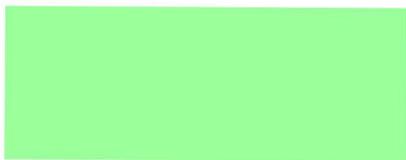


(b)(6)

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 26 2013

OFFICE: MONTERREY, MEXICO

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:

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,

A handwritten signature in black ink that reads "Ron Rosenberg".

Ron Rosenberg  
Chief, Administrative Appeals Office

**DISCUSSION:** The Field Office Director, Monterrey, 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). He 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 May 8, 2013.

On appeal the applicant maintains that if a waiver is not granted, his U.S. citizen spouse will suffer extreme hardship. *See Form I-290B, Notice of Appeal or Motion* (Form I-290B), received June 7, 2013.

The record contains, but is not limited to: Form I-290B; letters from the applicant's spouse and the applicant; various immigration applications and petitions; a licensed mental-health counselor's letter; medical documents; financial documents; a residential lease; traffic conviction records; and marriage and birth certificates and family photos. The record also contains three Spanish-language letters that are not accompanied by full, certified English translations as required under 8 C.F.R. § 103.2(b)(3).<sup>1</sup> Because the required translations were not submitted for these documents, the AAO will not consider them in this proceeding. The entire record, with the exception of the Spanish-language documents described, 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-

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<sup>1</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.

...

(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 on January 25, 2005 and remained until he voluntarily returned to Mexico in August 2012. The applicant began accruing unlawful presence after he became 18 years old, on January 16, 2007. He accrued over a year of unlawful presence between January 16, 2007, and his departure in August 2012. 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 or his children 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 22 year-old native and citizen of the United States who asserts emotional, medical and economic hardship. She states that she suffers from separation-related depression and anxiety, for which she did not seek professional help until after their daughter's birth in January 2012, because medication could be harmful to an unborn child. A licensed mental-health counselor (LMHC) interviewed the applicant's spouse on May 29, 2013 and diagnosed her with major depressive disorder, moderate, single episode. The LMHC recommended that the applicant's spouse visit a doctor's office for an antidepressant, and a clinical visit summary from [REDACTED] Family Practice indicates that she was prescribed Citalopram for depression and Vistaril for anxiety. The LMHC does not address counseling as an option for the applicant's spouse, and while the applicant's spouse avers that she is “currently seeing” the same LMHC, no corroborating evidence supports her statement. The AAO has considered the LMHC's letter but also has considered that it appears to be based on self-reporting by the applicant's spouse during a single interview, does not identify any diagnostic tests or tools utilized, and does not contain a prognosis, treatment plan, or recommendation that the applicant's

spouse seek any form of treatment outside of medication. While not insignificant, the emotional and health-related difficulties described have not been distinguished from those ordinarily associated with separation as a result of a loved one's inadmissibility.

The applicant's spouse indicates that their young daughters are currently residing with the applicant in Mexico because she did not want to separate them from him. She and the applicant write that the children need vaccinations that are unavailable at the local health clinic in Tlaxcalilla, as corroborated by a letter from the clinic. The AAO notes that the applicant's children, both U.S. citizens, are not required to relocate to Mexico and neither the applicant nor his spouse have addressed the possibility of scheduling vaccinations in the United States. The applicant's spouse asserts that she has already scheduled their elder daughter to speak with a counselor, anticipating hardship to the child in the event of separation from the applicant. She likewise asserts without supporting documentary evidence that the applicant is suffering from depression in Mexico as a result of their separation. As discussed, hardship to the applicant or his children can be considered only insofar as it results in hardship to a qualifying relative. Here the evidence does not demonstrate that the applicant or his children suffer separation-related hardship to a degree that elevates the applicant's spouse's hardship to an extreme level.

The applicant's spouse states that she was a pregnant stay-at-home mom when the applicant was in the United States and he was the family's sole provider. The record contains no documentary evidence demonstrating that the applicant was employed in the United States or showing that he contributed financially to the household. 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 writes that she must now try to find means to support her family as a single mother and also secure childcare and send money to assist the applicant in Mexico. The record contains no documentary evidence demonstrating that the applicant's spouse is unable to work or secure employment. While the AAO recognizes that the applicant's spouse has likely experienced some reduction in income as a result of separation from the applicant, the evidence is insufficient to show that she would be unable to meet her financial obligations in the applicant's absence during the remainder of his temporary inadmissibility.

The AAO acknowledges that separation from the applicant has 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.

Addressing the hardship she would experience upon relocation to Mexico, the applicant's spouse indicates that Mexico's economy, standard of living, employment opportunities, education system, and healthcare system are all far below those in the United States and would negatively impact her and their U.S. citizen children. While the applicant's spouse lists several statistics related to Mexico's healthcare system, she does not identify the statistical source or provide corroborating documentary evidence. Additionally, the applicant's spouse indicates that she has safety concerns because of serious drug- and gang-related violence occurring in Mexico, and she incorporates an

illustration and graph into her letter from an entity called “Reforma Ejectometro Grupo Reforma,” to show that drug-related murders in Mexico rose substantially between 2006 and 2011. The AAO also has reviewed the U.S. State Department’s current *Mexico Travel Warning*, dated July 12, 2013. While U.S. citizens are warned that crime and violence are serious problems throughout Mexico and can occur anywhere, there is no travel advisory in effect for Hidalgo, where the applicant currently resides with their children and where his spouse would presumably relocate.

The AAO has considered cumulatively all assertions of relocation-related hardship to the applicant’s spouse, including readjusting to a country where she has never resided; doing so with two young children; severing her family and community ties to the United States; and her stated economic, employment, educational, health and security concerns. Considered in the aggregate, the AAO finds the evidence insufficient to demonstrate that the applicant’s U.S. citizen spouse would suffer extreme hardship were she to relocate to Mexico to join 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.

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.