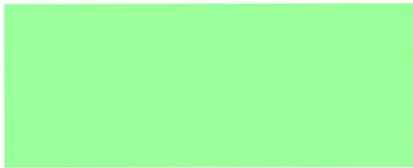




U.S. Citizenship
and Immigration
Services

(b)(6)



Date: FEB 28 2014

Office: ANAHEIM

FILE: 

IN RE: Applicant: 

APPLICATION: Application for Waiver of Grounds of Inadmissibility under Section 212(a)(9)(B) of the Immigration and Nationality Act, 8 U.S.C. § 1182(a)(9)(B)

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,

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

Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the International Adjudications Support Branch on behalf of the Field Office Director, Ciudad Juarez, Mexico. An appeal of the denial was dismissed by the Administrative Appeals Office (AAO). The matter is now before the AAO on motion. The motion will be granted and the underlying application remains denied.

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 again seeking admission within 10 years of his last departure from the United States. The applicant is the beneficiary of an approved Petition for Alien Relative (Form I-130). He seeks a waiver of inadmissibility in order to reside in the United States with his lawful permanent resident parents.

The Field Office Director concluded that the applicant had 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 November 15, 2012.

The AAO, reviewing the applicant's Form I-601 on appeal, concurred with the Field Office Director that extreme hardship to a qualifying relative had not been established, and dismissed the appeal. *Decision of the AAO*, dated July 22, 2013.

The applicant filed a motion to reconsider on August 27, 2013. Upon reviewing his file, the AAO found the evidence that the applicant accrued over one year of unlawful presence in the United States was inconclusive. On November 6, 2013, the AAO issued a request for evidence (RFE), asking the applicant to submit documentation showing that he was living in Mexico and not the United States between the years 2006, when he became 18 years old, and the present. The RFE stated that the additional evidence must be submitted within 12 weeks. As more than 12 weeks have passed since issuing the RFE, and no additional documentation has been received, the record will be considered complete as of the date of this decision.

With the applicant's motion,¹ the applicant's father, a qualifying relative, contends that he will be unable to find employment in Mexico because he is over 50 years of age and that his separation from the applicant causes him anxiety and depression on a daily basis. According to 8 C.F.R. § 103.5(a)(2), a motion to reopen must state new facts to be proved and be supported by affidavits or other documentary evidence. As the applicant has submitted new documentary evidence to support his claim, a motion to reopen will be granted.

¹ On the Form I-290B, Notice of Appeal or Motion (Form I-290B), the applicant indicates he is submitting a motion to reconsider. According to 8 C.F.R. § 103.5(a)(3), a motion to reconsider must state the reasons for reconsideration and be supported by any pertinent precedent decisions to establish that the decision was based on an incorrect application of law or Service policy. The applicant's Form I-290B does not meet the standards for a motion to reconsider; however, as the applicant submitted new documentary evidence to support his claim, the application will be considered a motion to reopen.

The record contains but is not limited to the following documentation: statements by the applicant's father, a statement by the applicant, and a letter of reference. The entire record was reviewed and considered in rendering this decision.

Section 212(a)(9)(B) 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-

.....
(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 reflects that the applicant attempted to enter the United States without inspection on April 13, 2005, and was granted voluntary return. The applicant applied for an immigrant visa to the United States in 2010 at the U.S. Consulate in Ciudad Juarez and was found to be inadmissible under section 212(a)(9)(B) of the Act. The applicant filed Form I-601 on May 18, 2012, with a statement from his father, who stated that the applicant never entered the United States illegally. After his Form I-601 was denied, the applicant appealed the denial on December 20, 2012, claiming that he had never been in the United States and that he once attempted to cross the border illegally but was turned back by U.S. immigration officers.

As stated in the previous AAO decision dismissing his appeal, the applicant submitted no information or evidence to overcome the finding that he entered the United States without inspection and resided in the United States for more than one year. On November 27, 2013, the AAO requested from the applicant evidence showing that he never entered the United States illegally and that he was living in Mexico between the years 2006 and the present. The AAO did not receive a response to this request. Section 291 of the Act, 8 U.S.C. § 1361, states that whenever any person makes an application for admission, the burden of proof shall be upon such person to establish that he is not inadmissible under any provision of this Act. The burden never shifts to the government to prove admissibility during the adjudication of a benefit application, including an application for a waiver. INA § 291; *Matter of Arthur*, 16 I&N Dec. 558 (BIA 1976). The applicant has not met his burden. On motion, the applicant does not contest his inadmissibility under section 212(a)(9)(B) of the Act.

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. Hardship to the applicant can be considered only insofar as it results in hardship to a qualifying relative. The applicant's lawful permanent resident parents are the only qualifying relatives 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 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. *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.

On motion, the applicant’s father asserts that his separation from the applicant is causing anxiety and depression, and that the absence of the applicant is “like a slow death” to his wife and him, because they need to be with the applicant. Although the assertions of the applicant’s father are relevant and have been taken into consideration, little weight can be afforded them in the absence of supporting evidence. The record contains no supporting evidence concerning the emotional hardships that the applicant’s parents are experiencing due to separation from the applicant. 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 father also contends that he is suffering financial difficulties, as it is not easy to support two households in the United States and Mexico, and the applicant is unable to find employment in Mexico. As the AAO noted in its previous decision, no documentation has been submitted establishing the applicant’s parents’ current income, expenses, assets, liabilities, or overall financial situation, or that they financially support the applicant, to establish that without the applicant’s physical presence in the United States the applicant’s parents will experience financial hardship. Furthermore, the record lacks documentation showing the applicant is unable to support himself while in Mexico.

The AAO recognizes that the applicant’s parents will endure hardship as a result of separation from the applicant. However, their situation if they remain in the United States is typical to individuals separated as a result of removal or refusal of admission and does not rise to the level of extreme hardship based on the record.

The applicant's father also contends that he and his wife cannot relocate to Mexico because he will be unable to find employment; no company in Mexico wants to hire a person over 50 years of age. Moreover, the applicant states his parents are becoming older and more vulnerable to illness, and health care in Mexico is below U.S. standards. 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. However, the applicant submits no evidence showing that his parents suffer from such a condition.

The applicant's father also refers to violence in Mexico, stating it is unsafe there. As the AAO noted in its previous decision, the record contains references to general country conditions, but the applicant submits no information showing how these conditions would specifically affect his parents. The record indicates that the applicant resides in the state of [REDACTED]. According to the most recent travel warning for Mexico, issued by the U.S. Department of State on January 9, 2014, there is no advisory in effect for the state of [REDACTED]. The record fails to establish that the applicant's parents would be at risk if they relocated to Mexico.

Based on the evidence on the record, the applicant has not established that his parents would suffer hardship if they were to relocate to Mexico to reside with the applicant. Although his parents, natives of Mexico, may experience some difficulties securing employment given their ages, the record does not show that the applicant and other family members are unable to help financially support them. Additionally, the record does not show that the applicant's parents have medical conditions that could not be treated in Mexico. Finally, though the applicant's father expresses concerns about the family's safety in Mexico, the evidence submitted does not show that their family would face risks in [REDACTED].

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 lawful permanent resident parents would face extreme hardship if the applicant is unable to reside in the United States. Rather, the record demonstrates that they will face no greater hardship than the unfortunate, but expected disruptions, inconveniences, and difficulties arising whenever a family member is refused admission to the United States. Although the AAO is not insensitive to the applicant's parents' situation, the record does not establish that the hardship they 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 motion to reopen is granted and the prior AAO decision is affirmed.