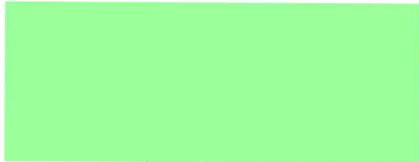




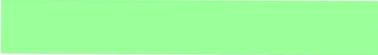
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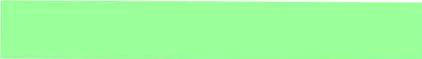


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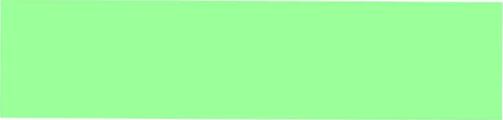


IN RE:



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:



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 Field Office Director, Monterrey, Mexico denied the waiver application. A subsequent appeal was dismissed by the Administrative Appeals Office (AAO). This matter is now before the AAO on a motion to reopen and reconsider. The motion will be granted and the prior decision of the AAO will be affirmed.

The applicant was found to be inadmissible to the United States pursuant to 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 readmission within 10 years of her last departure from the United States. The applicant is a beneficiary of an approved Petition for Alien Relative, as a spouse of a U.S. citizen, who seeks a waiver of inadmissibility in order to reside in the United States with her U.S. citizen spouse.

The Field Office Director concluded that the record failed to establish the existence of extreme hardship for a qualifying relative. The Field Officer Director denied the application accordingly. *See Decision of the Field Office Director*, dated February 24, 2011. On appeal, the AAO determined that the applicant had demonstrated extreme hardship to her spouse upon relocation, but not separation, and dismissed the appeal accordingly. *See Decision of the AAO*, dated October 22, 2012. On motion, the AAO affirmed its prior decision. *See Decision of the AAO*, dated April 22, 2013. On a second motion, the AAO again affirmed its prior decision. *See Decision of the AAO*, dated September 12, 2013.

The applicant has submitted a motion to reopen or reconsider the dismissal of her appeal. The applicant's motion to reopen is granted. In the applicant's motion to reopen or reconsider, counsel for the applicant asserts that the applicant has submitted evidence demonstrating that the applicant's spouse has established extreme financial hardship and updated evidence concerning the applicant's spouse's psychological and medical hardship.

In support of the applicant's motion to reopen and reconsider, the applicant submitted an updated psychological report for the applicant's spouse, medical notes concerning the applicant's spouse, financial documentation, a letter of support, and an affidavit from the applicant's spouse. The entire record was reviewed and considered in rendering this decision.

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

.....

(v) Waiver.-The Attorney General 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 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. No court shall have jurisdiction to review a decision or action by the Attorney General regarding a waiver under this clause.

As noted previously, the applicant is a native and citizen of Mexico who claims to have entered the United States without admission or parole in 1992. The applicant filed a Form I-485, Application to Register Permanent Residence or Adjust Status, on October 16, 1998. This application was denied due to abandonment on June 24, 2004. The applicant was placed in removal proceedings and filed a second Form I-485 before an immigration judge on March 25, 2008. The applicant withdrew that application and was granted voluntary departure by an immigration judge on October 3, 2008. The applicant departed the United States pursuant to voluntary departure order on January 20, 2009. The applicant accrued unlawful presence in the United States from April 1, 1997, the effective date of the unlawful presence provisions, until the filing of her first Form I-485 on October 16, 1998. The applicant also accrued unlawful presence from June 24, 2004, the date of the denial of her Form I-485, until she was granted voluntary departure by the immigration judge on October 3, 2008. Accordingly, she accrued over one year of unlawful presence in the United States, and she is inadmissible under section 212(a)(9)(B)(i)(II) of the Act. The applicant does not dispute this finding of inadmissibility on motion.

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, parent, son or daughter of the applicant. Hardship to the applicant can be considered only insofar as it results in hardship to a qualifying relative. 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 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 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 is a 50-year-old native and citizen of Mexico. The applicant's spouse is a 57-year-old native of Guatemala and citizen of the United States. The applicant is currently residing in Ciudad Juarez, Mexico and her spouse is currently residing part-time in Phoenix, Arizona and part-time in Ciudad Juarez, Mexico, with the applicant.

As noted in the AAO's three previous decisions, the AAO determined that the applicant has demonstrated that her spouse would suffer extreme hardship upon relocation to Mexico. The AAO took notice of the U.S. Department of State travel warnings for the area in which the applicant resides in Mexico. The record also indicated that the applicant's spouse would leave behind ties in the United States if he resided in Mexico on a full-time basis, such as his home and business in the United States. *See Decisions of the AAO*, dated October 22, 2012, April 22, 2013, and September 12, 2003. The applicant's spouse also asserts that the applicant has been seeking employment in Mexico, but was employed for only two to three months before being laid off.

On motion, counsel for the applicant asserts that the applicant's spouse has demonstrated that he is suffering from extreme financial hardship. Counsel contends that the AAO arbitrarily determined that the record was insufficient to establish that the applicant's spouse would be unable to meet his financial obligations while residing in the United States. As previously noted, the applicant's spouse asserted that he was unable to maintain his financial obligations in the United States while residing in Mexico on a part-time basis. In support of this contention, the applicant's spouse asserted that his business is taking in less money due to his absences from the United States. The applicant's spouse's friend submitted a letter stating that the applicant's spouse is having financial problems and was unable to pay utility bills at times, including electricity. The applicant's spouse previously submitted financial documentation indicating bounced check and nonsufficient funds fees and containing a notice of intent to accelerate and foreclose, dated January 15, 2013, for failure to pay two months of mortgage payments. The applicant's spouse asserts that he has since been able to pay the amount owed, but contends that he is again late on payments. The record does not contain any updated supporting documentation indicating that the applicant's spouse is behind on payments or that he has, at any time, been unable to maintain his utilities.

Counsel asserts that the applicant's spouse's decline in income is due to his mental state and support obligations. It is noted that an updated psychological report for the applicant's spouse indicates that he consistently performs his daily activities, including his work and the maintenance of his household and property. As previously determined by the AAO, it is not clear that the applicant's spouse would be unable to earn a higher income from his landscaping business if he resided in the United States on a full-time rather than part-time basis.

As noted, the the applicant's spouse asserted that he earned an income of \$23,000 prior to residing in the United States part-time. The applicant's spouse also asserted that his income was less than \$17,000 in 2012, when he began to reside in Mexico part-time. The record contains 2012 tax returns for the applicant's spouse indicating adjusted gross income of \$19,304. It is noted that the record also contains a letter of support from the applicant's friend, stating that he

pays the applicant's spouse \$350 per month to live in a room in his home. The applicant's 2012 tax return does not include rental income, which would indicate another source of income for the applicant. The applicant's spouse's friend asserts that he intends to move to New York in December, but there is no indication that the applicant's spouse would be unable to rent out the same portion of his home to other individuals.

The applicant's spouse asserts that he is in bad health and needs the applicant in the United States to take care of him. The applicant's spouse further asserts that he misses the applicant and is suffering depression to the point of contemplation of suicide. The record contains updated medical notes concerning the applicant's spouse indicating that he is taking prescription medication and had conversations concerning a diabetic diet and the role of exercise. The record also contains an updated psychological evaluation stating that the applicant's spouse has been diagnosed with adjustment disorder with mixed anxiety and depressed mood, chronic. The evaluation states that there is no finding of acute indication of suicidal or homicidal ideation or intent and recommends continued medication compliance with his primary care physician. The evaluation further indicates the applicant's spouse may benefit from therapy.

It is acknowledged that separation from a spouse nearly always creates a level of hardship for both parties and the record indicates that the applicant's spouse is suffering hardship upon separation from the applicant. However, in the aggregate, there is insufficient evidence in the record to find that the applicant's spouse is suffering from a level of hardship beyond the common results of separation from a spouse.

In this case, the record contains sufficient evidence to show that the hardships faced by the qualifying relative, in the aggregate, would rise to the level of extreme hardship if he relocated to Mexico. The record, however, does not contain sufficient evidence to show that the hardships faced by the qualifying relative upon separation, considered in the aggregate, rise beyond the common results of removal or inadmissibility to the level of extreme hardship. U.S. court decisions have repeatedly held that the common results of removal are insufficient to prove extreme hardship. See *Hassan v. INS*, 927 F.2d 465, 468 (9th Cir. 1991), *Perez v. INS*, 96 F.3d 390 (9th Cir. 1996); *Matter of Pilch*, 21 I&N Dec. 627 (BIA 1996) (holding that emotional hardship caused by severing family and community ties is a common result of deportation and does not constitute extreme hardship); *Matter of Shaughnessy*, 12 I&N Dec. 810 (BIA 1968) (holding that separation of family members and financial difficulties alone do not establish extreme hardship). “[O]nly in cases of great actual or prospective injury . . . will the bar be removed.” *Matter of Ngai*, 19 I&N Dec. 245, 246 (BIA 1984).

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 relocate and thereby suffer extreme hardship can easily be made for purposes of the waiver even where there is no actual intention to relocate. Cf. *Matter of Ige*, 20 I&N Dec. 880, 886 (BIA 1994). Furthermore, to relocate and suffer extreme hardship, where remaining in the United States and being separated from the applicant would not result in extreme hardship, is a matter of choice and not the result of

inadmissibility. *Id.*, also *cf. Matter of Pilch*, 21 I&N Dec. 627, 632-33 (BIA 1996). As the applicant has not demonstrated extreme hardship from separation, we cannot find that refusal of admission would result in extreme hardship to the qualifying relative in this case.

The AAO therefore finds that the applicant has failed to establish extreme hardship to her U.S. citizen spouse as required under section 212(a)(9)(B)(v) of the Act. As the applicant has not established extreme hardship to a qualifying family member, no purpose would be served in balancing positive and negative factors to determine whether the applicant merits this 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 motion is granted and the prior decision of the AAO is affirmed.