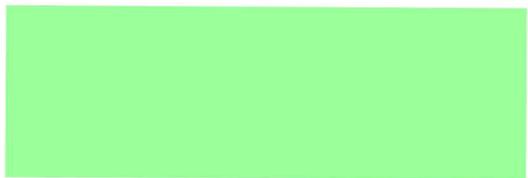




U.S. Citizenship
and Immigration
Services

(b)(6)



Date: **MAY 15 2013**

Office: ANAHEIM

FILE: 

IN RE: Applicant: 

APPLICATION: Application for Waiver of Grounds of Inadmissibility pursuant to 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 our 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-190B, 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 a 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

DISCUSSION: The waiver application was denied by the International Adjudications Support Branch (IASB) on behalf of the Field Office Director, Mexico City, Mexico, and 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 (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 10 years of his last departure. The applicant is the spouse of a U.S. citizen. On March 21, 2012, he filed an Application for Waiver of Grounds of Inadmissibility (Form I-601). The applicant seeks a waiver of inadmissibility under 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 U.S. citizen wife and child.

In a decision dated August 22, 2012, the IASB concluded that the applicant failed to establish that his qualifying relative would experience extreme hardship as a consequence of his inadmissibility and denied the Form I-601 application accordingly.

On appeal, the applicant asserts that the IASB erred in finding that he has not established extreme hardship to his qualifying relatives. Counsel contends that the evidence outlining adverse country conditions in Mexico, as well as evidence of financial and emotional difficulties demonstrates extreme hardship to the applicant's qualifying relatives.

The record includes, but is not limited to: the applicant's appeal brief; a psychological evaluation; a letter by the applicant's wife; financial documentation; a marriage certificate; a birth certificate for the applicant's son; medical documentation concerning the applicant's son; documentation concerning the applicant's removal proceeding; copies of collection notices and bills; family photos; and documentation concerning the applicant's criminal history and arrests.

The AAO conducts appellate review on a *de novo* basis. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). The entire record has been reviewed and considered in rendering a decision on the appeal.

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.

(ii) Construction of unlawful presence.- For purposes of this paragraph, an alien is deemed to be unlawfully present in the United States if the alien is present in the United States after the expiration of the period of stay authorized by the Attorney General or is present in the United States without being admitted or paroled.

The record reflects that the applicant entered the United States without inspection on June 28, 2003, and remained in the United States until January 20, 2009, when he complied with a voluntary departure order issued by an immigration judge in San Antonio, Texas. The applicant was apprehended by Immigration and Customs Enforcement Agents on February 25, 2008, following his arrest for possession of a controlled substance, and was issued a Notice to Appear and placed in removal proceedings. On September 23, 2008, an immigration judge granted the applicant's request for voluntary departure. The applicant voluntarily departed the United States to Mexico on January 20, 2009.

Here, the AAO finds that the applicant accrued unlawful presence in the United States from June 28, 2003, until his departure in January 2009. As the applicant accrued unlawful presence of more than one year and is seeking admission within 10 years of his 2009 departure, he is inadmissible to the United States pursuant to section 212(a)(9)(B)(i)(II) of the Act. The applicant does not contest his inadmissibility on appeal.

Beyond the decision of the IASB, the record reflects that the applicant has an outstanding warrant for an arrest issued on June 15, 2009 in San Antonio, Texas. The applicant was arrested on February 22, 2008 for "possession of a controlled substance less than one gram." In his Application for Redetermination of Custody Status submitted to the immigration court in connection with his 2008 removal proceeding, the applicant indicates that the criminal proceeding against him remained pending at the time of his release from immigration custody on bond and that the controlled substance he possessed was cocaine. The record includes an FBI rap sheet which indicates that the warrant for the applicant's arrest remains outstanding. However, there is no proof in the record of proceedings that the applicant has been convicted for this crime.

A discretionary waiver of section 212(a)(9)(B)(i)(II) inadmissibility is available under section 212(a)(9)(B)(v) of the Act, 8 U.S.C. § 1182(a)(9)(B)(v), which provides that:

Waiver.-The Attorney General [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 to the satisfaction of the Attorney General [Secretary of Homeland Security] 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 of Homeland Security] regarding a waiver under this clause.

A discretionary waiver of inadmissibility under section 212(a)(9)(B)(v) of the Act is first dependent on showing that the bar to admission imposes extreme hardship on a U.S. citizen or lawful permanent resident spouse or parent of the applicant. Hardship to the applicant or other family members can be considered only insofar as it results in hardship to a qualifying relative. 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). Here, the record reflects that the applicant is married to a U.S. citizen. The applicant's wife therefore meets the definition of a qualifying relative.

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 the 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 is 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 AAO now turns to the issue of whether the applicant has established that a qualifying relative would experience extreme hardship as a result of his inadmissibility.

The asserted hardship factors in this case are the emotional and financial impact to the applicant's wife if she remains in the United States without him. The applicant stated in his appeal letter that he has a good relationship with his wife and their son and that he wants an opportunity to enter the United States lawfully "and find a job to provide for [his] family and take responsibility." The applicant indicates that he complied with a voluntary departure order in January 2009 and that soon afterwards he learned of his wife's pregnancy. He indicates that separation has been difficult for his wife, as she is unemployed and presently resides with her mother. In a letter received on May 21, 2012, the applicant's wife states that she is receiving public assistance to help provide support for their child, that she has student loans and credit card debt, and that she resides with her mother. She asserts that she has been separated from the applicant for over three years and she does not want her son to be without his father. Both the applicant and his wife indicate that she is experiencing financial hardship as a result of separation, and the applicant asserts that his wife needs him in the United States to provide financial support to the family.

Upon review, the AAO finds that the evidence in the record, when considered in the aggregate, fails to establish the applicant's wife is experiencing emotional and financial hardship that rises beyond the common results of removal or inadmissibility if the applicant were denied admission into the United States and she remained in the United States. Here, the financial documentation refers mostly to the state assistance the applicant's wife receives to help support their child. Though the record includes documentation regarding the applicant's wife's student loan debt, it is noted that such debt was incurred prior to the applicant's wife's marriage to the applicant. Also, the record contains no evidence demonstrating that prior to his return to Mexico, the applicant contributed financially to their household. There is also no documentation in the record supporting the applicant's wife's claims made pertaining to economic conditions in Mexico. Furthermore, the record does not include evidence indicating that inadequacy of earnings in Mexico is such that he would be unable to meet the family's needs through employment in that country. Although the applicant's assertions have been taken into consideration, little weight can be afforded them in the absence of supporting evidence. *See Matter of Kwan*, 14 I&N Dec. 175 (BIA 1972) ("Information in an affidavit should not be disregarded simply because it appears to be hearsay: in administrative proceedings, that fact merely affects the weight to be afforded it."). Going on record without supporting documentary evidence 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)).

The AAO acknowledges and is sympathetic to the applicant's wife's claim that separation from the applicant has been difficult on the family and in raising a child without the applicant. Though the AAO recognizes the significance of family separation as a hardship factor, we conclude that the difficulties described by the applicant's wife, and as demonstrated by the evidence in the record, are the common results of removal or inadmissibility and do not rise to the level of extreme hardship. U.S. court decisions have repeatedly held that the common results of removal or inadmissibility are insufficient to prove extreme hardship. *See Hassan v. INS*, 927 F.2d 465, 468 (9th Cir. 1991).

Based on the foregoing, the AAO finds that when considering the asserted emotional, psychological, and financial hardships collectively, the applicant has not fully demonstrated that the hardship his U.S. citizen spouse is experiencing as a result of separation is more than the common result of removal or inadmissibility.

In regard to joining the applicant to live in Mexico, the applicant's wife asserts that the violence in that country is extreme and that she does not want their son surrounded by violence and drug-related incidents. The applicant states that he is concerned about the dangers of living in Mexico and that he would be concerned about his family, should they relocate to that country. The record includes a newspaper article related to the deaths of three gunmen following a confrontation with the military on January 6, 2012 in the town of Pinos, Zacatecas. The record also includes a printout of an article indicating that the drug cartel "Los Zetas" operates in the state of Zacatecas. Taken together, the AAO finds the documentary submissions insufficient to demonstrate that the applicant's wife would experience extreme hardship should she relocate to Zacatecas, Mexico. Though the record evidence indicates that the applicant is presently residing in the town of Nieves, Zacatecas, the applicant has not demonstrated the extent to which certain country conditions would affect his family members specifically in that region of Mexico. Lastly, while we acknowledge the contents of the latest U.S. Department of State Travel Warning regarding Mexico, there is not sufficient evidence in the record from country conditions sources about safety issues in Nieves, Zacatecas resulting from transnational crime organizations, drug cartels, or gang-related violence.

The documentation in the record fails to establish the existence of extreme hardship to the applicant's wife caused by the applicant's inadmissibility to the United States. Having found the applicant statutorily ineligible for relief, no purpose would be served in discussing whether he merits a waiver as a matter of discretion.

In proceedings for an application for a waiver of grounds of inadmissibility under section 212(a)(9)(B)(v) of the Act, the burden of proving eligibility rests 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.