



**U.S. Citizenship  
and Immigration  
Services**

**Non-Precedent Decision of the  
Administrative Appeals Office**

MATTER OF M-A-E-

DATE: JAN. 19, 2016

APPEAL OF TUCSON FIELD OFFICE DECISION

APPLICATION: FORM I-601, APPLICATION FOR WAIVER OF GROUNDS OF  
INADMISSIBILITY

The Applicant, a native and citizen of Mexico, seeks a waiver of inadmissibility. *See* Immigration and Nationality Act (the Act) § 212(a)(9)(B)(v), 8 U.S.C. § 1182(a)(9)(B)(v). The Director of the Tucson Field Office denied the application. The matter is now before us on appeal. The appeal will be dismissed.

The Applicant is the beneficiary of an approved Form I-130, Petition for Alien Relative, filed on his behalf by his lawful permanent resident spouse. In a decision dated April 6, 2015, the Director found the Applicant to be inadmissible to the United States pursuant to § 212(a)(9)(B)(i)(II) of the Act, 8 U.S.C. § 1182(a)(9)(B)(i)(II), for having been unlawfully present in the country for more than one year and seeking readmission within 10 years of his last departure from the United States. The Director determined further that the Applicant provided insufficient evidence to establish that his spouse would suffer extreme hardship if he were denied admission to the United States. The application was denied accordingly.

On appeal the Applicant asserts that his spouse will experience extreme hardship if he is denied admission into the United States. The record includes, but is not limited to, a psychological evaluation, medical records, and documents establishing relationships and identity. The entire record was reviewed and considered in arriving at a decision on the appeal.

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—

- (I) was unlawfully present in the United States for a period of more than 180 days but less than 1 year, voluntarily departed the United States (whether or not pursuant to section 244(e)) prior to the commencement of proceedings under section 235(b)(1) or section 240, and again seeks admission within 3 years of the date of such alien's departure or removal, or

(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.

Section 212(a)(9)(B)(v) of the Act provides that section 212(a)(9)(B)(i) inadmissibility may be waived as a matter of discretion for

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 was admitted into the United States as a B2 visitor on March 19, 2007, with authorization to remain in the country until September 18, 2007, and he remained until March 2, 2010. The record reflects that the Applicant reentered the United States with a valid border crossing card on March 4, 2010. He has not departed the country since that time. The Applicant is inadmissible under section 212(a)(9)(B)(i)(II) of the Act for having accrued unlawful presence in the United States from September 19, 2007 to March 2, 2010, a period of more than one year, and seeking admission prior to the passage of 10 years. The Applicant does not contest his inadmissibility under section 212(a)(9)(B)(i)(II) of the Act.

The Applicant must demonstrate that denial of the application would result in extreme hardship to a qualifying relative or relatives. In this case, the qualifying relative is the Applicant's lawful permanent resident spouse. Hardship to the Applicant or others can be considered only insofar as it results in hardship to a qualifying relative. *Matter of Gonzalez Recinas*, 23 I&N Dec. 467, 471 (BIA 2002).

The definition of extreme hardship "is not . . . fixed and inflexible, and the elements to establish extreme hardship are dependent upon the facts and circumstances of each case." *Matter of Cervantes-Gonzalez*, 22 I&N Dec. 560, 565 (BIA 1999) (citation omitted). Extreme hardship exists "only in cases of great actual and prospective injury," *Matter of Ngai*, 19 I&N Dec. 245, 246-47 (BIA 1984), but hardship "need not be unique to be extreme." *Matter of L-O-G-*, 21 I&N Dec. 413, 418 (BIA 1996). The common consequences of removal or refusal of admission, which include "economic detriment . . . [,] loss of current employment, the inability to maintain one's standard of living or to pursue a chosen profession, separation from a family member, [and] cultural readjustment," are insufficient alone to constitute extreme hardship. *Matter of Pilch*, 21 I&N Dec.

(b)(6)

*Matter of M-A-E-*

627 (BIA 1996) (citations omitted); *see also Matter of Shaughnessy*, 12 I&N Dec. 810 (BIA 1968) (separation of family members and financial difficulties alone do not establish extreme hardship); *but see Matter of Kao and Lin*, 23 I&N Dec. 45, 51 (BIA 2001) (distinguishing *Matter of Pilch* 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 the qualifying relatives would relocate). Nevertheless, all “[r]elevant factors, though not extreme in themselves, must be considered in the aggregate in determining whether extreme hardship exists.” *Matter of Ige*, 20 I&N Dec. 880, 882 (BIA 1994) (citations omitted).

The record reflects that the Applicant’s spouse was born in Mexico on [REDACTED] and she became a U.S. lawful permanent resident on May 2, 1994. The Applicant and his spouse married on [REDACTED] 2011, and they have a U.S. citizen son, born on [REDACTED], and a U.S. citizen daughter, born on [REDACTED].

The Applicant asserts that his spouse would experience extreme hardship if he is removed from the United States. He states that she suffers back pain resulting from a car accident, and she is unable to work full-time and requires medical care. He indicates that he is the sole financial provider in their family and that he takes care of his spouse when she needs care. He also indicates that he drives their children to school and to appointments when his spouse is unable to do so.

An April 27, 2015, psychological evaluation reflects that the Applicant’s spouse reported feelings including distress, sadness, insomnia, and irritability, and she complained of generalized aches, exhaustion, and difficulty concentrating. The diagnostic impressions reflect that the Applicant’s spouse suffers from a mood disorder, generalized anxiety disorder, past history of panic disorder, and other trauma related disorder. The therapist noted further that the Applicant’s spouse’s conditions would worsen if the Applicant’s waiver application were denied.

Medical evidence in the record reflects that after a car accident, the Applicant’s spouse was treated between December 2011 and March 2012 for neck, back, and head injuries and pain. Medical records also reflect that the Applicant’s spouse was treated for abdominal pain in March 2014, and that she suffers from chronic problems including allergies and asthma, esophageal reflux, and unspecified ovarian cyst. The record also contains medical evidence reflecting that the Applicant’s daughter suffers from chronic migraine headaches and asthma.

Upon review, the evidence in the record is insufficient to establish that the Applicant’s spouse would suffer hardship beyond that normally experienced upon inadmissibility of a family member if she remains in the United States. Although medical evidence reflects that the Applicant’s spouse was treated for neck, back, and head injuries in 2011 and 2012, the evidence does not demonstrate that she required treatment after March 2012, or that her injuries caused an inability to work. Similarly, the medical evidence from 2014 is general and does not indicate the Applicant’s spouse suffers from a serious medical condition or that she is unable to work or care for herself. In addition, the Applicant has not demonstrated that their daughter’s medical conditions would cause his spouse to experience hardship if he were denied admission into the country. The record also lacks financial

evidence to corroborate claims that the Applicant is the sole financial provider for their family or demonstrate the couple's income and expenses or otherwise establish how the Applicant's spouse would suffer financial hardship upon separation. While we acknowledge that the Applicant's spouse would experience hardship upon separation from the Applicant, the evidence in the record does not establish the severity of this hardship or how it would affect her daily life. Considering the evidence in the aggregate, the record is insufficient to establish that the Applicant's spouse would experience extreme hardship if the Applicant is denied admission into the country and she remains in the United States.

The evidence is also insufficient to establish that the Applicant's spouse, a native of Mexico, would experience extreme hardship if she relocated to Mexico with the Applicant. The psychological evaluation reflects that the Applicant's spouse expressed concern that their family would be unable to meet their financial obligations if they relocated to Mexico. She also indicated that she would not want their children to grow up in Mexico and that living conditions and the quality of medical care and education is inferior to that of the United States. The Applicant states on the Form I-601 that his family is used to life in the United States. The claims are general and do not demonstrate the type and level of hardship that the Applicant's spouse would suffer upon relocation to Mexico. Further, the record contains no financial, country conditions, or other relevant evidence to corroborate the claims.

Based on the evidence in the record, considered in the aggregate, the Applicant has not established that his spouse would experience hardship beyond the common results of removal or inadmissibility if she were to relocate to Mexico to reside with the Applicant. The Applicant has therefore not established extreme hardship to a qualifying relative, as required under section 212(a)(9)(B)(v) of the Act. Having found the Applicant ineligible for relief, we find no purpose would be served in discussing whether the Applicant merits a waiver as a matter of discretion.

The Applicant has the burden of proving eligibility for a waiver of inadmissibility. *See* § 291 of the Act, 8 U.S.C. § 1361. The Applicant has not met that burden. Accordingly, we will dismiss the appeal.

**ORDER:** The appeal is dismissed.

Cite as *Matter of M-A-E-*, ID# 14862 (AAO Jan. 19, 2016)