



**U.S. Citizenship
and Immigration
Services**

(b)(6)

DATE: **SEP 25 2013**

Office: ANAHEIM

FILE: [REDACTED]

IN RE: Applicant: [REDACTED]

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:

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,

Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the International Adjudications Support Branch on behalf of the Field Office Director, Ciudad Juarez, Mexico, and 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 entered the United States without authorization in 2004 and did not depart the United States until May 2012. The applicant was thus found to be inadmissible to the United States under 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. The applicant seeks a waiver of inadmissibility pursuant to sections 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 with her U.S. citizen spouse.

The field office director determined that the applicant failed to establish extreme hardship to a qualifying relative and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) accordingly. *Decision of the Field Office Director*, dated January 2, 2013.

On appeal, the applicant's representative submits the following: a letter from the applicant's spouse, financial documentation, evidence establishing four money transfers from the applicant's spouse to his wife in Mexico, and a letter and medical documentation pertaining to the applicant's father-in-law. The entire record was reviewed and considered in rendering this decision.

Section 212(a)(9)(B) of the Act provides, in pertinent part:

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 [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 applicant entered the United States without authorization in 2004 and did not depart until May 2012, and she is therefore inadmissible under section 212(a)(9)(B)(i)(II) of the Act for having been unlawfully present in the United States for more than one year.

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. The applicant's U.S. citizen spouse is the only qualifying relative in this case. Hardship to the applicant or her father-in-law can be considered only insofar as it results in hardship to a 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 v. I.N.S.*, 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, the applicant's U.S. citizen spouse contends that he is experiencing emotional and financial hardship as a result of long-term separation from the applicant. The applicant's spouse states that he has been married to his wife for five years, he loves her, and long-term separation from her is causing him emotional trauma. In addition, the applicant's spouse asserts that he earns very little money and sometimes cannot afford to pay the bills, and yet he has to send money to his wife in Mexico, which is causing him financial difficulty. Finally, the applicant's spouse contends that he worries about his wife's safety in Mexico as a result of the high levels of violence and crime and the lack of gainful employment opportunities for her. Letter from [REDACTED] dated January 26, 2013.

To begin, the applicant has not established that the emotional hardship her spouse is experiencing is beyond the hardships normally associated with long-term separation from a spouse as a result of inadmissibility. Nothing in the record indicates that the applicant's spouse would experience hardship were he to travel to Mexico to visit his wife regularly. Nor has any supporting documentation been provided establishing the problematic country conditions referenced by the applicant's spouse. 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)). As for financial hardship from having to support two households, no documentation has been provided on appeal establishing the applicant's spouse's current financial situation, including income and expenses and assets and liabilities, to establish that the applicant's absence specifically is causing her husband financial hardship. Copies of select bills paid by the applicant's spouse and four money transfers to the applicant in Mexico fail to establish their complete financial picture. Alternatively, the applicant has not established that she is unable to obtain gainful employment in Mexico that would permit her to support herself financially. Finally, the applicant's spouse states that he has close ties to his eight siblings and his mother and father. The record does not establish that they would be unable to assist the applicant's spouse, financially or emotionally, should the need arise. As such, the applicant has failed to establish that her spouse would experience extreme

hardship were he to remain in the United States while the applicant continues to reside abroad as a result of her inadmissibility.

In regard to relocating abroad to reside with the applicant as a result of her inadmissibility, the applicant's spouse first notes that he was born in Honduras and is now a U.S. citizen and thus has no ties to Mexico. He contends that Mexico is a country that discriminates by age, race, nationality and other factors, and he would thus not be able to apply for a job and obtain health benefits. He also references the high rates of crime and violence in Mexico. Moreover, the applicant's spouse contends that he has strong family ties, particularly with his parents, and relocation abroad would cause him hardship. Finally, the applicant's spouse maintains that, were he to relocate abroad, he would not be able to continue paying the mortgage on his home and help his parents financially. *Supra* at 2-4.

The record contains no supporting documentation establishing that the applicant's spouse would not be able to obtain gainful employment and health coverage in Mexico. As noted above, assertions without supporting documentation do not suffice to establish extreme hardship. Further, as noted above, no supporting documentation has been provided to establish that the applicant's spouse would be in danger were he to reside in Mexico. As for his father's daily care, it has not been established that the applicant's spouse's eight siblings and his mother would not be able to properly care for him. Nor has the applicant provided any documentation establishing her spouse's family ties in the United States. Finally, as previously noted, no financial documentation has been provided to establish that the applicant's spouse would not be able to maintain his home and pay his bills while living abroad. As such, it has not been established that the applicant's spouse would experience hardship were he to relocate to Mexico to reside with his wife.

The record does not support a finding that the applicant's spouse will face extreme hardship if the applicant is unable to reside in the United States. Rather, the record demonstrates that he will face no greater hardship than the unfortunate, but expected, disruptions, inconveniences, and difficulties arising whenever a spouse is removed from the United States or is refused admission. There is no documentation establishing that the applicant's spouse's hardships are any different from other families separated as a result of immigration violations. Although the AAO is not insensitive to the applicant's spouse's situation, the record does not establish that the hardships he would face rise to the level of "extreme" as contemplated by statute and case law. Having found the applicant statutorily ineligible for relief, no purpose would be served in discussing whether the applicant 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.