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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]

H6

Date: DEC 0 8 2011 Office: MEXICO CITY, MEXICO [redacted]

IN RE: Applicant: [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:

[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, Mexico City, Mexico, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The record reflects that the applicant is a native and citizen of Mexico who 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 his last departure from the United States. The applicant is married to a United States citizen and is the father of two United States citizen children and one United States citizen stepchild. He is the beneficiary of an approved Petition for Alien Relative (Form I-130). The applicant seeks a waiver of inadmissibility pursuant to section 212(a)(9)(B)(v) of the Act, 8 U.S.C. § 1182(a)(9)(B)(v), in order to reside in the United States with his spouse, children, and stepchild.

The Field Office Director found that the applicant had failed to establish that extreme hardship would be imposed on the applicant's qualifying relative and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) accordingly. *Decision of the Field Office Director*, dated August 10, 2009. The AAO notes that the Field Office Director denied the applicant's Application for Permission to Reapply for Admission After Deportation or Removal (Form I-212) in the same decision; however, since the AAO only received one Form I-290B with a filing fee, it will only adjudicate one appeal (Form I-601 appeal).[1]

On appeal, the applicant, through counsel, claims that United States Citizenship and Immigration Service (USCIS) "erred in finding lack of hardship in this case." *Form I-290B*, dated September 1, 2009. Counsel claims that the applicant's wife "has suffered emotionally as she tries to maintain her household and her sanity while [the applicant] is gone." *Id.* Additionally, counsel states the applicant's three (3) year old son is in Mexico with the applicant, and "[b]ecause of this, [the applicant's wife] suffers from anxiety, depressison [sic] and stress and is presently seeing a counselor." *Id.* Further, counsel states the applicant's wife sends money to the applicant in Mexico every month. *Id.*

The record includes, but is not limited to, counsel's appeal brief; statements from the applicant's wife and stepdaughter; letters of support for the applicant and his wife; medical documents for the applicant's wife; money transfer receipts; utility and household bills; mortgage documents, banking documents, and tax documents; an employment verification and pay stubs for the applicant's wife; an article on education in Latin America, and documents for the applicant's removal proceeding. The entire record was reviewed and considered in arriving at a decision on the appeal.

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[1] The Adjudicator's Field Manual provides guidance on adjudicating Forms I-601 and I-212 that are filed together.

43.2 Adjudication Processes.

> (c) Of course, an alien might be applying for both consent to reapply and a waiver of inadmissibility, provided the particular ground(s) of inadmissibility applying to the alien are waivable. If the alien has filed both applications (Forms I-212 and I-601), adjudicate the waiver application first. If the Form I-601 waiver is approved, then consider the Form I-212 on its merits; if the Form I-601 is denied (and the decision is final), deny the Form I-212 since its approval would serve no purpose.

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 [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 [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.

In this case, the record reflects that the applicant entered the United States on October 19, 1991 without inspection. On October 31, 1991, an immigration judge ordered the applicant removed to Mexico. On the same day, the applicant was removed to Mexico. On an unknown date in 1995, the applicant reentered the United States without inspection. In February 2008, the applicant departed the United States.

The applicant accrued more than one year of unlawful presence from April 1, 1997, the effective date of the unlawful presence provisions under the Act, until February 2008, the date he departed the United States. The applicant's departure from the United States following this period of unlawful presence triggered the applicant's inadmissibility under section 212(a)(9)(B)(i)(II) of the Act. The applicant is seeking admission into the United States within ten years of his February 2008 departure. The applicant is, therefore, inadmissible to the United States under section 212(a)(9)(B)(i)(II) of the Act for being unlawfully present in the United States for a period of more than one year and seeking admission within 10 years of his departure.

A waiver of inadmissibility under section 212(a)(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 his children or stepchild can be considered only insofar as it results in hardship to a qualifying relative. The applicant's spouse is the only qualifying relative in this case. 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 of Immigration Appeals (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 appeal, counsel states the applicant's wife "has no relatives outside the United States" and she "has lived in the United States all her life." Additionally, counsel states the applicant's wife is suffering depression and anxiety, and she "is able to receive treatment...in the United States." In a statement dated September 3, 2009, [redacted] reports that the applicant's wife is "under significantly increased stress and anxiety." [redacted] states the applicant's wife requires "medication to assist her in functioning with her daily activities." Counsel claims that the "small health clinic in [the applicant's] town is not equipped to deal with individuals suffering from depression and anxiety." Further, counsel claims that the applicant's son "has suffered many health problems" in Mexico, he has been "taken to the local doctor for allergies and fevers," and there is no hospital in the applicant's town. The AAO notes the applicant's wife's concerns regarding the difficulties she and her children would face in relocating to Mexico.

The AAO acknowledges that the applicant's wife is a citizen of the United States and that she may experience some hardship in joining the applicant in Mexico. The AAO also recognizes that, in relocating to Mexico, the applicant's spouse would be required to give up her long-term employment. However, the AAO notes that the record does not contain documentary evidence, e.g., country conditions reports on Mexico, that demonstrate that the applicant's wife would be unable to obtain employment upon relocation that would allow her to use the skills she has acquired in the United States. Additionally, the AAO acknowledges that the applicant's wife is suffering from some mental health issues; however, there is no documentation in the record establishing that she cannot continue her therapy in Mexico or that she has to remain in the United States to receive therapy. Further, the AAO acknowledges that the applicant's son may be suffering some hardship in Mexico; however, other than counsel's claim, the record does not include supporting documentary evidence that the applicant's son is unable to receive treatment for his medical conditions in Mexico or that he has to return to the United States to receive treatment. Therefore, based on the record before it, the AAO finds that, even considering the potential hardships in the aggregate, the applicant has failed to establish that his wife would suffer extreme hardship if she relocated to Mexico.

Counsel states the applicant "has been a positive father figure," and "he has been instrumental in providing a safe, stable and loving environment for his wife and children." In an undated statement, the applicant's wife states "[i]t is very hard to play the parenting role alone" and she needs the applicant "to help [her] mentally and physically." She claims that the applicant has filled the "'father' role that [her daughter's] own daddy doesn't fill," and her children need the applicant. In an undated statement, the applicant's wife states her son has been wetting his bed, and she claims that "[t]his is due to anxiety of not having [the applicant] in the home." The AAO notes that the record establishes that the applicant's son was prescribed an antidepressant, a bronchodilator, and an antibiotic. The applicant's wife states the applicant also helps her mother and stepfather. The AAO acknowledges that the applicant's children and in-law's may be suffering some hardship in being separated from the applicant; however, the applicant's

children and in-law's are not qualifying relatives, and the applicant has not shown that hardship to his children and in-law's will elevate his wife's challenges to an extreme level. Counsel states the applicant's wife "has become anxious, and depressed during this very difficult time." As noted above, [redacted] reports that the applicant's wife is "under significantly increased stress and anxiety" and she requires "medication to assist her in functioning with her daily activities." [redacted] states "[t]he inability to have [the applicant's wife's] family together is causing her worsening emotional trauma." The AAO notes the concerns of the applicant's wife and children.

Counsel states the applicant's wife "works to support [the applicant] and [her] child in Mexico, her children in the US and to keep the home which she and [the applicant] have purchased." The applicant's wife states that over a 6-week period, she has $2,205.00 in expenses. The AAO notes that the record establishes that the applicant's wife makes $13.86 an hour. *See statement from* [redacted] Wal-Mart store manager, dated November 3, 2003. Counsel claims that the applicant "has been unable to find work [in Mexico] and [the applicant's wife] send[s] $400-$500 monthly to support [the applicant] and his parent and her child." In an undated statement, the applicant's wife states she sends "money to [her] mother-in-law for the support of [the applicant] and [her] son." Additionally, she claims that the applicant watched the children while she worked, and now she has the additional expense of daycare. Counsel states this "additional burden has created a great deal of stress for her." The AAO notes the financial concerns of the applicant's wife.

The AAO acknowledges that the applicant's wife is suffering emotional and financial issues due to her separation from the applicant. The AAO finds that when the applicant's wife's emotional and financial issues are considered in combination with the normal hardships that result from separation of a spouse, the applicant has established that his wife would experience extreme hardship if she remained in the United States in his absence.

Although the applicant has demonstrated that his wife would experience extreme hardship if separated from the applicant, we can find extreme hardship warranting a waiver of inadmissibility only where an applicant has demonstrated extreme hardship to a qualifying relative in the scenario of separation *and* the scenario of relocation. The AAO has long interpreted the waiver provisions of the Act to require a showing of extreme hardship in both possible scenarios, as a claim that a qualifying relative will remain in the United States and thereby suffer extreme hardship as a consequence of separation can easily be made for purposes of the waiver even where there is no intention to separate in reality. *See Matter of Ige*, *supra* at 886. Furthermore, to separate and suffer extreme hardship, where relocating abroad with the applicant would not result in extreme hardship, is a matter of choice and not the result of inadmissibility. *Id.*, *see also Matter of Pilch*, *supra* at 632-33. As the applicant has not demonstrated extreme hardship from relocation, we cannot find the refusal of admission would result in extreme hardship to the qualifying relative in this case.

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. *See* 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.