



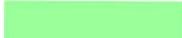
U.S. Citizenship
and Immigration
Services

(b)(6)

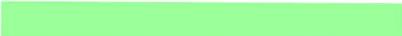


DATE: SEP 26 2013

OFFICE: MONTERREY, 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,

A handwritten signature in black ink, appearing to read "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 10, 2013.

The record contains, but is not limited to: Form I-290B, the applicant's statement, various immigration applications and petitions, a hardship letter from the applicant's spouse, and her birth certificate. 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 he voluntarily returned to Mexico in July 2012. The applicant accrued unlawful presence 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(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 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-Moralez*, 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 25 year-old native and citizen of the United States who has been married to the applicant since August 2011. She asserts the applicant's inadmissibility has caused her health-related, economic and emotional hardship. The applicant's spouse states that she is disabled, unemployed, has two children from a previous relationship, and if the applicant is admitted to the United States he can work legally to support them. The applicant asserts that his spouse is diabetic and "always sick." He adds that separation has affected him, his wife, and her children psychologically and emotionally. The record contains no documentary evidence demonstrating that the applicant's spouse suffers from a disability or medical condition, or addressing any diagnosis, prognosis, physical limitations or special medical or psychological needs. 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 writes that his spouse and children have no place to live and are currently staying in a one-room mobile home because his brother-in-law can no longer support them. He states that he has been unable to secure employment in Mexico and thus has been unable to financially support his family. As noted by the Field Office Director, the applicant has submitted no supporting evidence to substantiate his claim of financial hardship. The record contains no documentary evidence demonstrating that the applicant was employed in the United States or contributed financially to his spouse's household; it also lacks evidence showing his prior or potential income and his unsuccessful efforts at securing employment in Mexico. The applicant also did not submit evidence showing that his spouse is unemployed, unable to work, or otherwise addressing her current income or support from other sources. Moreover, the record contains no documentary evidence delineating the applicant's spouse's regular expenses and financial obligations from which an accurate determination might be made as to whether she is experiencing economic hardship in the applicant's absence.

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 encountered by the qualifying relative, when considered cumulatively, meet the extreme-hardship standard.

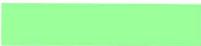
Addressing the hardship she may experience upon relocation to Mexico, the applicant's spouse states that she cannot move to Mexico with her children because they are small, she is afraid for their well-being, and because she is disabled she does not think she would receive the medical care she needs. The applicant writes that his spouse and both children have medical problems that prevent them from relocating. The record contains no supporting medical documentation for the applicant's spouse or her children and no country conditions documents addressing Mexico's healthcare system or the accessibility to or availability of medical care.

The applicant indicates that he currently resides in Veracruz with his elderly father, who has only a small one-bedroom hut and limited income. He explains that he has no house or job in Mexico to support his family and no health insurance or the financial means to afford medical treatments, which are costly there. The applicant avers that relocation would be very difficult for his spouse and children as they have never lived in Mexico, do not speak the language, his spouse has no family there, and they would not have the same economic and educational opportunities as in the United States. The applicant's spouse writes that employment in Mexico is not an option. The record contains no country-conditions reports or other documentary evidence addressing Mexico's economy, employment, education, healthcare system, health insurance or related costs.

The applicant's spouse expresses security concerns about Mexico and indicates that gangs threaten newly arrived citizens. The record contains no supporting country-conditions reports or other documentary evidence. The AAO has, however, reviewed the U.S. State Department's current *Mexico Travel Warning*, dated July 12, 2013. Regarding Veracruz, where the applicant indicates on Form I-290B that he resides, the report warns that U.S. citizens should exercise extreme caution, Veracruz continues to experience violence among rival criminal organizations, but Mexican federal security forces continue to assist state and local security forces in providing security and combating organized crime.

The AAO has considered cumulatively all assertions of relocation-related hardship to the applicant's spouse, including readjusting to a country in which she has not resided; her family ties to the United States and lack of family ties to Mexico; security concerns; and stated economic, employment, education, and health-related concerns for Mexico. Considered in the aggregate, the AAO finds the evidence in the record 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



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NON-PRECEDENT DECISION

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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.