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

U.S. Citizenship and Immigration Services

[redacted]

H5

Date: SEP 18 2012 Office: MEXICO CITY (CIUDAD JUAREZ) FILE: [redacted]

IN RE: Applicant: [redacted]

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

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 AAO inappropriately applied the law in reaching its decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen in accordance with the instructions on Form I-290B, Notice of Appeal or Motion, with a fee of $630. The specific requirements for filing such a motion can be found at 8 C.F.R. § 103.5. **Do not file any motion directly with the AAO.** Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires any motion to 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 Acting District Director, Mexico City. A subsequent appeal was dismissed by the Administrative Appeals Office (AAO). The matter is now before the AAO on motion. The motion will be granted and the underlying waiver application remains denied.

The record establishes that the applicant is a native and citizen of Mexico who is inadmissible to the United States under section 212(a)(9)(B)(i)(II) of the Immigration and Nationality Act (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, specifically having entered the United States without inspection in September 2003 and remaining until departing voluntarily in October 2005. The applicant is the recipient of an approved I-130 Petition for Alien Relative. The applicant does not contest this finding of inadmissibility. Rather, she is seeking a waiver of inadmissibility in order to reside in the United States with her U.S. citizen spouse.

In a decision dated April 15, 2008, the Acting District 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 Excludability (Form I-601) accordingly. *Decision of the Acting District Director*, dated April 15, 2008.

In a decision dated November 24, 2010, the AAO dismissed the appeal, concluding that the applicant had not demonstrated that her inadmissibility would cause extreme hardship to her spouse if he were to reside in Mexico or if he remained in the United States.

On motion, counsel for the applicant submits a brief with a copy of an I-130 receipt notice indicating incorrectly that the spouse was a permanent resident; a copy of an I-130 approval notice correctly notating the spouse as a United States citizen; two affidavits from the applicant's spouse; copies of receipts for money transfers to the applicant from her spouse; W-2s and tax filings for the applicant's spouse; a psychological report for the applicant's son; medical documentation for the applicant's spouse; country condition information; an eviction notice and utility cut off notice for the applicant's spouse; and copies of photos of the applicant and her family.

The entire record was reviewed and considered in rendering this decision.

Section 212(a)(9)(B) of the Act provides, in pertinent part:

> 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.. . . .

Section 212(a)(9)(B)(v) of the Act provides for a waiver of section 212(a)(9)(B)(i) inadmissibility as follows:

> (v) Waiver. – The Attorney General [now the Secretary of Homeland Security (Secretary)] 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 to the satisfaction of the Attorney General (Secretary) 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...

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.

On motion, counsel contends that there are changed conditions, notably an increase in drug-related violence in Mexico, including kidnappings and robberies of U.S. citizens. Counsel also contends there has been a worsening of the psychological impact on the applicant's son due to separation from his father and that the applicant's spouse has been diagnosed with a medical problem. Counsel further contends the decision should be reconsidered because the Acting District Director did not adequately consider the totality of circumstances and key facts using proper legal principles of extreme hardship.

Counsel contends the Acting District Director did not fully account for the separation between applicant's spouse and minor son as a tremendous hardship on the qualifying relative spouse. Counsel asserts that it is "out of the ordinary" for an applicant to file a waiver on account of having a spouse and minor child who are U.S. Citizens as "many who file these waiver applications do so with only a spouse." Counsel asserts that the eviction notice evidences the applicant's spouse is struggling financially in the United States while sending money to the applicant. Counsel contends the son's emotional condition is worsening due to the separation, causing more hardship to the applicant's spouse. Counsel points out that the applicant's spouse has siblings and a mother in United States, but that they cannot provide child care because of their own fulltime employment responsibilities.

The applicant's husband states that his finances have been affected by sending money to support the applicant and son in Mexico. However, the applicant did not show that she would be contributing financially to her spouse if she were in the United States nor establish that she is unable to support herself while in Mexico, thereby ameliorating the hardships referenced by the applicant's spouse with respect to having to support her.

The psychological evaluation of the applicant's son describes no physical or behavioral problems, and concludes "since the family is the basic unit of society, the most suitable and

recommendable solution, emotionally and psychologically, is that they should be united." The evaluation further states that "up to this point they have not experienced greater harm than the sadness and anxiety of not living together, possible harms that may arise are very great." The evaluation does not indicate a worsening situation that would cause hardship to the applicant's spouse. The evaluation makes general statements of sadness and anxiety, but otherwise details no specific damaging effects to the son that would cause extreme hardship to the applicant's spouse.

In his affidavit the applicant's spouse states that his mother and siblings are unable to help care for his son because of their employment responsibilities. His affidavit states that due to violence in Mexico he fears for the safety of the applicant and their son while also fearful of relocating there because of the violence, his health, and the poor economy. However, the affidavit does not describe any emotional or psychological hardship due to the separation from the applicant, nor present any psychological or medical documentation or other evidence to support any resulting emotional hardship.

The AAO recognizes that the applicant's spouse will endure hardship as a result of separation from the applicant. However, his situation if he remains in the United States, is typical to individuals separated as a result of removal and does not rise to the level of extreme hardship based on the record. The difficulties that the applicant's husband would face as a result of his separation from the applicant, even when considered in the aggregate, do not rise to the level of extreme as contemplated by statute and case law.

In the brief counsel asserts that security and economic conditions in Mexico have deteriorated, making it more difficult if the applicant's spouse were to join the applicant in Mexico. Counsel asserts that because the spouse has family in the United States it would be extreme hardship for him to relocate to Mexico and strain the close relationship with family members. Counsel further notes that the applicant's spouse has been diagnosed with Acute Coronary Syndrome, asserting this makes travel to Mexico a hardship and the possibility of relocating "substantially more uncertain and extremely more difficult."

The applicant's spouse states that in November 2010 he was diagnosed with Acute Coronary Syndrome and that the resulting heart condition makes it difficult to travel and if he resided in Mexico his health "would be in jeopardy" because he would be unemployed and unable to pay for medication or receive health insurance for continued medical care. The applicant provided no documentation specific to her spouse's inability to find employment in Mexico, but only information about general conditions in Mexico. Regarding the spouse's medical condition, the diagnosis of Acute Coronary Syndrome is on hospital letterhead with no specific reference to the applicant's spouse. Discharge instructions for the spouse indicate "usual activities as tolerated" while listing some prescription and some non-prescription medications. There are also test results, but no explanation of the results specific to the applicant's spouse. There is no detailed explanation from the treating physician describing the severity of the spouse's condition or any limitations that are placed on him, such as for work or travel. Country information submitted by the applicant does not address health care in Mexico or specifically the type of care the

applicant's spouse would need. 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)).

Counsel asserts conditions in Mexico have changed with increased violence. Documentation submitted by the applicant shows general drug-related violence in Mexico, but not specific to where the applicant resides. AAO notes that a travel warning issued by the U.S. Department of State for Mexico in February 2012 recommends deferring travel to areas of Jalisco bordering Zacatecas and Michoacan and exercising caution when traveling at night outside of cities. The applicant has not shown that the situation in her home state of Jalisco would result in danger or other hardship to spouse. Further, the applicant has not established that a threatening encounter she and her spouse experienced was other than a random act. While the AAO is sympathetic to the fact that there was a threatening incident, no documentation has been provided establishing that this incident resulted in hardship to the applicant's spouse.

Based on the evidence on the record, the AAO does not find the applicant has established that her spouse would suffer extreme hardship were he to relocate to Mexico to join the applicant.

The record, reviewed in its entirety, does not support a finding that the applicant's spouse will face extreme hardship if the applicant is unable to reside in the United States. Rather, the record demonstrates that he will face no greater hardship than the unfortunate, but expected, disruptions, inconveniences, and difficulties arising whenever a spouse is removed from the United States or is refused admission. There is no documentation establishing that the applicant's spouse's hardships are any different from other families separated as a result of immigration violations. Although the AAO is not insensitive to the applicant's spouse's situation, the record does not establish that the hardships he would face rise to the level of "extreme" as contemplated by statute and case law. Having found the applicant statutorily ineligible for relief, no purpose would be served in discussing whether the applicant merits a waiver as a matter of discretion.

In proceedings for application for waiver of grounds of inadmissibility, 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 motion to reopen is granted and the prior decision of the AAO is affirmed. The waiver application is denied.

ORDER: The motion is granted and the underlying waiver application remains denied.