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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals
20 Massachusetts Ave. NW MS 2090
Washington, DC 20529-2090

U.S. Citizenship and Immigration Services

H5

[redacted]

DATE: APR 19 2012 OFFICE: CHICAGO, ILLINOIS File: [redacted]

IN RE: Applicant: [redacted]

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

ON BEHALF OF APPLICANT:

[redacted]

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

If you believe the law was inappropriately applied by us in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of $630. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

for

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Field Office Director, Chicago, Illinois and 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 under section 212(a)(6)(C)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(6)(C)(i), for seeking to procure a visa, other documentation, or admission into the United States or other benefit provided under the Act by fraud or willful misrepresentation, and 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 readmission within 10 years of his last departure from the United States. The applicant seeks a waiver of inadmissibility in order to reside in the United States with his U.S. citizen spouse and child.

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 August 11, 2009.

On appeal, counsel asserts that the adjudicating officer erred in finding a lack of extreme hardship to the applicant's USC spouse. *Form I-290B*, Notice of Appeal or Motion, received September 10, 2009.

The record contains but is not limited to: Form I-290B and counsel's briefs; Forms I-601, I-485 and denials of each; hardship affidavit; record of sworn statement; marriage and birth certificates; and Form I-130. The entire record was reviewed and considered in rendering this decision on the appeal.

Section 212(a)(9) of the Act provides:

> (B) ALIENS UNLAWFULLY PRESENT.-
>
> > (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.

The record reflects that the applicant entered the United States without inspection on March 15, 1997 and remained until December 2002 when he voluntarily departed. The applicant accrued unlawful presence from April 1, 1997, the effective date of the unlawful presence provisions under the Act, to December 2002, a period in excess of one year. As the applicant is seeking admission within 10 years of departure, he is inadmissible pursuant to section 212(a)(9)(B)(i)(II) of the Act.

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

> (i) Any alien who, by fraud or willfully misrepresenting a material fact, seeks to procure (or has sought to procure or has procured) a visa, other documentation, or admission into the United States or other benefit provided under this Act is inadmissible.

The record reflects that on a nonimmigrant visa application submitted on February 23, 2006 the applicant asserted that he was only previously in the United States for six months in 2005 and the only visa he obtained was in June 2005. The applicant failed to disclose both his five year, eight month period of unlawful presence and that he obtained additional H2-B visas in 2003 and 2004 while still subject to the 10-year unlawful presence bar. The Field Office Director found the applicant to be inadmissible under section 212(a)(6)(C)(i) of the Act, 8 USC § 1182(a)(6)(C)(i). The record supports this finding, the applicant does not dispute this finding, and the AAO concurs that the applicant is inadmissible under section 212(a)(6)(C) of the Act.

A waiver of inadmissibility under sections 212(i) and 212(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 the applicant's 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-Moralez,* 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 alien has established extreme hardship to a qualifying relative. 22 I&N Dec. 560, 565 (BIA 1999). The 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. *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).

However, 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*, 138 F.3d at 1293 (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 reflects that the applicant's spouse is a 32-year-old native of Mexico and citizen of the United States who has been married to the applicant since September 2003. She states that the applicant is a great husband and father to their now 7-year-old daughter, [redacted] Counsel asserts that the couple has a wonderful marriage, genuinely enjoy each other's company, and the applicant's spouse will miss her husband's friendship and companionship resulting in adverse emotional impact if he is removed. While the AAO recognizes the emotional difficulties inherent in separation, the evidence is insufficient to demonstrate uncommon or significant hardship beyond that normally associated with a family member's removal or inadmissibility.

The applicant's spouse states that she completed her education through the second grade and works as a housekeeper earning about $480 bi-weekly. She states that the applicant completed a ninth grade education and earns about $750 bi-weekly. The applicant's spouse states that their monthly expenses are about $1,750 including rent, babysitter, groceries, phone, car note and

insurance. She states that she has no close family members in the Chicago area and her lawful permanent resident mother, father, and four siblings all reside in Idaho. Counsel asserts that in the event of her husband's removal, the applicant's spouse would have to "choose between relying on governmental aid to survive or moving to Idaho if she wants any type of support network." Counsel asserts that if the applicant can no longer watch their daughter on Saturdays when his spouse works, an additional child care expense would be incurred. The record contains no documentary evidence demonstrating income or expenses. Going on record without supporting documentation is not sufficient to meet the applicant's burden of proof in this proceeding. *See 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)). While the AAO recognizes that the applicant's spouse will experience some reduction in household income in the event of the applicant's removal, the evidence is insufficient to demonstrate that she would be unable to support herself and her daughter in his absence, or that she would be unwilling or unable to relocate to Idaho where she has a large family support base.

The AAO acknowledges that separation from the applicant may cause various difficulties for the applicant's spouse. However, it finds the evidence in the record insufficient to demonstrate that the challenges encountered by the qualifying relative, when considered cumulatively, meet the extreme hardship standard.

Addressing relocation, the applicant's spouse states that she has no close relatives in Mexico. She states that like her own parents and four siblings, the applicant's parents and six siblings are lawful permanent residents, one of his brothers is a U.S. citizen, and they all reside in the United States. The applicant's spouse states that if she were to join her husband in Mexico, it would be to the small rural town of Tunguitiro, Michoacan where the only source of employment is as a field worker earning about $10 USD per day. Counsel asserts that even if the applicant's spouse were to find employment in Mexico, it would not provide medical insurance which she and her daughter currently have through Medicaid. Counsel asserts that if the applicant's spouse or daughter were to face a life-threatening medical problem they would be unable to pay for the required treatment. The applicant' spouse states that although there is a small clinic in the town, there is no hospital or emergency room. Counsel asserts that Tinguitiro has only a public grammar and secondary school and that the applicant and his spouse would be unable to afford to send their daughter and any future children to private school. The record contains no documentary evidence addressing employment, education, or medical care in Mexico as a whole or in Tunguitiro specifically, and no documentary evidence to suggest that the applicant's spouse or child suffer from any medical conditions or would be unable to access health care as needed.

The AAO has considered cumulatively all assertions of relocation-related hardship to the applicant's spouse including relocating to a country in which she has not lived for a number of years, close family ties in the U.S. and lack of close family ties in Mexico; economic, employment, health-related, and education-related concerns.

Considered in the aggregate, the AAO finds the evidence insufficient to demonstrate that the applicant's U.S. citizen spouse would suffer extreme hardship if she were to relocate to Mexico to be with the applicant.

The applicant has, therefore, failed to demonstrate the challenges his spouse faces are unusual or beyond the common results of removal or inadmissibility to the level of extreme hardship. Accordingly, the AAO finds that the applicant has failed to demonstrate extreme hardship to a qualifying relative. 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.

In proceedings for application for waiver of grounds of inadmissibility under section 212(i) and 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. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.