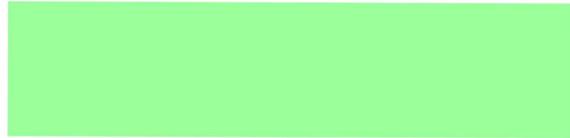


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U.S. Citizenship
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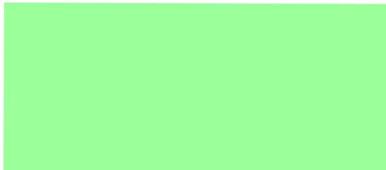


Date: **JAN 20 2015** Office: TUCSON FILE:

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:



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 Acting Field Office Director, Tucson, Arizona, 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 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 spouse of a United States citizen and seeks a waiver of inadmissibility in order to reside in the United States.

The acting field office director found that the applicant failed to establish that his qualifying relative would experience extreme hardship as a consequence of his inadmissibility. The Application for Waiver of Grounds of Inadmissibility (Form I-601) was denied accordingly. *See Decision of the Acting Field Office Director* dated May 21, 2014.

On appeal counsel for the applicant asserts that the applicant's spouse will experience extreme hardship and that USCIS failed to review the evidence as the decision denying the application cited a psychological evaluation other than the one submitted by the applicant. With the appeal counsel submits a brief. The record contains a statement from the applicant's spouse, a psychological evaluation of the spouse, financial documentation, letters of support from family members and coworkers of the spouse, and country information for Mexico. 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.

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.

The record reflects that the applicant entered the United States without inspection on May 4, 2009, but was detained by U.S. Customs and Border Protection agents and allowed to voluntarily return to Mexico. The applicant then entered the United States without inspection on May 12, 2009, and remained until February 2013, when he returned to Mexico to attend a visa interview at the U.S. consulate. Based on this information, the acting field office director found the applicant inadmissible for having accrued unlawful presence of more than one year in the United States. The applicant has contested the finding of inadmissibility on appeal.

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. Under this provision of the law, children are not deemed to be "qualifying relatives." However, although children are not qualifying relatives under this statute, USCIS does consider that a child's hardship can be a factor in the determination whether a qualifying relative experiences extreme hardship. 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. *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 appeal counsel asserts that the spouse’s emotional and psychological health will deteriorate without the applicant, immediate family cannot offer the same love and comfort, and the spouse needs the stability her husband provides. Counsel cites the findings of a psychologist who evaluated the applicant’s spouse and indicated that she has extreme levels of depression and anxiety. Counsel notes that letters from family members and friends of the spouse suggest that separation from the applicant would prevent them from starting a family and affect decisions on how to raise a family.

The applicant’s spouse states that her daughter is attached to applicant, and it hurts her to see her daughter depressed and having nightmares. She states that her daughter and the applicant do things together such as going to the river and mountains and planting gardens. The spouse states that since the applicant returned to Mexico she has fallen into depression, feels lonely, and cannot imagine life without him.

A psychological evaluation of the applicant’s spouse notes that she was born in the United States and reports having three siblings in an intact, caring family. The evaluation states that the spouse reports that the applicant is the only father her daughter has ever known and that she and her daughter would be devastated if the applicant cannot return to the United States. It states that the spouse reports

feeling vulnerable and depressed, frequently crying, and sometimes feeling nervous with her heart fluttering. It states that the spouse reports having difficulty concentrating, becoming easily irritated, and having panic attacks and mood swings. The evaluation found that the applicant's spouse has high levels of depression and anxiety and states that the applicant's removal has compromised the spouse's psychological well-being with resulting symptoms meeting criteria for Major Depressive Disorder and Panic Attacks. It concludes that conditions resulting from the applicant's immigration difficulties appear to have served as the underlying cause of spouse's depression and anxiety.

The statement by the applicant's spouse and the psychological evaluation provided do not establish that the hardships the applicant's spouse is experiencing are beyond the hardships normally associated when a family member is found to be inadmissible, or that the hardship referenced for the spouse's daughter causes extreme hardship to her mother, the applicant's spouse. Although the evidence indicates that the applicant's spouse experiences hardship due to separation from the applicant, there is insufficient evidence in the record, in the aggregate, to find that the applicant's spouse suffers hardship beyond the common results of separation.

Neither counsel nor the applicant's spouse has asserted financial hardship to the spouse due to separation from the applicant. Financial documentation submitted to the record shows the spouse's income and some expenses, including a mortgage, but does not establish any economic contribution by the applicant to show that the spouse would suffer financial hardship without the applicant's physical presence in the United States.

We find, however, that the record establishes that the applicant's spouse would experience extreme hardship if she were to relocate to Mexico to reside with the applicant. The spouse states that she would lose everything by relocating to Mexico because she has lived her entire life in the United States, has had a stable job for more than 12 years, owns a home, and has her family and friends here. The psychological evaluation cites the spouse's work record and asserts that she would be financially devastated if she relocated to Mexico as she currently has a mortgage, so she would lose her home and would have a reduced salary in Mexico. Counsel asserts that the applicant's spouse would be unable to use her work experience in Mexico or complete her education since she does not write or read Spanish. Counsel further asserts that there is a shortage of jobs in Mexico and limited opportunities for Americans to find a professional job.

The psychological evaluation of the applicant's spouse states that she has insurance benefits for herself and her daughter through her employer, but could not afford private insurance in Mexico. The evaluation states that the applicant has a low salary in [REDACTED] so he would be unable to afford counseling services for his spouse, whose depression and anxiety from relocating to Mexico would go untreated, and her situation could deteriorate. The evaluation also states that the spouse's daughter does not know Spanish, receives special education services for a speech problem, is a slow learner, and has once been held back. The evaluation states that the applicant's spouse would be concerned about her daughter in school in Mexico as it would likely create self-doubt in her daughter about her intellectual capacity and cause a lower sense of self-worth. We note that no school or education documents have been submitted to the record.

Counsel asserts that Mexico experiences crime and violence and that the applicant is from a small town in [REDACTED] where civilians protect themselves because the government does not. The psychological evaluation of the applicant's spouse, which indicates that the applicant lives in Mexico City, states that if the spouse were to relocate to a Mexico border city, those cities are dangerous and that it is also dangerous to travel to [REDACTED], which would add to stress and anxiety for the spouse. The U.S. Department of State advises deferred non-essential travel to the state of [REDACTED] except for some areas where travelers should still exercise caution. It states that armed members of self-defense groups maintain roadblocks and should be considered volatile and unpredictable. For [REDACTED] however, no advisory is in effect, although it recommends deferral of non-essential travel to areas just east of the Federal District that have high rates of crime and insecurity. *See* Travel Warning-U.S. Department of State, dated October 10, 2014.

The record establishes that the applicant's spouse was born in the United States, and by relocating to Mexico she would have to leave her family, her community, and her employment, and would be concerned about her emotional and financial well-being as well as that of her daughter. It has thus been established that the applicant's spouse would suffer extreme hardship were she to relocate abroad to reside with the applicant due to his inadmissibility.

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 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.

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. 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 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 appeal is dismissed.