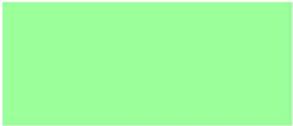


(b)(6)

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



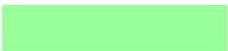
U.S. Citizenship  
and Immigration  
Services



DATE: **NOV 12 2013**

Office: RENO

File: 

IN RE: Applicant: 

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

ON BEHALF OF APPLICANT:



INSTRUCTIONS:

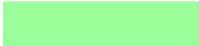
Enclosed please find the decision of the Administrative Appeals Office (AAO) in your case.

This is a non-precedent decision. The AAO does not announce new constructions of law nor establish agency policy through non-precedent decisions. If you believe the AAO incorrectly applied current law or policy to your case or if you seek to present new facts for consideration, you may file a motion to reconsider or a motion to reopen, respectively. Any motion must be filed on a Notice of Appeal or Motion (Form I-290B) within 33 days of the date of this decision. **Please review the Form I-290B instructions at <http://www.uscis.gov/forms> for the latest information on fee, filing location, and other requirements. See also 8 C.F.R. § 103.5. Do not file a motion directly with the AAO.**

Thank you,

  
for

Ron Rosenberg  
Chief, Administrative Appeals Office



**DISCUSSION:** The Field Office Director, Reno, Nevada, denied the waiver application, and it is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native and a 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 for one year or more, and under section 212(a)(6)(C)(i) of the Act, 8 U.S.C. § 1182(a)(6)(C)(i), for procuring or attempting to procure a visa, admission, or other immigration benefit by fraud or misrepresentation. The applicant seeks 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 her husband.

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 Grounds of Inadmissibility (Form I-601). *Decision of Field Office Director, March 28, 2013.*

On appeal, counsel for the applicant contends that USCIS erred in finding that the applicant's husband would not suffer extreme hardship as a result of the applicant's inadmissibility if she is unable to reside in the United States. The record contains documentation including, but not limited to: an appeal brief; updated hardship statement; psychological assessment; birth and marriage certificates; financial information, including a bankruptcy filing and statements of gambling losses; copies of diplomas and training certificates; and country condition information. The record also contains copies of tax returns, bank statements, car insurance and title documents, utility bills, and photographs. The entire record was reviewed and considered in rendering this decision.

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 reflects that the applicant has entered the United States on five occasions. Except for the first occasion, when she entered without inspection or admission at the age of seven with her parents, each entry has been an admission in B2 status using a nonimmigrant visa. Her most recent departure, after living here for over three years, occurred after she accrued unlawful presence of one year or more, and she is thus inadmissible under section 212(a)(9)(B)(i)(II) of the Act.<sup>1</sup>

Section 212(a)(6)(C)(i) of the Act provides, in pertinent part,

Any alien who, by fraud or willfully misrepresenting a material fact, seeks to procure (or has sought to procure or has procured) a visa, other documentation, or admission into the United States or other benefit provided under this Act is inadmissible.

Section 212(i)(1) of the Act provides:

The [Secretary] may, in the discretion of the [Secretary], waive the application of clause (i) of subsection (a)(6)(C) in the case of an alien who is the spouse, 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 [Secretary] that the refusal of admission to the United States of such immigrant alien would result in extreme hardship to the citizen or lawfully resident spouse or parent of such an alien [...].

The record shows the field office director found the applicant inadmissible for procuring a visa and admission to the United States by fraud or misrepresentation. First, to hide the fact of her entry without inspection, she admits failing to divulge on her 2002 nonimmigrant visa application that she had previously been in the United States and, as a result of the nondisclosure, received a visitor's visa. Then, she admits entering the United States in B2 status, despite intending to remain beyond her period of authorized stay and live with her uncle. She is thus inadmissible under both section 212(a)(9)(B)(i)(II) and section 212(a)(6)(C)(i) of the Act, and requires a waiver of inadmissibility.

A waiver of inadmissibility under sections 212(a)(9)(B)(v) and 212(i) 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 can be considered only insofar as it results in hardship to a qualifying relative. The applicant's husband is the only qualifying relative in this case. If extreme hardship 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).

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<sup>1</sup> She admits that, after entering with her parents in April 1991, she remained until October 1995. Her first B2 admission was for a vacation from March 2003 to May 2003. Her second B2 admission in August 2003 resulted in an overstay until October 2004 and her third admission in November 2004 ended when she departed in March 2008. Although this departure triggered a 10 year inadmissibility, the applicant was able to receive a B2 admission in May 2008, and has not left the country since that entry.

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 applicant has established extreme hardship to a qualifying relative. 22 I&N Dec. 560, 565 (BIA 1999). 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; the Board added that not all of these factors need be analyzed in any given case and emphasized that the list is 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, while 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, or cultural readjustment 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, although 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)); conversely, *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 case-by-case whether denial of admission would result in extreme hardship to a qualifying relative.

Regarding whether the applicant has established that a qualifying relative would suffer extreme hardship by relocating, the record reflects that the cumulative effect of problems that would impact her husband amounts to hardship that rises to the level of "extreme." He claims to be fearful of living with his wife in Mexico due to violence and risks to personal safety, as well as to unavailability of medical care. U.S. government reporting advising U.S. citizens against travel to his wife's native [REDACTED] state substantiates his safety concerns. Besides noting the dangers of traveling due to roadblocks, carjackings, and robberies, and a surge in activity by drug cartels, the U.S. Department of State (DOS) identifies particular safety concerns about gambling establishments in [REDACTED]. See *Travel Warning—Mexico*, DOS, July 12, 2013. Official reporting also establishes that medical care is of inconsistent quality in Mexico, hospitals do not accept U.S. domestic health insurance and require payment before rendering services, and lower cost may be outweighed by nonadherence to U.S. standards and lack of access to emergency support. See *Mexico—Country Specific Information*, DOS, February 15, 2013. Documentation establishes that the 36-year-old qualifying relative has a history of recurring peripheral nerve tumors (schwannomas) of the right foot requiring surgical treatment. The neurosurgeon who performed his last procedure in 2006 states in an August 13, 2013 letter that surgery is indicated by studies showing several schwannomas again present and causing pain, but he is unaware of any neurosurgeon in Mexico with the required expertise. Documentation confirms that insurance largely covered the 2006 surgical expenses exceeding \$20,000.

The record reflects that the applicant's husband is U.S.-born and raised, with all his close relatives – parents, siblings, nieces, and nephews – living nearby, and currently resides in his childhood home. There is no indication he has any ties to Mexico besides his wife. The record supports claims he was diagnosed several years ago with depression and anxiety related to the stress of gambling debts and failed investments that led him to file for personal bankruptcy. Documentation shows he is taking prescription medication for depression, anxiety, and insomnia. Whether or not treatment is available in Mexico, we observe that moving there would sever ties to his established treatment providers, while also removing him from the area where he has lived since birth. There is evidence he has invested significant time and effort in acquiring his business degrees, supplemented his education with specialized training, and earns a good salary in a field localized to his geographic area. He fears being unable to support himself in Mexico due to nontransferability of his skills and generally lower wages in his wife's country.

In aggregate, the diminution in personal safety, healthcare, and economic security that the applicant's husband would experience upon relocating go beyond the common or usual consequences of inadmissibility or removal. The record indicates he faces potential loss of access to specialized surgical treatment and the insurance benefits to pay for it. The applicant thus establishes that her spouse would suffer extreme hardship by departing the country to live with the applicant abroad.

Claims regarding potential emotional hardship due to separation are largely undocumented. While a therapist reports the applicant's husband having taken an antidepressant for depression and anxiety associated with his 2009 personal bankruptcy filing, and notes that he is currently worried about the applicant's uncertain immigration status, there is no evidence in support of the claim that his mental state has affected his job performance. See *Psychological Assessment*, May 18, 2013. The assessment further observes that the applicant and her husband are both saddened by the prospect of separation, but fails to offer a prognosis or treatment recommendations. Despite this assessment, there is no documentary evidence confirming the applicant's husband is likely to experience any impact beyond the common and typical result of being separated from a spouse. The record shows that his relatives – parents, siblings, nieces, nephews – in the local area comprise a strong emotional support network, and documentation establishes that he has sufficient resources to visit his wife in Mexico to ease the pain of separation. The record reflects that the couple married in June 2012. There is little evidence for the qualifying relative's claim that separation will cause him distress beyond the common or typical result of inadmissibility or removal, and it does not show how his hardship would rise beyond what would normally be expected upon the absence of a spouse.

Although medical records confirm the applicant's husband has been diagnosed with recurring neural tumors of the foot, there is documentation of only one prior surgery in July 2006 with evidence of full recovery by the year's end. There is no evidence how the condition or the corrective surgery affects his life and no showing that the applicant is needed in a caretaking capacity during post-operative recovery.

Regarding the financial component of separation hardship, the record lacks documentation that the applicant contributes earnings to household income. The evidence shows the applicant's husband earned over \$75,000 in 2011 and claims a 2012 salary exceeding \$80,000. There is no evidence the applicant has any employment history or has ever earned income here, no indication of her job prospects or living expenses in Mexico, and nothing to suggest her departure will impose a financial burden on her husband. 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)). Based on the record, the AAO is unable to conclude that the applicant's inability to remain here will make her husband unable to meet his financial obligations.

For all these reasons, the cumulative effect of the emotional and financial hardships the applicant's husband will experience due to the applicant's inadmissibility does not rise to the level of extreme. The AAO concludes based on the evidence provided that, were her husband to remain in the United States without the applicant due to her inadmissibility, he would not suffer hardship beyond those problems normally associated with family separation.

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. Matter of Pilch*, 21 I&N Dec. 627, 632-33 (BIA 1996). 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.

The documentation on record, when considered in its totality, reflects the applicant has not established that her spouse will suffer extreme hardship if she is unable to live in the United States. The AAO recognizes that the applicant's husband will endure hardship as a result of the applicant's inability to immigrate. However, his 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 her husband as required under the Act.

In application proceedings, it is the applicant's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361. Here, that burden has not been met.

**ORDER:** The appeal is dismissed.