

(b)(6)



U.S. Citizenship  
and Immigration  
Services

Date: **AUG 01 2014** Office: NEBRASKA SERVICE CENTER

FILE: [REDACTED]

IN RE: [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:  
[REDACTED]

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,

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

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 applicant is a native and citizen of Mexico who was found 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 admission within ten years of her last departure from the United States. The applicant’s spouse is a legal permanent resident. The applicant seeks a waiver of inadmissibility in order to reside in the United States with her husband.

The Director found that the applicant failed to establish that her qualifying relative would experience extreme hardship as a consequence of her inadmissibility and denied the Form I-601, Application for Waiver of Grounds of Inadmissibility (Form I-601), accordingly. *See Decision of the Director*, dated February 1, 2014.

On appeal, the qualifying spouse’s declaration indicates that he is experiencing medical, emotional and financial hardships as a result of his separation from the applicant. In addition, he fears for the safety of the applicant, who currently lives in Tijuana, Mexico.

The record includes, but is not limited to; a Form I-290B, Notice of Appeal or Motion; a psychological evaluation of the qualifying spouse; letters and a declaration from the qualifying spouse; letters from the applicant, the applicant’s mother-in-law, the applicant and qualifying spouse’s son and their friends, with accompanying identification documents; medical documentation regarding the qualifying spouse<sup>1</sup>; photographs; financial documentation, including copies of remittances sent to the applicant in Mexico<sup>2</sup>; and country-conditions materials 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:

(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> The requisite translation for one of the medical letters regarding the qualifying spouse was not provided by the applicant. 8 C.F.R. § 103.2(b)(3) states, with regard to translations, that “[a]ny document containing foreign language submitted to 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.” As such, this letter without a translation cannot be considered in analyzing this case.

<sup>2</sup> Some documents that appear to be invoices or bills in Spanish also were not accompanied by translations and therefore could not be considered. See 8 C.F.R. § 103.2(b)(3).

(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.

Section 212(a)(9)(B)(v) of the Act provides for a waiver of section 212(a)(9)(B)(i) inadmissibility as follows:

The Attorney General [now Secretary of Homeland Security] 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 . . . 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. The applicant's spouse 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 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 record reflects that the applicant entered the United States with a border crossing card in December 2010 and was authorized to stay until March 27, 2011. She returned to Mexico in March 2013. She therefore accrued over one year of unlawful presence between March 27, 2011 and her departure in March 2013. She is inadmissible to the United States under section 212(a)(9)(B)(i)(II) of 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 admission within ten years of her departure from the United States. The applicant does not contest her inadmissibility.

Regarding the hardship that the applicant’s lawful permanent resident spouse were to experience if he remains in the United States while the applicant continues to reside in Mexico, the applicant’s spouse states that he is suffering health, emotional and financial hardships. He states that he suffers from anxiety, stress, headaches, difficulty sleeping, poor concentration and depression and that he has been diagnosed with depression, obsessive-compulsive disorder and diabetes. His assertions concerning his emotional and medical difficulties are supported by a psychological assessment and letters from his doctors. According to one doctor, his medical condition has

decreased his “vitality” and “mental vigor.” The medical evidence also shows that the applicant is required to maintain a strict diet and take medication for diabetes. In addition, the psychologist states that the applicant’s spouse has “limited ability to cope with stress, which has led to . . . psychosomatic symptoms such as stomach discomfort, back pain, numbness in limbs, and headaches.” She adds that the applicant’s husband claims to have been engaging in obsessive-compulsive behaviors and has increased his dietary intake and smoking since the applicant’s departure.

The applicant’s husband indicates that he also is financially struggling to support two households, his in California and the applicant’s in Mexico. The applicant provides copies of remittances her spouse sent in 2013 and in March 2014, ranging from 50 to 150 dollars, at times weekly and others monthly. The record also includes photocopies of bills, including credit-card statements with large balances, reflecting the applicant’s spouse’s inability to manage certain expenses. The applicant’s spouse, moreover, states that he has had to borrow money to cover his costs and to travel to see the applicant approximately twice a month in Tijuana. The record demonstrates that the applicant’s husband is maintaining two households. The record also contains objective documentation regarding the applicant’s husband’s income and expenses in the United States with enough specificity to show that he is struggling financially. As such, the evidence of the qualifying spouse’s hardship upon separation, including his health, emotional and financial hardships, considered in the aggregate, establishes that he is experiencing extreme hardship due to his separation from the applicant.

Concerning the hardship that the applicant’s husband, a native of Mexico, would experience if he were to relocate to be with the applicant, he states in his declaration that the applicant has been unable to find employment in Mexico, so he believes that it will be difficult for him to obtain employment there as well. However, the applicant does not provide evidence to corroborate claims regarding the availability of suitable employment in Mexico. While the assertions of the qualifying spouse are relevant evidence and have been considered, 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 husband asserts in his declaration that he lives in constant fear for the applicant’s safety and that there was recently a shooting in the neighborhood where the applicant lives with his mother and their son. The record includes articles and a Department of State travel advisory addressing violence and crime in Tijuana. However, it appears that the applicant and her husband have family support in Mexico, specifically her mother-in-law, who has offered to house the applicant and her grandson as long as necessary. Moreover, the record reflects that one of the applicant’s husband’s doctors, located in Mexico, claims to have treated him since 2007 and sees him every four to six weeks, demonstrating that the applicant’s spouse travels to Mexico despite his concerns. We acknowledge that the qualifying spouse’s potential difficulties in Mexico represent a hardship; however, the applicant has not provided sufficient evidence to show that her qualifying spouse’s cumulative hardships upon relocation would be extreme.

We can find extreme hardship warranting a waiver of inadmissibility only where an applicant has demonstrated extreme hardship to a qualifying relative in the scenario of separation *and* the scenario of relocation. A claim that a qualifying relative will remain in the United States and thereby suffer extreme hardship as a consequence of separation can easily be made for purposes of the waiver even where there is no intention to separate in reality. *See Matter of Ige*, 20 I&N Dec. 880, 886 (BIA 1994). Furthermore, to separate and suffer extreme hardship, where relocating abroad with the applicant would not result in extreme hardship, is a matter of choice and not the result of inadmissibility. *Id.*, *see also Matter of Pilch*, 21 I&N Dec. 627, 632-33 (BIA 1996). As the applicant has not demonstrated extreme hardship from relocation, we cannot find that refusal of admission would result in extreme hardship to the qualifying relative in this case.

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.