



U.S. Citizenship  
and Immigration  
Services

(b)(6)

DATE: JUL 31 2014

OFFICE: CIUDAD JUAREZ

FILE: [REDACTED]

IN RE: [REDACTED]

APPLICATION: Application for Waiver of Grounds of Inadmissibility pursuant to 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 cursive script, appearing to read "Ron Rosenberg".

Ron Rosenberg  
Chief, Administrative Appeals Office

**DISCUSSION:** The waiver application was denied by 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 prior AAO decision will be affirmed.

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 one year or more and seeking readmission within 10 years of departure from the United States. The applicant is the beneficiary of an approved Petition for Alien Relative (Form I-130) filed on her behalf by her U.S. citizen husband. The applicant seeks a waiver of inadmissibility under 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 husband.

In a decision dated April 9, 2010, the Field Office Director concluded that the applicant did not demonstrate extreme hardship to a qualifying relative and denied the Form I-601, Application for Waiver of Grounds of Inadmissibility, accordingly. The application was also denied as a matter of discretion. The applicant appealed that decision, and we dismissed the appeal on May 22, 2012. The applicant filed a motion to reopen the dismissal on June 22, 2012 and we did not receive that motion until April 8, 2014.

Accompanying the motion is a statement in support of the motion, a declaration from the applicant's spouse, a new psychological evaluation of the applicant's spouse, documentation of the applicant's spouse's medications and medical treatment, documentation from the applicant's spouse's employer, documentation of the applicant's spouse's family in the United States, medical bills from Ciudad Juarez, Mexico in the applicant's name, and documentation of the applicant's spouse's travel to Tijuana, Mexico. The record also includes evidence previously submitted to support the applicant's waiver application and appeal. The entire record was reviewed and considered in rendering this decision.

A motion to reopen must state the new facts to be proved in the reopened proceeding and be supported by affidavits or other documentary evidence. 8 C.F.R. § 103.5(a)(2). 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 policy. A motion to reconsider a decision on an application or petition must, when filed, also establish that the decision was incorrect based on the evidence of record at the time of the initial decision. 8 C.F.R. § 103.5(a)(3). A motion that does not meet applicable requirements shall be dismissed. 8 C.F.R. § 103.5(a)(4). The applicant has provided new documentation with her motion. The application therefore will be reopened.

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-

....

(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 (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 applicant claims she initially entered the United States without inspection in December 2003, and she remained in the United States unlawfully until February 2009, accruing unlawful presence during this period. The applicant does not contest her inadmissibility on motion.

On motion, the applicant's spouse states that he is suffering from emotional, psychological and financial hardship. The applicant's spouse states that communicating with, visiting, and sending money to the applicant is very stressful for him. In support of that statement, the record contains a new psychological evaluation of the applicant's spouse, previously submitted medical records concerning the applicant's work-related injury, and a statement from the applicant's spouse, among other documents. The new psychological evaluation by the same therapist who previously evaluated the applicant's spouse is dated June 13, 2012, just over two years after the previous report. The therapist states that the applicant's spouse, diagnosed with major depressive disorder (recurrent and severe with psychotic features) and generalized anxiety disorder, has been undergoing treatment with her office including 12 sessions of group therapy and 3 individual sessions. She also states that the applicant's spouse was prescribed Fluoxetine to assist with depressive symptoms. She adds that the applicant's spouse takes Zocor to treat hypercholesterolemia. The therapist states that the applicant's spouse's condition will "likely continue deteriorating without the emotional and physical support of [the applicant]." The applicant's spouse reported to the therapist that he feels irritable and hopeless two to three times per week, sad on a daily basis, and has a decrease in appetite and loss of energy and motivation. He also reports having nightmares and sleep disruption. The applicant's spouse's emotional hardship is not substantially different from that previously documented on appeal.

The applicant's spouse states that he fears that he will lose his employment as a result of his inability to concentrate and focus. In addition to experiencing a work-related accident in 2009, the applicant's spouse reports that he was reprimanded in 2012 for making an incorrect calculation for an order. The applicant's spouse's employer, in a note dated May 4, 2012, states that the applicant was subject to disciplinary action concerning his lack of attention in one particular incident that resulted in a customer rejecting a shipment. Moreover, the applicant's spouse reported to his therapist that he cannot afford to visit the applicant in Mexico, and he has "been forced to downgrade his living conditions as a result of his severe financial hardships," but he provides no documentation, such as evidence of his income and expenses, to support that statement. The applicant's spouse provides two receipts for remittances he sent the applicant in May 2011 and receipts for travel to Tijuana to visit her, but he provides no other documentation of financial support or expenses. Although the applicant's spouse's assertions are relevant and have been taken into consideration, little weight can be afforded them in the absence of supporting evidence. *See Matter of Kwan*, 14 I&N Dec. 175 (BIA 1972) ("Information in an affidavit should not be disregarded simply because it appears to be hearsay; in administrative proceedings, that fact merely affects the weight to be afforded it."). 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)).

Concerning the hardship that the applicant would suffer were he to relocate to Mexico to reside with the applicant, the applicant's spouse states that he fears moving to Mexico, where he has no family members or community ties. On motion, he provides documentation concerning his parents' and five siblings' immigration status in the United States, although this information was previously submitted. The record, however, does not illustrate the nature of his family ties. The record lacks letters from the applicant's spouse's family members or any indication of how frequently he has contact with those family members and what hardship he would suffer due to separation from them were he to relocate to Mexico. The applicant's spouse previously stated that his parents rely on his financial support, but he submits no evidence of that support on motion. The applicant's spouse also states that the applicant has been unemployed in Mexico and that he also financially supports her. The record, however, does not contain documentation of that support, aside from two receipts from May 2011. The applicant's spouse also provides no documentation of the financial hardship that he believes he would suffer in Mexico. The record lacks evidence of the applicant's cost of living in Mexico, such as her rent and other expenses. The applicant's spouse also asserts that he has safety concerns, particularly as a result of an injury that the applicant suffered in Ciudad Juarez, Mexico. In support of that statement the applicant's spouse submits a medical receipt from [REDACTED] dated March 31, 2009, in the applicant's name. No documentation in the record discusses the nature or cause of the applicant's condition treated at the medical facility. This receipt does not support a determination that the applicant was a victim of crime or that the medical care in Mexico is inadequate, another claim made by the applicant's spouse. Again, 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. at 165. As a result, based on the information provided, considered in the aggregate, the evidence does not illustrate that the hardship suffered in this case, should the applicant's spouse

relocate to Mexico, would be beyond what is normally experienced by families dealing with removal or inadmissibility. *Matter of O-J-O-*, 21 I&N Dec. at 383.

Although the applicant's spouse's concern over the applicant's immigration status is neither doubted nor minimized, the fact remains that Congress provided for a waiver of inadmissibility only under limited circumstances. In nearly every qualifying relationship, whether between husband and wife or parent and child, there is a deep level of affection and a certain amount of emotional and social interdependence. While, in common parlance, the prospect of separation or involuntary relocation nearly always results in considerable hardship to individuals and families, in specifically limiting the availability of a waiver of inadmissibility to cases of "extreme hardship," Congress did not intend that a waiver be granted in every case where a qualifying relationship, and thus the familial and emotional bonds, exist. The point made in this and prior decisions on this matter is that the current state of the law requires that the hardship, which meets the standard in section 212(a)(9)(B)(v), of the Act, be above and beyond the normal, expected hardship involved in such cases. In this case, when the evidence is considered in the aggregate, the evidence does not demonstrate that the applicant's qualifying relative would suffer extreme hardship.

In this case, the record does not contain sufficient evidence to show that the hardships faced by the qualifying relative, considered in the aggregate, rise beyond the common results of removal or inadmissibility to the level of extreme hardship. We find that the applicant has failed to establish extreme hardship to her qualifying relative 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 determining whether she merits a 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 is affirmed.