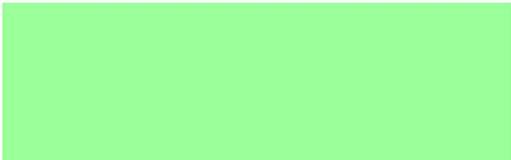


(b)(6)

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



U.S. Citizenship
and Immigration
Services



DATE: OCT 28 2013

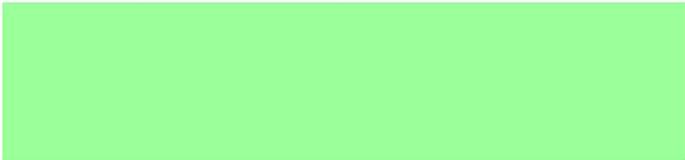
Office: ANAHEIM

FILE: [REDACTED]

IN RE: Applicant: [REDACTED]

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:



INSTRUCTIONS:

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,

A handwritten signature in black ink, appearing to read "Michael Shumway".

Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The International Adjudications Support Branch denied the waiver application on behalf of the Field Office Director, Ciudad Juarez, Mexico, and 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 readmission within 10 years of his last departure from the United States. The applicant seeks a waiver of inadmissibility in order to reside in the United States with his family. The applicant's qualifying relative is his lawful permanent resident father.

In a decision dated March 22, 2013, the field office director noted that a consular officer had found the applicant to be inadmissible under section 212(a)(9)(B)(i)(II) of the Act. The field office director confirmed the finding of inadmissibility, stating that the applicant had accrued unlawful presence in the United States from his entry without inspection in May 2007 to his departure in July 2010. The field office director then concluded that although the applicant's father may experience extreme hardship on relocation to Mexico, the applicant had failed to demonstrate that his father would face extreme hardship if separated from the applicant. Therefore, the field office director denied the waiver application.

On appeal, counsel for the applicant states that the applicant's father believed that he had 12 months to submit evidence regarding the hardship he has experienced in the applicant's absence. Counsel asserts that the applicant's father "was prepared" to demonstrate that his health is deteriorating and to submit affidavits in support of the applicant's waiver request. However, while counsel stated on page two of the Form I-290B that further evidence was attached and indicated on page one that additional evidence would be submitted within 30 days, no additional evidence has been provided by the date of this decision, nearly six months after the filing of the Form I-290B.

The AAO conducts appellate review on a de novo basis. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). The record includes, but is not limited to: a statement from the applicant; letters of support from the applicant's friends and his father's friend; and medical records relating to the applicant's father. 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 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 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 regarding a waiver under this clause.

In the present case, the record reflects that the applicant entered the United States without inspection in May 2007, at the age of 16, and remained in the country until July 2010. Although the applicant was a minor when he first entered the United States and therefore did not begin to accrue unlawful presence in 2007, he did accrue more than one year of unlawful presence from the date he turned 18 on July 31, 2008 to his departure in July 2010. Therefore, he is inadmissible under section 212(a)(9)(B)(i)(II) of the Act. The applicant does not contest this finding of inadmissibility on appeal.

The applicant is eligible to apply for a waiver of inadmissibility under section 212(a)(9)(B)(v) of the Act as the son of a lawful permanent resident. In order to qualify for this waiver, however, he must first prove that the refusal of his admission to the United States would result in extreme hardship to his qualifying relative. Hardship to the applicant is not directly relevant under the statute and will be considered only insofar as it results in hardship to the applicant's father. 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 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 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 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 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.

On appeal, counsel asserts that the applicant's father is able to submit evidence of his health conditions as well as additional affidavits in support of the applicant's waiver application.

However, as noted above, the record does not contain evidence additional to that which was submitted with the original waiver application.

In a written statement, the applicant requests forgiveness for entering the United States unlawfully and expresses his desire to join his family in the United States. He notes that his mother and sister recently joined his father in the United States as lawful permanent residents and that he is the only member of the family still residing in Mexico. He contends that life in Mexico is difficult due to high rates of unemployment and violent crime, and he is fearful of living alone there. He also states that he entered the United States in order to assist his father, who had worked in this country to support the family in Mexico. He also claims that he and his father have a close relationship and that separation has been difficult for them. A friend of the applicant's, [REDACTED] confirms in a letter dated July 2, 2012 that the applicant "cares immensely for his father and his family" and that he is a hardworking and responsible person. Ms. [REDACTED] also states that the applicant is trained in concrete pumping and would have more job opportunities in the United States than he does in Mexico. Another friend, [REDACTED] also states in a letter dated July 2, 2012 that the applicant is dedicated to his family, is intelligent and hardworking, and would bring useful skills in concrete pumping to the United States work force.

The applicant asserts that his father has experienced hardship in the form of "discouragement, depression, economic mismanagement, stress and alcoholism" in relation to the applicant's immigration situation, and that his father worries about the applicant's safety in Mexico. The applicant also states that his father has been in poor health and has been diagnosed with "stress and exhaustion in excess." In a letter of support dated July 8, 2012, [REDACTED] a friend, states that he has observed the applicant's father suffering from stress due to separation from the applicant. He states that the applicant and his father are very close. The record also contains a 1-page medical document, dated July 5, 2012, which states that the applicant's father sought treatment for insomnia, anxiety, stress, worries, and decreased appetite. The document indicates that the applicant's father was advised to engage in relaxation techniques, exercise, and social activity and to stop smoking. The record also contains a July 5, 2012 letter from a healthcare provider at [REDACTED] PA-C, which indicates that the applicant's father "is currently experiencing anxiety, insomnia and stress secondarily to a social situation. He is currently . . . alone without family." The letter notes that the applicant's father was "advised of medical recommendations to improve his wellbeing most importantly to improve his nutrition."

The AAO finds that the applicant has failed to demonstrate that his father would suffer extreme hardship if he continues to be separated from the applicant. Although the applicant claims that his father is depressed, the evidence is insufficient to establish that the applicant's father is experiencing emotional difficulty beyond that which commonly results from separation from a close family member. The medical records indicate that the applicant's father sought treatment for anxiety, insomnia, decreased appetite, and stress, but there is no indication that those difficulties have interfered with his ability to care for himself or carry out his daily

responsibilities. Furthermore, the medical records do not indicate that the applicant's father was diagnosed with depression or that he required ongoing treatment. Additionally, the letter indicates that the applicant's father's difficulties were related to his living alone in the United States, but the applicant states that his mother and sister joined his father in July 2012. While the record does show that the applicant and his father miss each other and would prefer to live together, the evidence is insufficient to establish that this results in extreme hardship for his father.

While the applicant also claims that his father has faced economic difficulties, the record contains no evidence of the applicant's father's financial situation. "[G]oing 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 applicant has also failed to show that his father would suffer extreme hardship if he were to relocate to Mexico with the applicant. The record indicates that the applicant's father is originally from Mexico, and neither the applicant nor his father has claimed that his father could not relocate. While the applicant asserts that it is unsafe to live in Mexico, he has not submitted any evidence to support that claim. *See Soffici*, 22 I&N Dec. at 165.

Even when considered in the aggregate, the evidence the applicant has submitted is insufficient to establish that a qualifying relative would face extreme hardship due to a denial of his waiver application. *See Matter of O-J-O-*, 21 I&N Dec. 381, 383 (BIA 1996). Because we have found that the applicant has not established extreme hardship to a qualifying relative, no purpose would be served in determining whether he merits a waiver as a matter of discretion.

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.