



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

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

MATTER OF M-A-B-

DATE: MAY 17, 2019

APPEAL OF SAN DIEGO, CALIFORNIA FIELD OFFICE DECISION

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

The Applicant, a citizen of Mexico currently residing in the United States, has applied to adjust status to that of a lawful permanent resident. A foreign national seeking to adjust status must be “admissible” or receive a waiver of inadmissibility. The Applicant has been found inadmissible for unlawful presence and seeks a waiver of that inadmissibility. Immigration and Nationality Act (the Act) section 212(a)(9)(B)(v), 8 U.S.C. § 1182(a)(9)(B)(v). 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 of the San Diego, California Field Office denied the application, concluding that the Applicant did not establish that denial of admission would result in extreme hardship to her U.S. citizen father or lawful permanent resident (LPR) mother.

On appeal, the Applicant submits additional evidence and asserts that the Director erred by applying the wrong standard and not considering hardship factors in the aggregate.

Upon *de novo* review, we will dismiss the appeal.

## I. LAW

A foreign national who 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 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 departure or removal, is inadmissible. Section 212(a)(9)(B)(i)(I) of the Act. A foreign national is deemed to be unlawfully present in the United States if present in the United States after the expiration of the period of authorized stay or if present in the United States without being admitted or paroled. Section 212(a)(9)(B)(ii) of the Act.

This 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. Section 212(a)(9)(B)(v) of the Act.

A determination of whether denial of admission will result in extreme hardship depends on the facts and circumstances of each case. *Matter of Cervantes-Gonzalez*, 22 I&N Dec. 560, 565 (BIA 1999) (citations omitted). We recognize that some degree of hardship to qualifying relatives is present in most cases; however, to be considered “extreme,” the hardship must exceed that which is usual or expected. *See Matter of Pilch*, 21 I&N Dec. 627, 630-31 (BIA 1996) (finding that factors such as economic detriment, severing family and community ties, loss of current employment, and cultural readjustment were the “common result of deportation” and did not alone constitute extreme hardship). In determining whether extreme hardship exists, individual hardship factors that may not rise to the level of extreme must also be considered in the aggregate. *Matter of Ige*, 20 I&N Dec. 880, 882 (BIA 1994) (citations omitted).

Once the foreign national demonstrates the existence of the required hardship, he or she must then show that USCIS should favorably exercise its discretion and grant the waiver. Section 212(i) of the Act. When exercising our discretion, we “balance the adverse factors evidencing a [foreign national's] undesirability as a permanent resident with the social and humane considerations presented on the [foreign national's] behalf to determine whether the grant of relief in the exercise of discretion appears to be in the best interests of the country.” *Matter of Mendez-Morales*, 21 I&N Dec. 296, 300 (BIA 1996)(citations omitted).

It is the Applicant’s burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Skirball Cultural Ctr.*, 25 I&N Dec. 799, 806 (AAO 2012).

## II. ANALYSIS

The Director determined that the Applicant is inadmissible for unlawful presence of more than 180 days but less than 1 year, based on the Applicant’s testimony that she entered the United States without inspection in August 2000 and remained until she was voluntarily returned to Mexico in April 2001. The Applicant does not contest this determination, which is supported by the record.

The issue presented on appeal is whether the Applicant has established that denial of her waiver and admission would result in extreme hardship to a qualifying relative or relatives and, if so, whether she merits a waiver in the favorable exercise of discretion.

An applicant may show extreme hardship in two scenarios: 1) if the qualifying relative remains in the United States separated from the applicant and 2) if the qualifying relative relocates overseas with the applicant. Demonstrating extreme hardship under both of these scenarios is not required if an applicant’s evidence establishes that one of these scenarios would result from the denial of the waiver. The Applicant may meet this burden by submitting a statement from the qualifying relative certifying under penalty of perjury that the qualifying relative would relocate with the Applicant, or would remain in the United States, if the applicant is denied admission. 9 *USCIS Policy Manual* B.4(B), <https://www.uscis.gov/policymanual>.

In the present case, the record contains no statement from the Applicant’s parents to indicate whether they intend to remain in the United States or relocate to Mexico if the waiver application is denied.

The Applicant must therefore establish that if she is denied admission, her father, mother, or both would experience extreme hardship both upon separation and relocation. To show this, with the waiver application the Applicant submitted declarations from her father and siblings, statements and receipts, birth certificates and identity documents, tax records, law enforcement records, a psychological evaluation of the Applicant's father, medical records for both of her parents, and articles about conditions in Mexico. On appeal the Applicant submits paystubs, tax returns, and updated letters from her siblings.

#### A. Separation

The Applicant's 75-year old father states in his declaration that he and his spouse—the Applicant's mother, age 73—depend on the Applicant for their financial and medical well-being. He states that they both suffer various medical conditions that require at-home care, medication management, and frequent doctor visits, and they resided with the Applicant so that she could help them manage their illnesses and take them to their appointments. The father states that the Applicant's support is necessary for his physical, mental, and emotional stability, and he would suffer hardship in each of those respects without her. He also explains that he relies on Social Security payments amounting to \$10,000 annually, and therefore he depends on the Applicant's financial support. Without her, he states, he would face over \$1700 in monthly expenses, including rent, which he cannot afford.

Medical records indicate that the father is undergoing treatment for diabetes and high blood pressure, and that he has a history of blurred vision and arthritis, including knee pain that leaves him walking with a cane. The records also indicate that the mother requires medications for high blood pressure and allergies, and that she has a history of gallstones and back pain. The medical records for both parents indicate that they are illiterate and therefore require extra accommodations and assistance from pharmacies and at home in order to take their medications as prescribed.

In support of the claimed psychological hardship, the Applicant submits a psychological evaluation of her father, which reiterates the father's statements that he relies on the Applicant for emotional and financial support, as well as for assistance managing his and his wife's medical conditions and attending to tasks requiring literacy. The report also describes the father as worrying about the impact of the Applicant's departure on her children. The father acknowledged experiencing symptoms such as agitation, insomnia, irritability, and fatigue, as well as physiological symptoms including dizziness, lightheadedness, and shortness of breath, and testing yielded scores showing moderate to severe depression and anxiety; as a result, the father was diagnosed with major depressive disorder, recurrent, severe, without psychotic features; generalized anxiety disorder; and panic disorder. The psychologist concludes that the father's depression is likely to intensify if the Applicant's waiver is denied, potentially leading to agoraphobia, and the psychologist stated that individuals with generalized anxiety disorder are moderately to seriously disabled by their condition.

The Director acknowledged the evidence of the parents' medical conditions, the father's psychological conditions, and their reliance on the Applicant's support, particularly with respect to managing their healthcare. However, the Director explained that the record did not establish that the Applicant's siblings could not provide this assistance in her absence. The Director also explained that, in light of the Applicant's low income (approximately \$6400 in 2016), she did not establish that she provided

significant financial support to her parents, and the record further indicates that the parents did not reside with the Applicant as claimed.

On appeal, the Applicant submits letters from her five siblings, each of whom affirms that they are unable to provide the necessary level of care and assistance to their parents because of their family obligations and full-time employment. One of the Applicant's sisters states that the parents now reside with her, but the Applicant continues to take them to their medical appointments, care for them in the home, and bring them items that they need. The sister states that her job leaves her unable to take over these responsibilities.

The Applicant also submitted recent paystubs reflecting her part-time employment at \$11 an hour, tax records showing her 2017 income of approximately \$9000, and tax records for her partner—the father of her children, who resides with her—of \$31,000. The record also reflects that the Applicant's parents receive approximately \$1200, combined, in monthly Social Security payments. Viewed as a whole, the tax and payroll records and statements from family members reflect that the Applicant's parents could not afford to live on their own, and that the Applicant's employment status enables her to provide the transportation and personal care that her parents require. Although the record indicates that the parents are also supported by their other children in meeting their housing needs, the siblings agree that the parents require the Applicant's physical and financial assistance and caretaking, and that they could not meet these needs due to their own families and jobs.

In light of the evidence of the medical and psychological hardship that the Applicant's father would experience, we find that the record establishes that separation would result in extreme hardship to him.

#### B. Relocation

The Applicant's father states that, if the waiver is denied, he and his spouse would be forced to relocate to Mexico because of their dependence on the Applicant. He explains that he has lived in the United States for 38 years and depends on his Social Security benefits and Medicare for his financial and medical needs, and he would lose these benefits if he relocates to Mexico. He continues to state that he and his wife would lose their healthcare providers if they relocated, they would be ineligible for the social healthcare system because they never worked in Mexico, and they could not afford private medical care. Additionally, they would face hardship as a result of the poorer conditions and corrupt institutions in Mexico.

However, the record does not include evidence to establish these assertions. The Applicant has not shown that her father—a U.S. citizen—or her LPR mother would lose their Social Security benefits if they move to Mexico, and the record does not include evidence of their likely cost of living there. The Applicant also has not provided evidence that they would lack access to healthcare in Mexico or be unable to afford it. The medical documentation does not indicate that they require specialized care for their conditions and the Applicant has not shown that the necessary medications are unavailable in Mexico. The father asserts that living conditions in Mexico are far below those in the United States, but the record does not indicate where in Mexico she and her parents would reside; therefore we are unable to assess what conditions they would face. Similarly, although the U.S. Department of State advises that some—but not all—areas of Mexico have increased risk due to high levels of crime, we

are unable to assess the potential risk of crime that the Applicant and her parents would face in Mexico. We note, however, that The Department of State does not advise against travel to the Applicant's home state of [redacted]<sup>1</sup> Further, neither the Applicant nor her father addressed the presence (or absence) of relatives in Mexico, and evidence in the record, including notes from recent medical exams, indicate that the parents have recently travelled there. In sum, there is insufficient evidence to show that the claimed hardships upon relocation would occur, or that they would rise beyond the common results of removal or inadmissibility to the level of extreme hardship.

The Applicant must establish that denial of the waiver application would result in extreme hardship to a qualifying relative both upon separation and relocation. As the Applicant has not established extreme hardship to a qualifying relative in the event of relocation, she has not met this requirement. As such, no purpose would be served in determining whether the Applicant merits a waiver as a matter of discretion. Accordingly, the application remains denied.

**ORDER:** The appeal is dismissed.

Cite as *Matter of M-A-B-*, ID# 3727287 (AAO May 17, 2019)

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<sup>1</sup> U.S. Department of State, *Mexico Travel Advisory*, November 15, 2018, available at <https://travel.state.gov/content/travel/en/international-travel/International-Travel-Country-Information-Pages/Mexico.html>.