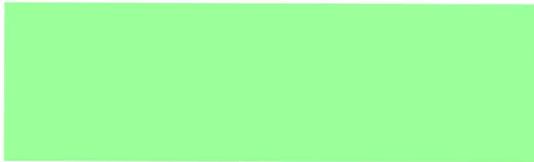


(b)(6)

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: **SEP 23 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:

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 her 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). She 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, accordingly. *See Decision of the Field Office Director*, dated March 16, 2010.

On appeal counsel asserts that a brief will be submitted to the AAO within 30 days along with a discussion of family ties, details concerning financial circumstances, the applicant's spouse's attempts to procure employment in Mexico, and objective country conditions evidence. *See Form I-290B*, received April 16, 2010. The AAO notes that neither a brief nor any of the additional evidence referenced by counsel has been received.

The record contains, but is not limited to: Form I-290B and counsel's statement thereon; various immigration applications and petitions; a hardship letter from the applicant's spouse; several letters from the applicant; travel receipts; money transfer receipts; a prescription; and a letter from the [REDACTED] indicating that the applicant does not have a criminal record. 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 February 2003 and remained until she voluntarily departed to Mexico in February 2008. The applicant

accrued unlawful presence in excess of one year. As the applicant is seeking admission within 10 years of her departure, she 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(9)(a)(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 her 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 34-year-old native of Mexico and citizen of the United States who asserts extreme hardship of an emotional and economic nature. He writes that he misses the applicant a lot because she helps him take care of all the housework and also helps him to pay some of the household expenses. The applicant avers that she used to prepare meals every day for her spouse because he works long hours. The applicant's spouse states that he has been traveling frequently to the Mexican border and overspending as a result of separation. He explains that in addition to sending money to the applicant in Mexico, he has to help his parents pay some of their bills too. The applicant adds that her spouse helps her parents in Mexico as well. The record contains no documentary evidence demonstrating the applicant's spouse's current employment or income, and none showing that the applicant ever worked in the United States or contributed financially to the household. While money transfer receipts show that the applicant's spouse sent a total of \$1,460 to the applicant between March and August 2008, and travel receipts reflect a cost of \$45 to \$75 for travel between [REDACTED], these documents do not accurately establish the applicant's current financial situation. The record contains no evidence that the applicant's spouse supports his parents or the applicant's financially and does not demonstrate the amount of any such contributions. No budget or other documentary evidence has been submitted delineating the applicant's spouse's income and expenses from which an accurate determination might be made as to whether he is experiencing economic hardship in the applicant's absence. 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)). While the AAO recognizes that the applicant's spouse has incurred additional expenses related to the applicant residing in Mexico, the evidence in the record is insufficient to

demonstrate that he is or will be unable to meet his financial obligations in her absence during the remainder of her temporary period of inadmissibility.

The applicant's spouse states that he misses the applicant and has been suffering emotional extreme hardship that gets worse as the days go by. He writes that it has become more difficult every day to travel to Mexico to see the applicant, but he does not explain the nature of this difficulty. While the AAO recognizes that the applicant's spouse has experienced emotional challenges related to separation from the applicant, he has not distinguished these from challenges ordinarily associated with separation as a result of a loved one's inadmissibility.

The AAO acknowledges that separation from the applicant has and will likely continue to cause various difficulties for the applicant's spouse. However, we find the evidence in the record insufficient to demonstrate that the challenges encountered by the qualifying relative, 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 counsel, the applicant or her 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 he to relocate to Mexico to be with the applicant during the remainder of her temporary period of inadmissibility.

The applicant has, therefore, failed to demonstrate that the challenges her spouse faces are unusual or beyond the common results of removal or inadmissibility to the level of extreme hardship. 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 she 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.