further indicates that the applicant’s mother-in-law’s condition has improved with medication and counseling. Additionally, Ms. [REDACTED] indicates the applicant’s spouse is “angry and struggling with having to leave everything to be with the one she loves.” However, the AAO notes the record does not include a discussion concerning the impact that the applicant’s mother-in-law’s current mental health has on the applicant’s spouse, his qualifying relative. Moreover, the AAO notes the record does not include evidence discussing the applicant’s spouse’s current mental health or the necessity of ongoing treatment other than what has been generally self-reported to Ms. [REDACTED]. Absent an explanation in plain language from the treating physician or mental health professional of the nature and severity of any condition and a description of any treatment or family assistance needed, the AAO is not in the position to reach conclusions concerning the severity of a medical or mental health condition or the treatment needed.

Further, the record establishes the applicant’s spouse resigned from [REDACTED] Works on March 10, 2011. The record also establishes her financial obligation for a student loan. However, the record does not contain sufficient evidence of her financial obligations, demonstrating her inability to meet those obligations in the applicant’s absence. The AAO also notes the record does not include evidence of the financial impact on the applicant’s in-laws upon the applicant leaving the United States, and the effect this has on his spouse. 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)).

The AAO notes the concerns regarding the hardship the applicant's spouse may experience in the applicant's absence but finds that even when this hardship is considered in the aggregate, the record fails to establish the applicant's spouse would suffer extreme hardship as a result of separation from the applicant.

Counsel contends that the applicant's spouse's decision to move to Mexico to be with the applicant has resulted in her losing a "prestigious, unique, and well-paying job" through which she received healthcare and retirement benefits and which allowed her to pay her debts, care for her family, and travel between Mexico and Alaska. Moreover, counsel adds that the applicant's spouse had to postpone her career development plans and now is unable to enroll in a nursing program with in-state residency tuition benefits. Additionally, according to counsel, the applicant's spouse no longer has affordable healthcare for her family; she cannot work in Mexico, as she lacks Spanish-language skills and the legal authorization to do so; she is unable to save for a home; and she cannot practice her religion without pressure to convert to Catholicism. The applicant's spouse further indicates: she must return to the United States periodically to care for her parents as well as her grandfathers; she and the applicant live with his brother's family and are "an extreme burden on them"; she is ineligible for subsidized, public healthcare; she and the applicant are unable to afford necessities, including bottled water, as the area in which they live is "economically depressed"; her credit score will be "ruined" because the applicant's income does not allow her to repay her student loan; the cost of travel to Alaska is "very expensive," making it "impossible for [her] to afford to see any of her extended family"; and local churches do not include those of the Nazarene faith. Additionally, Ms. [REDACTED] discusses that the applicant's mother-in-law has "become extremely concerned" for her daughter and the applicant's safety, due to the increased violence in Mexico.

Although the record does not include evidence of citizenship and nationality laws in Mexico or of social and economic conditions where the applicant and his spouse reside in [REDACTED] the AAO finds the record is sufficient to establish the applicant's spouse has suffered hardship since relocating to Mexico to be with the applicant. The record reflects the applicant's spouse is a national and citizen of the United States, where she maintains strong familial and community ties, and before 2011 she never resided outside of the United States. The record also reflects she has limited Spanish-language skills. The U.S. Department of State has issued a travel warning for [REDACTED] Mexico, recommending that travelers "defer non-essential travel to areas of the state that border the states of [REDACTED] [and] exercise caution when traveling at night outside of cities in the remaining portions of this state. . . . The security situation along the [REDACTED] borders continues to be unstable and gun battles between criminal groups and authorities occur. Concerns include roadblocks placed by individuals posing as police or military personnel and recent gun battles between rival [transnational criminal organizations] involving automatic weapons." *Travel Warning, Mexico*, issued November 20, 2012. The AAO finds, in the aggregate, the applicant's spouse would suffer extreme hardship upon relocation to Mexico.

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 in 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. In re Pilch*, 21 I&N Dec. at 632-33. 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.

In this case, the record does not contain sufficient evidence to show that the hardship faced by the qualifying relative, considered in the aggregate, rises beyond the common results of removal or inadmissibility to the level of extreme hardship. The AAO therefore finds the applicant has failed to establish extreme hardship to his U.S. citizen spouse as required under 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 the applicant 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. 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.