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

U.S. Citizenship and Immigration Services

H6

[redacted]

DATE: AUG 3 0 2011 OFFICE: CIUDAD JUAREZ FILE: [redacted]

IN RE: [redacted]

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

ON BEHALF OF APPLICANT:

SELF-REPRESENTED

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, 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 citizen of Mexico who entered the United States without admission or parole in May 2001 and departed the United States on September 3, 2007. The applicant was found to be inadmissible to the United States pursuant to 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 and seeking readmission within ten years of her last departure from the United States. The applicant is a beneficiary of an approved Petition for Alien Relative and seeks a waiver of inadmissibility in order to reside in the United States with her U.S. citizen husband.

The Field Office Director concluded that the record failed to establish the existence of extreme hardship to a qualifying relative and denied the application accordingly. *See Decision of the Field Office Director* dated April 29, 2008.

On appeal, the applicant's spouse asserts that his daughter has fallen into a depression and his relationship with her is "collapsing" because she blames him for breaking up the family. He further claims that he has had to cut back on work hours to spend more time with his daughter and is experiencing financial hardship as he supports his family in Mexico.

In support of the waiver application and appeal, the applicant's spouse submitted letters from himself, the applicant, his daughter, a social worker, and his daughter's school outreach consultant. The entire record was reviewed and considered in rendering a decision on the appeal.

Section 212(a)(9)(B) of the Act provides, 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.
>
> . . . .
>
> (v) Waiver.-The Attorney General 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 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. No court shall have jurisdiction to review a decision or action by the Attorney General regarding a waiver under this clause.

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 applicant's qualifying relative in this case is her U.S. citizen spouse. The record contains references to hardship the applicant's child 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. In the present case, the applicant's spouse is the only qualifying relative for the waiver under section 212(i) of the Act, and hardship to the applicant's child will not be separately considered, except as it may affect the applicant's spouse.

In the present case, the record reflects that the applicant is a fifty-one year-old native and citizen of Mexico who resided in the United States from May 2001, when she entered the United States without admission or parole, to September 3, 2007, when she returned to Mexico. The applicant's husband is a fifty-one-year-old native of Mexico and citizen of the United States. The applicant is currently residing in Mexico and the applicant's spouse is residing in Sacramento, California, with their fourteen-year-old daughter.[1]

The applicant's spouse claims that his daughter has fallen into a depression and their relationship is suffering, as she blames him for the family's separation. *See Form I-290B*, dated June 12, 2008. Since his daughter is not a qualifying relative in this case, her emotional hardship will be considered insofar as it impacts the applicant's spouse. The applicant's spouse and his daughter both met with a social worker for a therapy session. *See Letter from* [redacted] *LCSW*, dated May 28, 2008. The social worker claims that the applicant's spouse's daughter is confused and believes her father is at fault for her mother's absence. Her father also reported to the social worker that his daughter's teachers have noticed a negative change in her grades and attitude[2]. The social worker further claims that the applicant's spouse is worried about his parenting, his

[1] According to the I-130, the applicant has four children who were born in Mexico. From the evidence, it appears that the youngest daughter is living in the United States with the applicant's spouse. There is an indication that the youngest son is living with the applicant in Mexico; the whereabouts of the other children and the status of all the children are unknown. It is noted that no identity documents for any of the children have been submitted in the record.

[2] The AAO notes that a letter submitted from the daughter's school does not mention a change in her grades. In fact, the letter notes that she has "the demeanor of a happy child at school," but that she has expressed sadness concerning her mother's absence. *See Letter from* [redacted] *School Outreach Consultant*, dated May 27, 2008.

marital/family relationship, and his financial situation. The applicant's spouse initially sought therapy claiming symptoms of depression and anxiety, but there is no evidence in the record of a diagnosis of depression or anxiety for either the applicant's spouse or his daughter. *Id.* Going on record without supporting documentary evidence generally is not sufficient for purposes of meeting the burden of proof in these proceedings. *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)). The record is not sufficient to find that the applicant's spouse is suffering from extreme emotional hardship as a result of separation from the applicant or that the effects of hardship to his daughter result in extreme hardship to him.

The applicant's spouse further claims that he is suffering significant economical impact because he is supporting his family in the United States and Mexico. In addition, he states that he has had to cut back on work hours to spend more time with his daughter. *See Letter from* [redacted] There is no clear evidence of his family's financial situation in Mexico. It is unclear whether the applicant is working and the extent of her financial obligations in Mexico. In fact, it is unknown whether the applicant is living with her parents in Mexico and how much money the applicant's spouse sends her. The applicant's spouse's financial situation in the United States is equally unclear. There is no evidence concerning the applicant's spouse's employment, wages, or household bills. There is no indication as to whether the applicant worked and contributed to the household income while residing in the United States. Based on the record, the AAO is unable to ascertain the extent of financial hardship suffered by the applicant's spouse. The AAO would note that courts considering the impact of financial detriment on a finding of extreme hardship have repeatedly held that, while it must be considered in the overall determination, it is not enough by itself to justify an extreme hardship determination. *See INS v. Jong Ha Wang,* 450 U.S. 139 (1981) (upholding BIA finding that economic detriment alone is insufficient to establish extreme hardship).

The record does not contain any information concerning country conditions in Mexico, including the area where the applicant currently resides. The applicant's spouse states that he would like his wife in the United States because there are better opportunities and education in the United States. *See Letter from* [redacted] However, the applicant's spouse does not address the hardship he would personally face upon relocation to Mexico. It is noted that the applicant's spouse and the four children listed on his Form I-130 are all natives of Mexico. Further, the applicant's spouse does not address the existence of relatives in the United States and Mexico and the nature of these relationships. The only letter written by a relative was submitted by his fourteen-year-old daughter. *See Letter from* [redacted] dated September 28, 2007. The record is insufficient to establish that the applicant's spouse would suffer extreme hardship upon relocation to Mexico

Although the depth of concern and anxiety over the applicant's immigration status is neither doubted nor minimized, the fact remains that Congress provided for a waiver of inadmissibility only under limited circumstances. While the prospect of separation or involuntary relocation nearly always results in considerable hardship to individuals and families, in specifically limiting the availability of a waiver of inadmissibility to cases of "*extreme* hardship," Congress did not

intend that a waiver be granted in every case where a qualifying relationship exists. U.S. court decisions have repeatedly held that the common results of removal are insufficient to prove extreme hardship. *See Hassan v. INS,* 927 F.2d 465, 468 (9th Cir. 1991), *Perez v. INS,* 96 F.3d 390 (9th Cir. 1996); *Matter of Pilch,* 21 I&N Dec. 627 (BIA 1996) (holding that emotional hardship caused by severing family and community ties is a common result of deportation and does not constitute extreme hardship); *Matter of Shaughnessy,* 12 I&N Dec. 810 (BIA 1968) (holding that separation of family members and financial difficulties alone do not establish extreme hardship). "[O]nly in cases of great actual or prospective injury . . . will the bar be removed." *Matter of Ngai,* 19 I&N Dec. 245, 246 (BIA 1984).

In this case, the record does not contain sufficient evidence to show that the hardships faced by the qualifying relative, considered in the aggregate, rise beyond the common results of removal or inadmissibility to the level of extreme hardship. The AAO therefore finds that the applicant has failed to establish extreme hardship to her U.S. citizen spouse as required under section 212(a)(9)(B)(v) of the Act. 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(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.