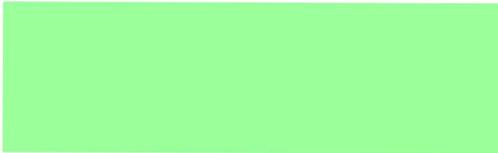




U.S. Citizenship
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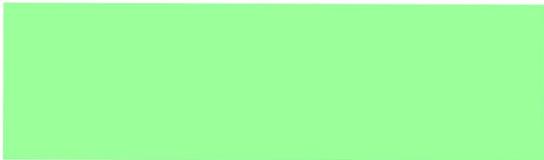


Date: **MAR 19 2015** Office: NEBRASKA SERVICE CENTER FILE:

IN RE: Applicant:

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:



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, which 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 one year or more. The applicant is the beneficiary of a spousal Petition for Alien Relative (Form I-130) and seeks a waiver of inadmissibility in order to reside with her husband in the United States.

The director concluded the applicant had failed to establish that extreme hardship would be imposed on a qualifying relative and, accordingly, denied the Application for Waiver of Grounds of Inadmissibility (Form I-601). *Decision of Service Center Director*, July 1, 2014.

On appeal, the applicant contends that USCIS erred in concluding that her husband would not suffer extreme hardship as a result of the applicant's inadmissibility. In support, the applicant provides additional evidence including a psychological evaluation; medical, financial, and country condition information; an updated hardship statement; identification documents; school records; and photographs. The record also contains documentation submitted with the waiver application. The entire record was reviewed and considered in rendering this decision.

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

(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 Attorney General (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 director found the applicant inadmissible under section 212(a)(9)(B)(i)(II) of the Act for entering the United States in November 2003 without admission or parole and remaining until her departure in October 2013, thereby accruing more than one year of unlawful presence. The applicant does not contest that she requires a waiver to reenter the country.

A waiver of inadmissibility under sections 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. Hardship to the applicant or her children can be considered only insofar as it results in hardship to a qualifying relative. The applicant's U.S. citizen 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 applicant has established extreme hardship to a qualifying relative. 22 I&N Dec. 560, 565 (BIA 1999). 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; the Board added that not all of these factors need be analyzed in any given case and emphasized that the list is 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, while 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.*

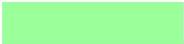
The actual hardship associated with an abstract hardship factor such as family separation, economic disadvantage, or cultural readjustment differs in nature and severity depending on the unique circumstances of each case, as does the cumulative hardship a qualifying relative experiences as a

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, although 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. INS*, 138 F.3d 1292, 1293 (9th Cir. 1998) (quoting *Contreras-Buenfil v. INS*, 712 F.2d 401, 403 (9th Cir. 1983)); conversely, *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 case-by-case whether denial of admission would result in extreme hardship to a qualifying relative.

Regarding whether the applicant has established that a qualifying relative would suffer extreme hardship by relocating, the evidence shows that the cumulative effect of problems impacting her husband represents hardship that rises to the level of “extreme.” The record shows that her 34-year-old husband was born here, has lived in the United States his entire life, and has numerous friends and relatives in the community, including his four siblings and their family members. Further, he claims that fear for his family’s safety, as well as his own should he move to Mexico, has caused him to suffer insomnia, loss of appetite, and inability to function well at work. Official U.S. government reporting regarding violent crime substantiates his concerns about safety both in [REDACTED] where the applicant and her two young children have lived during visa processing, and in the applicant’s native [REDACTED] state.¹ *See Travel Warning--Mexico*, U.S. Department of State (DOS), December 24, 2014. We note that the DOS advisory warns U.S. citizens about the risks of travel throughout [REDACTED] citing [REDACTED] as particularly dangerous for having one of the highest homicide rates in Mexico, as well as [REDACTED], and reports U.S. government personnel are prohibited from personal travel to areas of both states. Country condition information states that kidnapping and extortion have risen in parts of the country and the applicant’s husband asserts he and his children are at risk for their perceived ability to meet ransom demands. *See Country Information—Mexico*, DOS, February 6, 2015.

A psychologist’s report diagnosing the applicant’s husband with major depression supports claims that moving to Mexico would remove him from his social network of family, extended family, friends, employment, and religious community to an environment with limited opportunities to continue working to support his wife and two young children, ages one and eight. The psychologist concludes that living in Mexico would cause the applicant’s husband extreme stress due to fear of violence to his children and worry over being unable to support his family, thus causing him to become more depressed. In addition to depriving the applicant’s husband of contact with relatives and friends, as well as of the means to earn a living for his family, relocating would remove access

¹ The applicant gave birth to the couple’s second child three months after leaving the United States. Her husband states he lived with his wife’s parents on their farm while visiting his wife and children and the record shows she was born in [REDACTED] but the evidence does not specifically state where her parents live.



to quality pediatric care for his children. The applicant claims to have endured a different standard of obstetrical care in Mexico, but the record reflects that she had a surgical birth without medical complications, albeit that the Caesarean delivery came at high financial cost. We conclude that the hardship a qualifying relative would experience if he relocated to Mexico to be with his wife goes beyond those hardships ordinarily associated with inadmissibility or exclusion.

Regarding the claim of hardship to her husband due to separation, while there is evidence showing the emotional difficulties likely to result from the applicant's departure, the applicant has not shown they would exceed the typical consequences of separation from a family member. A psychological evaluation states that the qualifying relative's personal experience with parental discord may heighten his sensitivity to family separation, but the record does not establish that his reaction to the applicant's departure differs substantially from the usual result of inadmissibility. We acknowledge the psychologist's concern that the headaches, fainting, and nosebleeds the applicant's husband reported suffering due to stress about his wife's immigration problems may worsen, but note that there are no medical records substantiating these symptoms and that the psychological evaluation attributes a worsening prognosis regarding these symptoms to the stress of relocation. Medical evidence is lacking that the applicant's husband suffers from a serious medical condition the treatment of which requires his wife's presence. We note that both of his children are U.S. citizens entitled to return to this country at any time to reunite with their father and, therefore, that the decision for them to live in Mexico is a matter of parental choice. Further, while acknowledging the country conditions underlying fears for his wife's safety abroad, we observe that there is no evidence either she or any of her children (or the applicant) have been targeted or threatened.

The applicant asserts that her departure would result in financial hardship to her spouse. Documentation establishes that during the three years preceding her return to Mexico, the applicant's spouse earned most of their reported household income. We acknowledge that the applicant has provided receipts for food expenses in Mexico, bills for household expenses in the United States, receipts for money transfers to Mexico, and evidence her husband earns about \$35,000 a year. The record reflects that, after the applicant's husband left his job to be near his wife in Mexico, his employer rehired him when he returned after an indeterminate period without earned income. As his family has been residing with his wife's parents, there is little evidence of the applicant's living costs in Mexico besides those for food, and no evidence what these expenses were in the United States before she left. Despite containing documentation of past due accounts, the record fails to establish that these were caused by the applicant's absence or show that her husband lacked the resources to pay them. Based on the evidence, we cannot conclude that the applicant's departure made her husband unable to meet his financial obligations.

For all these reasons, the cumulative effect of the medical, emotional, and financial hardships the applicant's husband will experience due to the applicant's inadmissibility does not rise to the level of extreme. We are sensitive that the applicant's inability to remain in the United States will impose some hardship on her husband. We conclude based on the evidence provided that, were her husband to remain in the United States without the applicant due to her inadmissibility, he would not suffer hardship beyond those problems normally associated with family separation.

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 documentation on record, when considered in its totality, reflects the applicant has not established that his spouse will suffer extreme hardship if he is unable to live in the United States. We recognize that the applicant's husband will endure hardship as a result of the applicant's inability to immigrate. However, his situation is typical of individuals affected by removal or inadmissibility, and we thus find that the applicant has failed to establish extreme hardship to her husband as required under the Act.

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.