



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

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

MATTER OF M-D-R-B-D-M-

DATE: JULY 28, 2016

MOTION ON ADMINISTRATIVE APPEALS 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 for unlawful presence. *See* Immigration and Nationality Act (the Act) section 212(a)(9)(B)(v), 8 U.S.C. § 1182(a)(9)(B)(v). A foreign national seeking to be admitted to the United States as an immigrant or to adjust status to lawful permanent residence must be admissible or receive a waiver of inadmissibility. U.S. Citizenship and Immigration Services (USCIS) may grant this discretionary waiver if refusal of admission would result in extreme hardship to a qualifying relative or qualifying relatives.

The Director, Mexico City District Office, denied the application. The Director concluded that the Applicant was inadmissible under section 212(a)(9)(B)(i)(II) of the Act for unlawful presence in the United States. The Director then determined that the Applicant had not established that denial of admission would result in extreme hardship to her spouse, the only qualifying relative. The Applicant appealed the Director's decision, and we dismissed the appeal, finding that the Applicant had not shown that her spouse would experience extreme hardship upon separation or upon relocation to Mexico.

The matter is now before us on motion to reopen and motion to reconsider. In the motion, the Applicant submits additional evidence and claims that we erred in finding that separation does not impose extreme hardship on her spouse.

Upon review, we will deny the motions to reopen and reconsider.

I. LAW

The Applicant is seeking admission as an immigrant and has been found inadmissible for unlawful presence, specifically for having resided unlawfully in the United States for a period exceeding one year before she returned to Mexico in 2008. Section 212(a)(9)(B)(i) of the Act, 8 U.S.C. § 1182(a)(9)(B)(i), provides that a foreign national who 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 departure or removal from the United States, is inadmissible. Section 212(a)(9)(B)(ii) of the Act provides that a foreign national is deemed to be unlawfully present in the United States if present in the United

(b)(6)

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States after the expiration of the period of authorized stay or is present in the United States without being admitted or paroled.

Section 212(a)(9)(B)(v) of the Act, 8 U.S.C. § 1182(a)(9)(B)(v), provides that section 212(a)(9)(B)(i) inadmissibility may be waived as a matter of discretion if refusal of admission would result in extreme hardship to a U.S. citizen or lawful permanent resident spouse or parent.

Decades of case law have contributed to the meaning of extreme hardship. 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). An applicant must demonstrate that claimed hardship is realistic and foreseeable. *Id.*; see also *Matter of Shaughnessy*, 12 I&N Dec. 810, 813 (BIA 1968) (finding that the respondent had not demonstrated extreme hardship where there was “no showing of either present hardship or any hardship . . . in the foreseeable future to the respondent's parents by reason of their alleged physical defects”). 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. 627 (BIA 1996) (citations omitted); 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). 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).

II. ANALYSIS

The issue on motion is whether denial of the waiver would cause extreme hardship to her spouse, the only qualifying relative. The Applicant does not contest the finding of inadmissibility for unlawful presence, a determination supported by the record.¹ The Applicant does not assert that her spouse would face hardship if he relocated to Mexico, as relocation is not possible due to his incarceration, which will continue beyond the Applicant’s period of inadmissibility. Instead, she claims that her spouse suffers, and will continue to suffer, extreme hardship due to his prolonged separation from the Applicant.

¹ The record Applicant establishes that the Applicant entered the United States without admission in 1990, and she returned to Mexico in May 2008. She accrued unlawful presence from [REDACTED] 1999, when she turned 18 years old, until her departure in 2008, a period exceeding one year. Therefore, she is inadmissible for 10 years from the date of her departure, which is until May 2018 according to the present record.

A. Hardship

The Applicant must demonstrate that refusal of admission would result in extreme hardship to a qualifying relative or qualifying relatives, in this case her spouse. The Applicant states that her spouse cannot accompany her to Mexico because he is serving a prison sentence. But, she claims, his incarceration intensifies the emotional and psychological hardship he experiences as a result of their separation, because regular visitation with her and with their children is impossible as long as she is in Mexico.

In support of the claim of hardship to her spouse, the Applicant previously submitted statements from herself and her spouse, birth and marriage certificates, school records, copies of immigration documents, medical records, and financial records. On motion, she submits additional statements from herself and her spouse's mother, medical records, additional school records, and articles about visitation between children and their incarcerated parents. We have considered all the evidence in the record.

The record reflects that the Applicant's spouse has been incarcerated since 2008, and he serving a 21-year sentence. Their son resides in California with his paternal grandparents, and their daughter resides in Mexico with the Applicant. The Applicant states that her spouse's contact with the family is limited to telephone calls due to her location in Mexico and his son's location with his grandparents, some distance from the prison. Because he lacks regular visitation with his family, his emotional health and his rehabilitation suffer, according to the Applicant. In support of her claim, the Applicant submits a letter from her spouse's mother, who states that he suffers anxiety worrying about the Applicant and their children and their financial difficulties. The Applicant writes, in her own letter, that her spouse worries about the hardship that his parents face in caring for their grandson while they struggle with their own medical conditions and limited financial resources. She also writes that their son has lost interest in school and has been referred to a mental health clinic, developments which heighten her spouse's anxiety. If she were able to return to the United States, she claims, she would be able to care for their son, ameliorate the difficulties facing her spouse and his parents, and begin regular visitation between her spouse, herself, and their children.

Nevertheless, the record contains insufficient evidence to establish the hardships claimed. We have reviewed the evidence of her spouse's parents' medical conditions, including a physician's letter stating that these conditions cause her mother-in-law hardship in caring for her son. However, there is no evidence establishing the effect of these hardships on the Applicant's spouse, other than the statements from the Applicant and her mother-in-law. These statements claim that the Applicant's spouse suffers, but they lack specific detail of the nature and severity of the hardship he may experience. The Applicant also provides articles discussing the importance of regular visitation between children and incarcerated parents. While these articles show that, generally, visitation is important to maintaining or improving relationships and well-being for both the child and parent, they are not sufficient to establish the specific impact that lack of visitation has on the Applicant's spouse. In the brief submitted on motion, counsel states that "[h]uman nature dictates that majority of parents, including [the Applicant's spouse], have a natural desire to see and tend to their children

as they grow and would no doubt suffer hardship if deprived of same.” However, neither the assertions of counsel nor generalizations about “human nature” are evidence, and they are insufficient to establish extreme hardship without supporting documentation.

The record lacks current, direct evidence of the Applicant’s spouse’s condition, such as medical or psychological records or, notably, a statement from him describing the impact of their separation. The Applicant previously described efforts to obtain medical or psychological records about her spouse, but no such evidence has been received. The most recent statement from her husband dates from 2008 and describes his concerns prospectively, as she had only recently learned of her inadmissibility. He describes medical hardship related to a chronic but unspecified kidney condition that would require surgery, but no supporting documentation was provided. He also discusses his concerns for their children, including their health and safety if they relocate to Mexico, but he does not provide specific information or evidence about how these concerns affect him. Rather, he states broadly that the separation and worries for his children would cause him emotional, psychological, and financial hardship, but he does not provide any supporting evidence or make any specific claims about how his hardship would differ from the common consequences of removal. Significantly, he did not disclose his incarceration in his 2008 letter, and therefore made no claims about whether, or how, his circumstances might intensify any hardships he would face.² The record is unclear as to whether the Applicant’s spouse currently has any contact with her or with their children.

As we stated in our decision to dismiss the Applicant’s appeal, the record does not contain sufficient detail or supporting documentation regarding the hardships that the Applicant’s spouse may be facing. As a result, we are unable to conclude that he experiences extreme hardship as a result of separation.

As the Applicant has not demonstrated extreme hardship to a qualifying relative or relatives, we need not consider whether the Applicant warrants a waiver in the exercise of discretion.

III. CONCLUSION

The Applicant has the burden of proving eligibility for a waiver of inadmissibility. *See* section 291 of the Act, 8 U.S.C. § 1361. The Applicant has not met that burden, as she has not demonstrated that her spouse would experience extreme hardship.

ORDER: The motion to reopen is denied.

² In 2009, the Applicant’s spouse submitted a letter in support of the Form I-601 clarifying his location with the California Department of Corrections. However, the letter does not further describe his hardships or discuss the impact of his incarceration.

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FURTHER ORDER: The motion to reconsider is denied.

Cite as *Matter of M-D-R-B-D-M-*, ID# 14893 (AAO July 28, 2016)