



U.S. Citizenship
and Immigration
Services

(b)(6)

Date: **SEP 24 2014**

Office: NEBRASKA SERVICE CENTER

FILE: [REDACTED]

IN RE: [REDACTED]

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

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,

Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The Director, Nebraska Service Center, denied the waiver application and 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 to be inadmissible to the United States pursuant to section 212(a)(9)(B)(i)(II) of the Act for having been unlawfully present in the United States for more than one year. The applicant is married to a U.S. citizen and seeks a waiver of inadmissibility pursuant to section 212(a)(9)(B)(v) of the Act in order to reside with his wife in the United States.

In a decision, dated January 6, 2014, the director found that the applicant failed to establish that his wife would experience hardship rising to the level of extreme hardship as a result of his inadmissibility. The director denied the application accordingly.

On appeal, the applicant's spouse states that the psychological evaluations in the record and the decision in *Salcido-Salcido v. I.N.S.*, 138 F.3d 1292 (9th Cir. 1998) indicate that the director's decision was in error.

Section 212(a)(9) of the Act 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.

(ii) Construction of unlawful presence.- For purposes of this paragraph, an alien is deemed to be unlawfully present in the United States if the alien is present in the United States after the expiration of the period of stay authorized by the Attorney General or is present in the United States without being admitted or paroled.

...

(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.

The record reflects that the applicant entered the United States without inspection in 2002. He did not depart the United States until 2010. The applicant is therefore inadmissible under section 212(a)(9)(B)(i) of the Act for having been unlawfully present in the United States. The applicant's qualifying relative is his U.S. citizen spouse.

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 v. I.N.S.*, 138 F.3d 1292 (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.

The record of hardship includes: a statement from the applicant's spouse, two psychological evaluations for the applicant's spouse, financial documentation, medical documentation, and a U.S. Department of State Travel Warning for Mexico.

The record indicates that the applicant's spouse will suffer extreme hardship as a result of relocation, but does not currently indicate that the applicant's spouse will suffer extreme hardship upon separation. The record states that the applicant's spouse is suffering emotional, physical, and financial hardship as a result of separation. The applicant and his spouse have been married for six years and have been trying to have child. The applicant's spouse has undergone fertility treatments and suffered a miscarriage in 2009. She states that shortly after her miscarriage the applicant returned to Mexico, so that he could obtain a visa to live in the United States. The applicant's spouse states that she has become depressed and anxious; she has gained weight; and she has frequent headaches and stomach aches from the stress of separation. The psychological evaluation asserts that the applicant has suffered a long history of anxiety and depressive symptoms and that her character traits indicate she is submissively dependent on others for affection, attention, and security. The latest psychological evaluation in the record indicates that the applicant's mother suffered a stroke in March 2013, that both the applicant's parents have pacemakers, and that the applicant's spouse has become their caretaker. Despite the hardship that is portrayed in the psychological evaluations, other documentation in the record fails to support these assertions and creates inconsistencies in the record which have not been resolved. For example, the medical note, written one day after a psychological evaluation was completed does not mention any of the applicant's spouse's other reported medical problems, except for her fertility treatments. In addition, the applicant's mother's letter states that the applicant's spouse is living in Tijuana and makes no indication that her daughter is her caretaker. It is incumbent upon the applicant to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice

unless the applicant submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). Finally, the applicant's spouse states that she is also suffering financially from separation because the applicant was the family's main income earner and he cannot earn similar wages in Mexico, so she is now supporting him. The applicant does submit evidence of his spouse's income, but does not provide evidence of how much income he contributed to his household when he was in the United States. Thus, the applicant has failed to establish that his spouse is suffering extreme hardship as a result of separation.

The record does indicate that the applicant's spouse would suffer extreme hardship as a result of relocation. The applicant's spouse was born and raised in the United States, her parents and two siblings live in the United States, and she has been employed with the same employer in the United States for over 9 years. Although the record is not clear as to where the applicant's spouse is currently residing, the record does indicate that at some point the applicant's spouse attempted to live in Tijuana, Mexico with the applicant, but the four hour commute to work and unsafe conditions in the city caused her extreme emotional stress. The applicant's spouse expresses concern for her safety in Mexico. She submits a U.S. State Department Travel Warning for Mexico. The current U.S. State Department Travel Warning for Mexico, dated August 15, 2014, states that U.S. travelers should be aware that the Mexican government has been engaged in an extensive effort to counter organized criminal groups that engage in narcotics trafficking and other unlawful activities throughout Mexico. The warning states that crime and violence are serious problems and can occur anywhere in Mexico with U.S. citizens having fallen victim to serious criminal activity. The warning states that while many of those killed in organized crime-related violence have themselves been involved in criminal activity, innocent persons have also been killed. The warning addresses Tijuana and its surrounding area specifically, stating that travelers should exercise caution in the northern state of Baja California, particularly at night with criminal activity along highways and at beaches being a continuing security concern. The warning states that in 2013, homicide rates in Tijuana and Rosarito increased 48 percent and 67 percent compared to the previous year and both cities experienced further increases in homicide rates during the first half of 2014. Finally, the warning states that the battles between criminal organizations have resulted in violent crime in areas frequented by U.S. citizens, including during daylight hours. Thus, given the applicant's spouse's substantial ties to the United States and the conditions in Tijuana, Mexico, she would face extreme hardship as a result of relocation.

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(s) in this case.

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 therefore find that the applicant has failed to establish extreme hardship to his U.S. Citizen spouse as required under section 212(a)(9)(B)(v) of the Act.

In proceedings for application for waiver of grounds of inadmissibility under 212(a)(9)(B)(v) of the Act, the burden of proving eligibility remains entirely with the applicant. Section 291 of the Act, 8 U.S.C. § 1361. Here, the applicant has not met that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.