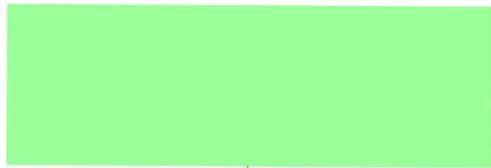




U.S. Citizenship  
and Immigration  
Services

(b)(6)



DATE: SEP 19 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 spouse 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 February 25, 2010.

On appeal, the applicant's spouse indicates that she will suffer extreme hardship if a waiver is not granted. *See Form I-290B, Notice of Appeal or Motion* (Form I-290B), filed March 25, 2010 and received by the AAO June 12, 2013.<sup>1</sup>

The record contains, but is not limited to: Form I-290B; various immigration applications and petitions; a medical progress note; and financial documents. The record also contains a Spanish-language letter from the applicant's spouse which is not accompanied by a full, certified English translation as required under 8 C.F.R. § 103.2(b)(3).<sup>2</sup> Because the required translation was not submitted for this document, the AAO will not consider it in this proceeding. The entire record, with the exception of the Spanish-language letter, was reviewed and considered in rendering this decision on the appeal.

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<sup>1</sup> The Form I-290B and Form DS-302, U.S. Department of State Choice of Agent and Address for Immigrant Visa Applicants, indicate that the applicant is represented by [REDACTED]. The record does not contain a Form G-28, Notice of Entry of Appearance as Attorney or Representative (Form G-28). A Form G-28 must be submitted to U.S. Citizenship and Immigration Services (USCIS) to establish eligibility to appear either as an attorney or as an accredited representative of an organization recognized and accredited by the Board of Immigration Appeals as defined in 8 C.F.R. §§ 103.2 and 292.1(a)(4). The decision therefore will be furnished only to the applicant.

<sup>2</sup> 8 C.F.R. § 103.2(b)(3). Translations. Any document containing foreign language submitted to United States Citizenship and Immigration Services (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.

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 2002 and remained until June 2006, when he voluntarily returned to Mexico. Although the applicant filed different applications to adjust his status after his entry, he accrued over a year of unlawful presence between February 25, 2004 (the date the appeal of his Form I-485, Application to Register Permanent Residence or Adjust Status, filed November 4, 2002 was rejected), to March 2, 2005 (the date his Form I-687, Application for Status as a Temporary Resident Under Section 245A was filed). As his departure from the United States in June 2006 triggered the unlawful-presence provisions of the Act, and as he is seeking admission within 10 years of that departure, the applicant 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 spouse 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).

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 spouse is a 48 year-old native of Mexico and citizen of the United States who married the applicant in May 2006, one month before he departed to Mexico. She asserts his

absence causes her emotional, physical and economic hardship. The applicant's spouse avers on appeal that she needs the applicant with her and has increasing difficulties maintaining herself. She refers to an illness for which she receives treatment without specifying the nature of her illness. A single undated progress note from the [REDACTED] shows that the applicant's spouse had palpitations, heartburn and bloatedness. While the handwritten portion of the note is difficult to read, "high blood pressure" and "feeling anxious can be deciphered. It also appears that the applicant's spouse was prescribed Paxil, though the dosage and duration are illegible. The record contains no other medical or mental health-related documents demonstrating the conditions currently afflicting the applicant's spouse, any ongoing treatment or limitations related thereto, or suggesting that the applicant's presence is required as a result. 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 applicant's spouse states on appeal that she is submitting a copy of her tax return as proof of income. Her 2009 individual income tax return indicates that she earned \$14,652 in business income from self-employment through her beauty salon. A property-tax statement indicates that the applicant's spouse owns her home and pays about \$1,000 per year in property taxes and a \$200 monthly mortgage. A residential energy bill dated July 25, 2008 indicates a monthly balance of about \$300. The record contains no evidence showing that the applicant and his spouse resided together in the United States, that he contributed financially toward her household expenses, or that his admission would assist her economically. The evidence in the record does not indicate that the applicant is unable to support herself in the absence of the applicant, who has resided in Mexico nearly the entire duration of their marriage.

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

The possibility of the applicant's spouse relocating to Mexico has not been addressed in the record. Though this deficiency was identified in the Field Office Director's decision, it remains unaddressed by the applicant or his spouse on appeal. As the record contains no assertions of hardship related to relocation, the AAO cannot speculate in this regard. Accordingly, the AAO finds the evidence insufficient to demonstrate that the applicant's qualifying relative spouse would suffer extreme hardship were she 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 spouse faces are unusual or beyond the common results of removal or inadmissibility. 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.

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*NON-PRECEDENT DECISION*

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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.