



U.S. Citizenship  
and Immigration  
Services

(b)(6)



DATE: **SEP 18 2013**

OFFICE: CIUDAD JUAREZ, MEXICO

File:

IN RE:

Applicant:

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:

SELF-REPRESENTED

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,

Ron Rosenberg  
Chief, Administrative Appeals Office

**DISCUSSION:** The Field Office Director, Ciudad Juarez, Mexico denied the waiver application 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 ten years of his last departure from the United States. The record indicates that the applicant is the son of a U.S. citizen and the beneficiary of an approved Petition for Alien Relative (Form I-130). The applicant seeks a waiver of inadmissibility pursuant to 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.

The Field Office Director concluded that the applicant failed to establish that extreme hardship would be imposed on a qualifying relative and denied the Form I-601, Application for Waiver of Grounds of Inadmissibility (Form I-601), accordingly. *See Decision of the Field Office Director*, dated September 17, 2009.

On appeal, the applicant's father indicates by checking Box B, at Part 2 on the Form I-290B, Notice of Appeal or Motion (Form I-290B), that he will submit a brief and/or additional evidence to the AAO within 30 days. *See Form I-290B*, received October 14, 2009. In a letter attached thereto, the applicant's father requests an additional 30 days to submit a brief or written statement. The AAO has not received a brief or additional evidence. The record, therefore, is considered complete as of the date of this decision.

The record contains, but is not limited to: Form I-290B; various immigration applications and petitions; letters from the applicant's father; a medical document; a social worker's letter; a loan-related letter; and two wire-transfer receipts. The entire record was reviewed and considered in rendering this decision on the appeal.

Section 212(a)(9) of the Act 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.

The record indicates that the applicant entered the United States without inspection in April 2004, when he was 15 years old, and remained until he voluntarily departed in January or February 2008.<sup>1</sup> The applicant accrued unlawful presence from June 26, 2006, the date of his eighteenth birthday, to January or February 2008, a period in excess of one year. As the applicant is seeking admission within 10 years of his departure, he was found to be inadmissible pursuant to section 212(a)(9)(B)(i)(II) of the Act, 8 U.S.C. § 1182(a)(9)(B)(i)(II). The record supports this finding, the applicant does not contest inadmissibility, and the AAO concurs that the applicant is inadmissible under section 212(a)(9)(B)(i)(II) of the Act.

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 can be considered only insofar as it results in hardship to a qualifying relative. In the present case, the applicant's father is his only 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-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 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).

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<sup>1</sup> The record contains two different dates of departure from the United States. This inconsistency, however, does not affect the applicant's inadmissibility under section 212(a)(9)(B)(i)(II) of the Act.

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 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 applicant’s father is a 45 year-old native of Mexico and citizen of the United States who asserts emotional and economic hardship. He writes that he is not going to be able to visit the applicant and it is “impossible to travel or send money to him.” As noted by the Field Office Director, the record contains two wire-transfer receipts indicating that the applicant’s father has sent money to the applicant in Mexico. The record does not, however, contain documentary evidence demonstrating the applicant’s father’s regular income and expenses, or any income the applicant may have generated while in the United States and contributed to his father’s expenses. 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 evidence in the record does not demonstrate that the applicant’s father is unable to support himself in the applicant’s absence, and there is no evidence from which the AAO could make a reasonable determination concerning economic hardship.

The applicant’s father indicates that separation has been very difficult and he and the applicant want to be together. He states that it is difficult to be calm because, while he knows that the applicant “is okay,” he worries “because Mexico is an unstable country with a lot of violence.” No country-conditions reports for Mexico or related documentary evidence has been submitted for the record. A licensed clinical social worker writes that the applicant’s father requested counseling for depression on June 16, 2008 and received a biopsychosocial assessment on June 24, 2008. The letter does not indicate whether the applicant’s father received counseling or other treatment. The social worker concludes that the

applicant's father has dysthymic disorder and has been experiencing mild to moderate symptoms of depression for between four and five months. According to the National Institutes of Health (NIMH), dysthymic disorder is characterized by chronic low-level depression, and a diagnosis of dysthymia requires that the patient experience a combination of depressive symptoms for two years or more.<sup>2</sup> The social worker adds that it appears the source of the applicant's father's depression is situational and related to the applicant's returning to Mexico, as well as financial stress and health problems. While the AAO has considered this evidence, the diagnosis appears to contradict the NIMH's definition and is based on self-reporting by the applicant's father during a single interview in 2008. Additionally, the social worker does not recommend follow-up therapy, medication, or treatment. Concerning his physical health, a "patient note" dated June 23, 2008, indicates that the applicant's father has been diagnosed with hypertension and type II diabetes. The record contains no other medical or health-related documents and does not address whether the applicant's father has any physical limitations or special needs as a result of his conditions or whether he relies in any way on the applicant for his care.

The AAO acknowledges that separation from the applicant has caused difficulties for the applicant's father. However, we find the evidence in the record insufficient to demonstrate that the challenges he has encountered, when considered cumulatively, meet the extreme-hardship standard.

The record lacks evidence addressing the possibility of the applicant's father relocating to Mexico. Though this deficiency was identified in the Field Office Director's decision, it remains unaddressed by the applicant or his father on appeal. Accordingly, the AAO finds the evidence insufficient to demonstrate that the applicant's father would suffer extreme hardship were he to relocate to Mexico to be with the applicant during the remainder of his temporary period of inadmissibility.

The applicant has, therefore, failed to demonstrate that the challenges his father faces are unusual or beyond the common results of removal. Accordingly, the AAO finds that the applicant has failed to demonstrate extreme hardship to a qualifying relative. As the applicant has not established extreme hardship to a qualifying family member 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.

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<sup>2</sup> NIMH: "Dysthymic Disorder among Adults." Online at [http://www.nimh.nih.gov/statistics/1DD\\_ADULT.shtml](http://www.nimh.nih.gov/statistics/1DD_ADULT.shtml).