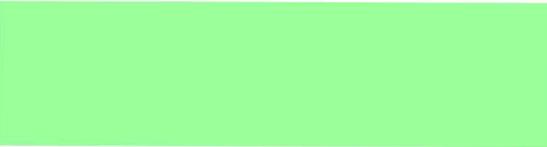


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U.S. Citizenship
and Immigration
Services



Date: **MAR 21 2013**

Office: CIUDAD JUAREZ

FILE: 

IN RE: 

APPLICATION: Application for Waiver of Grounds of Inadmissibility under Section 212(a)(9)(B) of the Immigration and Nationality Act, 8 U.S.C. § 1182(a)(9)(B)

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 cursive script, appearing to read "Ron Rosenberg".

Ron Rosenberg
Acting Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Field Office Director, Ciudad Juarez, Mexico. The matter 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 more than one year and seeking admission within ten years of her last departure from the United States. The applicant seeks a waiver of inadmissibility in order to reside in the United States with her U.S. citizen spouse and children.

The Field Office Director found that the applicant failed to establish that her qualifying relative would experience extreme hardship as a consequence of her inadmissibility. The application was denied accordingly. *See Decision of the Field Office Director*, dated April 20, 2012.

On appeal, the applicant's spouse contends that he is suffering from emotional and financial hardships as a result of his separation from the applicant and that he would also suffer hardship in Mexico if he were to relocate there.

The record contains an Application for Waiver of Grounds of Inadmissibility (Form I-601); a Notice of Appeal or Motion (Form I-290B); letters from the qualifying spouse and applicant; relationship and identification documents for the applicant, qualifying spouse, their children, and other family members; a doctor's letter regarding the qualifying spouse; country-conditions materials; a letter from the applicant's prior counsel; an Application for Immigrant Visa and Alien Registration (DS-230) and an approved Petition for Alien Relative (Form I-130). In addition, the record contains what appear to be scholastic documents, banking statements and two letters from the qualifying spouse that are written in Spanish. The requisite translations, however, were not provided. 8 C.F.R. § 103.2(b)(3) states:

Translations. Any document containing foreign language submitted to USCIS shall be accompanied by a full English language translation which the translator has certified as complete and accurate, and by the translator's certification that he or she is competent to translate from the foreign language into English.

As such, this evidence submitted without translations cannot be considered in analyzing this case. The rest of the 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-

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(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.

Section 212(a)(9)(B)(v) of the Act provides for a waiver of section 212(a)(9)(B)(i) inadmissibility as follows:

The Attorney General [now Secretary of Homeland Security] 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 . . . 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. The applicant's husband 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-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 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 hardship 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 hardship takes the case beyond those hardship 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 indicates that the applicant entered the United States without inspection in May 1998 and remained in the United States until April 2005. The applicant accrued unlawful presence from her unlawful entry in May 1998 until her departure in April 2005. By applying for an immigrant visa, the applicant is seeking admission within ten years of her departure from the United States. Therefore, as a result of the applicant’s unlawful presence, she is inadmissible to the United States under section 212(a)(9)(B)(i)(II) of the Act. The applicant has not disputed her inadmissibility.

The AAO finds that the applicant has failed to establish that her qualifying spouse will suffer extreme hardship as a consequence of being separated from her. The applicant’s spouse indicates in his letters that the “emotional and economic strain has become unbearable.” With regard to the qualifying spouse’s emotional hardships as a result of separation, the applicant also states that it has been difficult for him emotionally to be apart from her and their children. Although the qualifying spouse appears to be suffering emotionally due to his separation from the applicant, the record fails to demonstrate in sufficient detail how the qualifying spouse’s experiences amount to hardship beyond that commonly experienced by other separated families. The qualifying spouse also explains that he fears for the safety of the applicant and their children in Mexico and states that a drug cartel killed a distant cousin of his recently. In addition to the letters from the qualifying spouse and applicant, the record contains country-conditions reports confirming their claims of violence and other problems in Mexico. Though the applicant and her spouse describe their fears about the situation in Mexico, the record lacks details about how these problems have affected the applicant and their children. Moreover, although the qualifying spouse states that his distant cousin was

killed, he provides no details about the circumstances of his death or objective documentation to support such assertions. The assertions made by the applicant's spouse are evidence and have been considered. However, they cannot be given great weight absent supporting evidence. Going on record without supporting documentary evidence generally is not sufficient for purposes of meeting the burden of proof in these proceedings. 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, the applicant's spouse indicates that he is struggling financially to maintain two households in Mexico and the United States. He asserts that he can no longer afford to pay rents for his family's home in Mexico and his home in the United States. He states that he is self-employed as a truck driver and that he is "the sole financial provider" for his family. The record contains no clear documentation regarding the qualifying spouse's income or showing that he financially supports his family in Mexico. The Field Office Director noted this deficiency in her waiver denial and listed examples of the types of objective documentary evidence that could demonstrate the qualifying spouse's income, e.g. tax returns, earnings statements, mortgage or rent payments or living expenses. See *Decision of the Field Office Director*, dated April 20, 2012. No new evidence provided on appeal shows that the qualifying spouse is struggling financially. As such, the applicant failed to provide sufficient evidence to establish that the qualifying spouse is suffering emotional and financial hardships as a result of his separation from the applicant that, considered in the aggregate, are extreme.

The AAO also finds that the applicant has not met her burden of showing that her qualifying spouse, a native of Mexico, would suffer extreme hardship if he relocates to Mexico to be with her. The qualifying spouse states that he is a U.S. citizen and his children are also U.S. citizens. Although he says they are suffering "linguistically" and that they will be "handicapped, culturally" when they return to the United States, it is unclear how these hardships are affecting the qualifying spouse or would affect him if he relocated to Mexico. Moreover, the applicant does not address their family or community ties to Mexico, as natives of Mexico. Further, the applicant's spouse states that he would not be able to find gainful employment at his age and in his occupation and does not document his occupation in the United States with objective evidence or to demonstrate that he would be unable to obtain such employment in Mexico. He also fears relocation to Mexico due to the high levels of crime. Although country-conditions reports reflect serious problems in Mexico, they do not demonstrate how the applicant's spouse would be affected specifically by adverse conditions there.

Further, the qualifying spouse also asserts that their children live in fear and will have academic problems when they return to the United States. However, the record does not describe the impact of their children's emotional difficulties on the qualifying spouse. It is noted that Congress did not include hardship to an alien's children as a factor to be considered in assessing extreme hardship under section 212(a)(9)(B)(v) of the Act. In the present case, the applicant's spouse is the only qualifying relative for the waiver, and hardship to their children will not be separately considered, except as it may affect the applicant's spouse. The current record does not establish that the applicant's spouse would experience extreme hardship upon relocating to Mexico.

In this case the record does not contain sufficient evidence to show that the hardship faced by qualifying relative, considered in the aggregate, rise beyond the common results of removal or

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inadmissibility to the level of extreme hardship. The AAO therefore finds that the applicant has failed to establish extreme hardship to his qualifying spouse as required under section 212(a)(9)(B) 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) 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.