



U.S. Citizenship  
and Immigration  
Services

(b)(6)



DATE: JUL 30 2013 OFFICE: CIUDAD JUAREZ  
(ANAHEIM, CA)

FILE: [REDACTED]

IN RE: [REDACTED]

APPLICATION: Application for Waiver of Grounds of Inadmissibility under sections 212(a)(9)(B)(v) and 212(d)(11) of the Immigration and Nationality Act (the Act), 8 U.S.C. §§ 1182(a)(9)(B)(v) and 1182(d)(11)

ON BEHALF OF APPLICANT:

SELF-REPRESENTED

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  
Acting Chief, Administrative Appeals Office

**DISCUSSION:** The waiver application was denied by the International Adjudications Support Branch, Anaheim, CA, on behalf of the Field Office Director, Ciudad Juarez, Mexico and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native and a citizen of Mexico who was found to be found to be inadmissible pursuant to section 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 United States for more than one year and seeking admission within 10 years of her last departure. She was also found to be inadmissible to the United States pursuant to section 212(a)(6)(E)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(6)(E)(i), for aiding and abetting an alien to enter the United States in violation of law. The applicant is the spouse of a U.S. citizen and the beneficiary of an approved Petition for Alien Relative (Form I-130). She seeks a waiver under section 212(a)(9)(B)(v) of the Act, 8 U.S.C. § 1182(a)(9)(B)(v) and 212(d)(11) of the Act, 8 U.S.C. § 1182(d)(11) in order to reside in the United States with her U.S. citizen spouse.

The Field Office Director concluded that the applicant failed to establish that extreme hardship would be imposed on a qualifying relative and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) accordingly. *See Decision of the Field Office Director*, dated July 28, 2012.

On appeal, the applicant's spouse disagrees that he has not established extreme hardship. *See Form I-290B, Notice of Appeal or Motion* (Form I-290B), filed August 28, 2012.

The record contains, but is not limited to: Form I-290B, statements by the applicant and her spouse, and various immigration forms and applications. The entire record was reviewed and considered in rendering a decision on appeal.

Section 212(a)(9) states in pertinent part:

(B) Aliens Unlawfully Present.-

(i) In general. - Any alien (other than an alien lawfully admitted for permanent residence) who-

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(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.

The record reflects that the applicant entered the United States in August 2002 without inspection. The record further indicates that she was granted parole into the United States sometime in October 2003.<sup>1</sup> She was granted employment authorization based on that parole on October 31, 2003. The applicant accrued unlawful presence from her entry in August 2002 until her grant of parole in October 2003. The unlawful presence bar was triggered by her departure in December 2008. As the applicant remained in the United States for a period of more than one year without lawful status and is seeking admission within 10 years of her departure, she is inadmissible to the United States pursuant to section 212(a)(9)(B)(i)(II) of the Act. The applicant does not contest her inadmissibility.

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 indicates that the applicant is also inadmissible pursuant to section 212(a)(6)(E) of the Act.

Section 212(a)(6)(E) of the Act provides, in pertinent part:

- (i) Any alien who at any time knowingly has encouraged, induced, assisted, abetted, or aided any other alien to enter or to try to enter the United States in violation of law is inadmissible.

Section 212(d)(11) of the Act provides:

The Attorney General may, in his discretion for humanitarian purposes, to assure family unity, or when it is otherwise in the public interest, waive application of clause (i) of subsection (a)(6)(E) in the case of . . . an alien seeking admission or adjustment of status as an immediate relative or immigrant under section 203(a) (other than paragraph (4) thereof), if the alien has encouraged, induced, assisted, abetted, or aided only an individual who at the time of the offense was the alien's

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<sup>1</sup> The record is unclear as to the exact date of her grant of parole, but USCIS records indicate that her initial work authorization was issued on October 31, 2003. Absent other information, October 2003 will be used as the date of her grant of parole.

spouse, parent, son, or daughter (and no other individual) to enter the United States in violation of law.

The record reflects that the applicant entered the United States without inspection with her minor son. She is therefore, inadmissible under section 212(a)(6)(E) of the Act. She has established that the individual who she aided to enter the U.S. illegally is an immediate family member. She is eligible to apply for a waiver under section 212(d)(11), which may be granted for humanitarian purposes, to assure family unity, or if it is otherwise in the public interest.

A waiver of inadmissibility under section 212(a)(9)(B)(v) of the Act is dependent first upon a showing that the bar imposes an extreme hardship on a qualifying family member, which includes the U.S. citizen or lawful permanent resident spouse or parent of the applicant. Hardship to the applicant and her children can be considered only insofar as it results in hardship to a qualifying relative. In the present case, the applicant's spouse is the only qualifying relative. 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*, 22 I&N Dec. 560, 565 (BIA 1999), the Board provided a list of factors it deemed relevant in determining whether an alien has established extreme hardship to a qualifying relative. The factors include the presence of a lawful permanent resident or U.S. 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).

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. *See Salcido-Salcido v. I.N.S.*, 138 F.3d 1292 (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.

The record contains references to hardship the applicant’s children would experience if the waiver application were denied. It is noted that Congress did not include hardship to an alien’s children as a factor to be considered in assessing extreme hardship under section 212(a)(9)(B)(v) of the Act. In the present case, the applicant’s spouse is the only qualifying relative for the waiver under section 212(a)(9)(B)(v) of the Act, and hardship to the applicant’s children will not be separately considered, except as it may affect the applicant’s spouse.

The applicant’s 62 year-old spouse is a native of Mexico and citizen of the United States. The applicant states that her husband cannot relocate to Mexico because he is a tenured employee at a ranch where he has been working for over thirty years and where he has been given a house. She states that he is well respected by the ranch owners and employees and can expect continued employment there. She indicates that there are no employment opportunities available to him in Mexico given his age. His income has also been her and their children’s sole financial support. The record does not contain any other assertions of relocation-related hardship to the applicant’s spouse.

The applicant has not submitted any documents to corroborate these assertions, such as documents showing her spouse’s long term employment, the house given to him, his ties to the United States, his inability to obtain employment in Mexico, or any other concerns of leaving the United States

and moving to Mexico. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)).

The AAO has considered cumulatively all assertions of relocation-related hardship to the applicant's spouse, including his length of residence in the United States, his loss of stable employment, and his stated minimal job opportunities in Mexico. The AAO does not find that sufficient evidence has been presented to establish that the applicant's spouse would suffer extreme hardship if he were to relocate to Mexico to live with the applicant.

The applicant's spouse states that he fears for his family's safety in Mexico and feels that they need to be urgently united with him in the United States. He explains that because he was an informant to the U.S. government, people in his hometown in Mexico are spreading rumors about him. The applicant states that separation from her husband has placed a strain on their relationship and his relationship with their children in Mexico. She notes that she lives in a rural and isolated area in Mexico and he visits the family whenever he is able. However, the cost of such trips and the risk of being robbed or bribed while traveling with truckloads of good for them have taken a toll. She indicates that the cost of sending money to her and the family in Mexico has also become a financial hardship. The applicant has not submitted any documents to support these assertions, such as articles to show risk of harm in Mexico, a listing of their income and expenses with supporting documents, evidence of the cost of supporting households in the United States and Mexico, the financial hardship of trips to Mexico and the dangers associated with such travel, receipts for sending money or goods to Mexico, or any other documents that indicate that the applicant's spouse has suffered and will continue to suffer extreme hardship because of his separation from the applicant.

The AAO has considered in the aggregate all assertions of separation-related hardship to the applicant's spouse, such as the emotional and financial strain of separation. The AAO finds that the evidence is not sufficient to corroborate claims that the applicant's spouse would suffer extreme hardship without the applicant's presence in the United States.

In proceedings for application for waiver of grounds of inadmissibility under section 212(a)(9)(B)(v) of the Act, the burden of proving eligibility remains entirely with the applicant. Section 291 of the Act, 8 U.S.C. § 1361. Here, the applicant has not met that burden. 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. For the same reason, no purpose would be served in determining whether the applicant merits a waiver under section 212(d)(11) of the Act for her inadmissibility under section 212(a)(6)(E) of the Act. Accordingly, the appeal will be dismissed.

**ORDER:** The appeal is dismissed.