



U.S. Citizenship
and Immigration
Services

(b)(6)



DATE: APR 02 2015

Office: MEXICO CITY (ANAHEIM)

FILE: [Redacted]

IN RE: [Redacted]

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:

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 that reads "Ron Rosenberg".

Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the District Director, Mexico City, Mexico. 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 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. She seeks a waiver of inadmissibility in order to reside in the United States with her U.S. citizen spouse and children.

The District Director concluded that the applicant failed to establish that a bar to her admission to the United States would result in extreme hardship to the qualifying spouse and denied the application accordingly. *See Decision of the District Director*, dated October 15, 2009.

On appeal, filed November 13, 2009 and received by the AAO on March 16, 2015, the applicant asserts that the extreme hardship in this case involves the separation of her family, as her daughter resides with her in Mexico, her son resides with his grandparents in the United States and her spouse is currently incarcerated in California.

The record contains the following documentation: statements from the applicant, her spouse, and her mother-in-law; documents establishing relationships and identity; an academic record for the applicant's son and a letter from his teacher; medical documents concerning the applicant's daughter and mother-in-law; letters from the applicant's former employer; and financial documentation. The entire record was reviewed and considered in rendering a decision on the appeal.

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.

The record indicates that the applicant entered the United States in 1990 without admission or inspection and returned to Mexico in May 2008. She therefore accrued unlawful presence between October 22, 1999, when she turned eighteen years old, and her departure in May 2008, a period in excess of one year. The applicant, as the beneficiary of an approved Form I-130,

Petition for Alien Relative, that her U.S. citizen spouse filed on her behalf, seeks admission within ten years of her departure from the United States. Therefore, as a result of the applicant's unlawful presence, she is inadmissible to the United States under section 212(a)(9)(B)(i)(II) of the Act. The applicant does not contest her inadmissibility.

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. 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 U.S. Citizenship and Immigration Services 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 contains references to hardship the applicant’s children, as well as the applicant’s mother-in-law and father-in-law, would experience if the waiver application were denied. It is noted that Congress did not include hardship to an alien’s children or in-laws as factors to be considered in assessing extreme hardship under section 212 (a)(9)(B)(v) of the Act. The applicant’s U.S. citizen spouse is the only qualifying relative for a waiver under section 212(a)(9)(B)(v) of the Act, and hardships to the applicant’s children and in-laws will not be separately considered, except as they may affect the applicant’s spouse.

With respect to the hardship the applicant’s spouse would experience if the applicant remained in Mexico and her spouse continued to live in the United States, separated from one another, the qualifying spouse asserts that he would experience emotional and financial hardships. He also indicates that their family cannot live apart, and that unity and stability is very important to him. The record reflects that the applicant’s spouse is currently in prison in California. According to the applicant, he has been imprisoned eight years and will become eligible for parole in ten. The applicant also indicates that she has not had contact with him. Although the qualifying spouse has likely suffered emotional hardship due to his separation from the applicant, the record does not

contain sufficient detail or supporting documentation regarding the types of emotional hardships that he may be encountering.

The qualifying spouse also states that he will experience financial hardship upon separation, as he is unemployed and the applicant is his only source of income. The record contains letters from the applicant's prior employers and payroll statements from her employment from 2008, before she departed the United States. However, the record lacks evidence of expenses or other financial documents to demonstrate her spouse's financial situation. As such, the record does not contain sufficient evidence to establish that the qualifying spouse would suffer emotional or financial hardships as a result of his separation from the applicant that are extreme. We find that, considering the evidence in the aggregate, the applicant has not established that her qualifying spouse would suffer extreme hardship if he remained in the United States and she remained in Mexico.

The applicant's spouse indicates that he would be unable to relocate to Mexico with the applicant because of his medical condition; he states he was diagnosed with a kidney problem requiring medication and treatment, possibly including surgery. He also indicates that moving to Mexico would cause him emotional and psychological hardship. However, the applicant provides no evidence to corroborate these claims regarding her qualifying spouse's physical and mental health.

The qualifying spouse also states that moving to Mexico would cause him financial hardship, because the applicant would not be able to find suitable employment in Mexico. While the applicant states that she is employed but financially struggling in Mexico, no evidence in the record corroborates their claims regarding the family's financial hardship.

Moreover, the qualifying spouse indicates that he would experience emotional hardship upon relocation to Mexico, based in part on safety concerns; he states that Mexico has a high crime rate. However, the record lacks evidence showing that he or his family, including the applicant and their daughter, who currently live there, would face safety issues. In addition, the qualifying spouse asserts that most of his close relatives live in the United States. Although the record includes a letter from his parents, it lacks evidence of other family relationships and evidence describing the nature of his relationship with his relatives in the United States. Although the qualifying spouse's assertions are relevant and have been taken into consideration, little weight can be afforded them in the absence of supporting evidence. Going on record without supporting documentation is not sufficient to meet the applicant's burden of proof in this proceeding. See *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 spouse is currently in prison. According to the applicant, he will not be eligible for parole for another ten years. Although the applicant's inadmissibility will lapse in three years, and therefore the qualifying spouse likely is unable to relocate to Mexico before his prison term is complete, we have considered the evidence the applicant provides regarding his potential hardships upon relocation. We acknowledge that the qualifying spouse would face hardships by relocating to Mexico with the applicant; however, the applicant has not provided sufficient

evidence to show that the qualifying spouse's cumulative hardships upon relocation would be extreme.

The applicant also provides evidence of hardship to their U.S. citizen children. Her spouse asserts that either separation from the applicant or relocation to Mexico would negatively affect their children. Moreover, he indicates that their daughter has health problems, including anemia, and that she would be adversely affected by relocating to Mexico. The record reflects that their daughter currently lives in Mexico with the applicant, and it includes no information regarding her current health condition. Similarly, the applicant indicates that their son, her mother-in-law, and father-in-law are experiencing emotional and financial hardship because of the applicant's absence. The applicant's son currently lives with his grandparents. The applicant has not submitted evidence showing how these hardships have affected her qualifying relative, her U.S. citizen spouse.

In this case the record does not contain sufficient evidence to show that the hardship faced by 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 her qualifying spouse as required under section 212(a)(9)(B) of the Act. As the applicant has not established extreme hardship to a qualifying family member, no purpose would be served in determining whether the applicant merits a waiver as a matter of discretion.

In proceedings for application for waiver of grounds of inadmissibility under section 212(a)(9)(B) of the Act, the burden of proving eligibility remains entirely with the applicant. See 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.