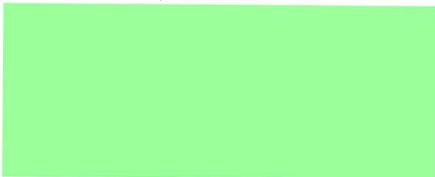


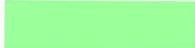
(b)(6)

U.S. Department of Homeland Security  
U. S. Citizenship and Immigration Services  
Administrative Appeals Office (AAO)  
20 Massachusetts Ave., N.W., MS 2090  
Washington, DC 20529-2090  
**U.S. Citizenship  
and Immigration  
Services**

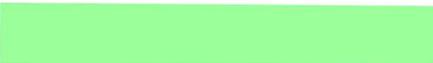


DATE: FEB 11 2014

Office: SEATTLE

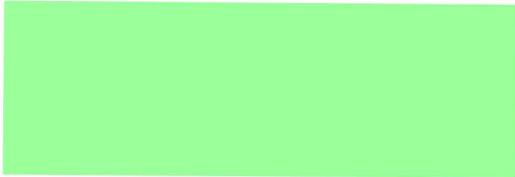
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IN RE:

Applicant: 

APPLICATIONS: 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,

A handwritten signature in black ink, appearing to read "Ron Rosenberg".

Ron Rosenberg  
Chief, Administrative Appeals Office

**DISCUSSION:** The Field Office Director, Seattle, Washington, denied the waiver application, and it is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native and a 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 for one year or more. The applicant seeks a waiver of inadmissibility in order to adjust his status as the beneficiary of the approved Petition for Alien Relative (Form I-130) filed by his wife.

The field office director concluded the applicant had failed to establish that extreme hardship would be imposed on a qualifying relative and, accordingly, denied the Application for Waiver of Grounds of Inadmissibility (Form I-601). *Decision of Field Office Director*, September 24, 2013.

On appeal, the applicant contends that USCIS did not give appropriate weight to the psychiatric evidence and erred in finding the applicant had not shown his wife would suffer extreme hardship as a result of the applicant's inadmissibility if he is unable to reside in the United States. The record contains documentation including, but not limited to: medical records, including a psychological evaluation, progress notes, and laboratory results; financial evidence; birth, marriage, and naturalization certificates; copies of passport pages, a border crossing card, and Form I-94; support letters; and photographs. The entire record was reviewed and considered in rendering this decision.

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

(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 record reflects that the applicant admits residing unlawfully in the United States from 2001 to 2005, he worked here from 2002 to 2005, and he departed the country sometime in 2005, thereby triggering his inadmissibility pursuant to section 212(a)(9)(B)(i)(II) of the Act. Immigration records show he was issued a Border Crossing Card (BCC) on July 22, 2005 and used it the same day to

procure his first lawful U.S. admission.<sup>1</sup> Having accrued unlawful presence of one year or more, he incurred a 10 year bar on admission, and requires a waiver of inadmissibility to immigrate.

A waiver 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 child can be considered only insofar as it results in hardship to a qualifying relative. The applicant's U.S. citizen 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 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 applicant has established extreme hardship to a qualifying relative. 22 I&N Dec. 560, 565 (BIA 1999). 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; the Board added that not all of these factors need be analyzed in any given case and emphasized that the list is 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).

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<sup>1</sup> Counsel claims that the applicant has remained in the country since his September 5, 2005 admission. Immigration records show that he used his BCC to procure admission four times after his initial admission: August 23, 2005; September 5, 2005; January 13, 2008; and January 30, 2008. The field office director did not address whether he misrepresented a material fact on his nonimmigrant visa application concerning his illegal 2001 entry, unlawful presence, and unauthorized U.S. employment, which would make him inadmissible under section 212(a)(6)(C)(i) of the Act.

However, while 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, or cultural readjustment 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, although 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)); conversely, 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 case-by-case whether denial of admission would result in extreme hardship to a qualifying relative.

Regarding whether the applicant has established that a qualifying relative would suffer extreme hardship by relocating, the record reflects that the cumulative effect of problems that would impact his wife does not represent hardship that rises to the level of “extreme.” The record contains a psychiatrist’s observations based on a one-hour session with the applicant’s family on January 24, 2011. Although this statement primarily addresses the impact on his family of the applicant’s return to Mexico, the psychiatrist also states that the applicant’s wife would lose her business if she accompanied her husband to Mexico. See *Psychiatrist’s Affidavit*, February 7, 2011. No documentary support is provided for this claim. The qualifying relative’s claim that her business responsibilities prevent her from moving to Mexico are likewise unsupported by documentation, as the record contains little evidence regarding her business besides 2008 and 2009 tax returns and W-2 forms indicating that her employer’s address and her residence address are identical. Her listing of unspecified “personal threats” as another reason she cannot return to Mexico is unsupported by the record, there is no indication she would relocate to an area of concern, and the U.S. Department of State (DOS) indicates that no advisory is in effect for Mexico City, where both the applicant and his wife grew up. See *Travel Warning—Mexico*, DOS, January 9, 2014.

The record also contains laboratory results indicating the applicant’s wife had abnormal fasting glucose levels and was being tested for diabetes mellitus, but without explaining the significance of these results, indicating any required treatment, or showing that treatment is unavailable in Mexico. Significant conditions of health, particularly when tied to an unavailability of suitable medical care

in the country to which the qualifying relative would relocate, are relevant factors in establishing extreme hardship. The evidence on the record is insufficient to establish, however, that the applicant's wife suffers from such a condition. The documents submitted were prepared for review by medical professionals and do not contain a clear explanation of the current medical condition of the applicant's wife. Absent an explanation in plain language from the treating physician of the exact nature and severity of any condition and a description of any treatment or family assistance needed, the AAO is not in the position to reach conclusions concerning the severity of a medical condition or the treatment needed. Official U.S. country condition information notes that excellent health facilities are available in Mexico City, *see Country Specific Information—Mexico*, DOS, October 16, 2013.

The record reflects that the applicant's wife naturalized about eight years ago, that she lived in Mexico for over 30 years before immigrating, and that the couple married on October 8, 2010 and has no biological children together. Although she claims her parents as dependents on her tax returns, there is no evidence regarding their financial circumstances, immigration status, or place of residence, or that she supports them financially. While the psychiatrist states that the qualifying relative's 19-year-old daughter would be disadvantaged educationally by moving to Mexico, any impact on her daughter, who is not a qualifying relative under the Act, may only be considered to the extent that it causes hardship to her mother. The record shows that the applicant's stepdaughter has received counseling since 2009 and reported to a new therapist in 2013. *See Intake Assessment*, January 16, 2013. There is insufficient evidence, however, to support the claimed educational detriment and no evidence of any related adverse impact to a qualifying relative. The AAO notes that the applicant's stepdaughter is working part time, is no longer a minor, and need not accompany her mother to Mexico. We thus conclude that, in the aggregate, the impact on the applicant's wife of moving back to Mexico to continue living with her husband does not rise to the level of "extreme hardship," as it does not go beyond the common or usual consequences of inadmissibility or removal.

Regarding the claim of emotional hardship due to separation from the applicant, there is little evidence that separation will cause distress beyond that which usually results from inadmissibility of a family member. The applicant's wife claims that both her parents live in the United States, and she lives with her daughter and runs a children's daycare out of her home. Although the psychiatrist concludes that separation from the applicant would significantly reduce the qualifying relative's opportunity for full and health and development, his affidavit identifies no specific conditions she exhibits or would experience other than stress. The applicant's wife states that she has had bad dreams, been unable to sleep, and felt scared by the prospect of the applicant's departure. She claims that because she and the applicant are each stepparent to the other's child, their blended family's need for the applicant's presence is exceptional and extremely unusual. She further asserts that both children have been traumatized by separation of birth parents. There is no evidence on record of such trauma to the applicant's son and the record shows that he lives with his birth mother, with whom the psychiatrist reports having no contact. As discussed above, the AAO may consider evidence regarding the psychological condition of the applicant's stepdaughter only insofar as it causes extreme hardship to her mother, the only qualifying relative in this case. While the record shows that the applicant, his wife, and her daughter live together as a family unit, and the psychiatrist foresees the applicant's departure will create trauma for his stepdaughter, the evidence

fails to establish that the impact of the applicant's absence on his stepdaughter will result in hardship to his wife.

Although providing tax returns, bank statements, and documentation of a jointly-owned car, the applicant has failed to support the claim that his wife is financially dependent on him.<sup>2</sup> Tax returns for 2008 and 2009, the two years immediately preceding her marriage to the applicant, show her earning over \$50,000, while their 2010 and 2012 joint filings report almost \$40,000 and \$63,000, respectively. There is no indication that the applicant's absence would deprive the household of its primary wage earner or adversely impact his wife's economic situation. Although counsel states that the applicant's wife has suffered financially due to the world economic downturn and has an extreme need for the applicant's financial support, the unsupported assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980). Based on the record, the AAO is unable to conclude that the applicant's inability to remain here would render his wife unable to meet her financial obligations.

For all these reasons, the cumulative effect of the medical, emotional, and financial hardships the applicant's wife will experience due to the applicant's inadmissibility does not rise to the level of extreme. We are sensitive that the applicant's inability to remain in the United States will impose some hardship on his wife. The AAO concludes based on the evidence provided that, were his wife to remain in the United States without the applicant due to his inadmissibility, she would not suffer hardship beyond those problems normally associated with family separation.

The documentation on record, when considered in its totality, reflects the applicant has not established that a qualifying relative will suffer extreme hardship if he is unable to live in the United States. The AAO recognizes that the applicant's wife will endure hardship as a result of the applicant's inability to immigrate. However, her situation is typical of individuals affected by removal or inadmissibility, and the AAO thus finds that the applicant has failed to establish extreme hardship to his wife as required under the Act.

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.

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<sup>2</sup> Without their respective W-2s and supporting schedules for their joint tax returns, the AAO is unable to assess their respective contributions to household income.