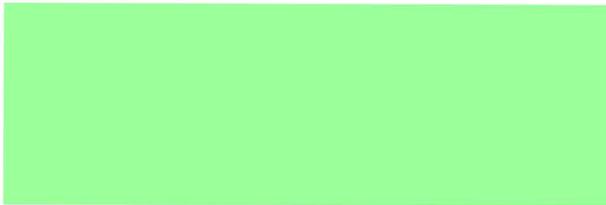




U.S. Citizenship
and Immigration
Services

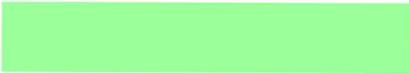
(b)(6)



APR 23 2014

Date: Office: NEBRASKA SERVICE CENTER

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:

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 Director, Nebraska Service Center. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The record reflects that 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 married to a U.S. citizen, and she is the mother of four U.S. citizen children. She is 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 with her spouse and children.

The 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. *Decision of the Service Center Director*, dated July 12, 2013.

On appeal, the applicant asserts that her qualifying relative is facing difficulty raising their minor children, and she submits copies of federal income tax returns for the years 2008 to 2011.

The record includes, but is not limited to, the following documentation: statements by the applicant and the applicant's spouse; financial documentation, copies of the birth certificates of the applicant's four children, and country-conditions information about Mexico. The entire record was reviewed and considered in rendering a decision on the appeal.

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

(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 1991. During her interview with a consular officer the U.S. Consulate in Ciudad Juarez, Mexico, the applicant

stated that she entered the United States without inspection in 1991 and departed in 2004.¹ The applicant began accruing unlawful presence on April 1, 1997, the effective date of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA).² The applicant is, therefore, inadmissible to the United States under section 212(a)(9)(B)(i)(II) of the Act for being unlawfully present in the United States for a period of more than one year, and seeking admission within 10 years of her departure from the United States. The applicant does not contest her inadmissibility.

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

(v) Waiver.-The [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 [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.

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 her children can be considered only insofar as it results in hardship to a qualifying relative. The applicant's husband is the only qualifying relative in this case. If extreme hardship to a qualifying relative is established, the applicant is statutorily eligible for a waiver and U.S. Citizenship and Immigration Services (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 of Immigration Appeals (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

¹ The record lacks evidence of the exact date of the applicant's departure in 2004. The record indicates that the applicant was married in 2001 in Los Angeles, California, and three of her children were born in the United States between 1993 and 2000, while she was unlawfully present. The record also indicates that her youngest child was born in 2006 in Mexico, indicating that she was not present in the United States in 2006. On the applicant's Form I-601, however, the applicant indicates that she was unlawfully present in the United States between September 1996 and September 2011.

² No period of unlawful presence prior to the effective date of IIRIRA, Pub. L. No. 104-208, is counted when determining inadmissibility under section 212(a)(9)(B) of the Act.

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. INS*, 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.

The applicant states that she was the primary caregiver for their three minor children and contends that her spouse is unable to provide for them "financially and mentally" in her absence. Although her spouse may be having difficulties raising their children without her assistance, the applicant provides no evidence to corroborate her claims. 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 record includes copies of federal income tax returns filed by the applicant's spouse between 2009 and 2011, the latter indicating an adjusted gross income of \$43,975. The record does not include evidence of the applicant's spouse's assets and liabilities. Although her spouse, in his November 2012 statement, asserts the financial burden of their separation is "huge," no evidence in the record supports concluding that he is unable to meet his financial obligations in the applicant's absence. Courts considering the impact of financial detriment on a finding of extreme hardship have repeatedly held that, while it must be considered in the overall determination, "[e]conomic disadvantage alone does not constitute "extreme hardship." *Ramirez-Durazo v. INS*, 794 F.2d 491, 497 (9th Cir. 1986).

The applicant's spouse states that he is unable to sleep and has been experiencing extreme anxieties due to his separation from the applicant. However, the record contains no supporting evidence concerning the emotional hardship that the applicant's spouse claims he is experiencing in the absence of his spouse. The applicant's spouse further states that their children will face emotional psychological hardship being apart from their mother. As noted above, under section 212(a)(9)(B)(v) of the Act, children are not deemed to be qualifying relatives. Although USCIS considers a child's hardship a factor in determining whether a qualifying relative experiences extreme hardship, the applicant did not provide supporting evidence showing that emotional hardship to her children will cause hardship to her husband.

The AAO recognizes that the applicant's spouse will endure hardship as a result of separation from the applicant. However, his situation, if he remains in the United States, is typical to individuals separated as a result of removal and, based on the record, does not rise to the level of extreme hardship.

Asserting that he would experience hardship upon relocation to Mexico, the applicant's spouse, a native of Mexico, contends that he and the applicant want the best healthcare and educational opportunities for their children, their children are not fluent in Spanish and thus would have difficulty communicating in Mexico, they dislike the food in Mexico, and they cannot drink the local water and would not be able to afford bottled water. The applicant submits evidence from the Centers for Disease Control and Prevention (CDC) on travelers' diarrhea.

The applicant's spouse also contends that the family would suffer financial hardship if they were to relocate to Mexico, as he and the applicant would only be able to find work as field hands in Mexico, earning \$40 a week or less

As noted above, the applicant's spouse is a native of Mexico, and is familiar with the language, customs, and culture of that country. It has not been established that the applicant's spouse is unable to support his family were they to relocate to Mexico. Further, the applicant has not addressed whether she is employed in Mexico. Moreover, the record does not reflect the family ties that the

applicant and her spouse have in Mexico. While the applicant's spouse states that he worries about how relocating to Mexico would affect their children, the record lacks evidence describing the extent of the hardship that the applicant's spouse would suffer related to their children's hardship. Therefore, though the AAO has considered his statements regarding the emotional hardships to their children were they to relocate to Mexico, without more his concerns do not rise to the level of extreme hardship. Based on the evidence on the record, the applicant has not established that her spouse would suffer hardship beyond the common results of removal if he were to relocate to Mexico to reside with the applicant.

The record, reviewed in its entirety and in light of the *Cervantes-Gonzalez* factors, cited above, does not support a finding that the applicant's U.S. citizen 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 and difficulties arising whenever a spouse is refused admission to the United States. Although the AAO is not insensitive to the applicant's spouse's situation, the record does not establish that the hardship he would face rises to the level of extreme as contemplated by statute and case law.

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.