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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]

#6

DATE: DEC 13 2011 Office: MEXICO CITY (CIUDAD JUAREZ) FILE: [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 establishes that the applicant, a native and citizen of Mexico, initially entered the United States without authorization in July 1991 and departed two months later; that he again entered without authorization in October 1993 and departed in June 1997; and that he entered without authorization for the final time in July 1997 and lived here until March 2008, when he departed. The applicant accrued unlawful presence from July 1997 until March 2008. As a result of this period of unlawful presence, he 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. The applicant does not contest this finding of inadmissibility. Rather, he is seeking a waiver of inadmissibility in order to reside in the United States with his U.S. citizen spouse and daughter.

The field office director concluded the applicant had failed to establish that extreme hardship would be imposed on a qualifying relative and, accordingly, denied the Application for Waiver of Ground of Inadmissibility (Form I-601). *Decision of the Field Office Director,* dated June 19, 2009.

In support of the appeal, the applicant's counsel submits a number of exhibits, including: letters from the applicant's wife and five children; letters from the applicant's parents-in-law, siblings-in-law, and family friends; documents regarding financial obligations and an itemization of monthly expenses; children's birth certificates and school records; and various reports about living conditions in Mexico, including a Travel Alert from the U.S. Department of State. The record also contains a number of different documents submitted in support of the waiver application, including a marriage certificate, W-2 and 1099 forms[1] and tax returns for the years 2004 through 2007, and records of applicant's shoplifting arrest. 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.-
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> > (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

[1] While applicant's spouse provided Form W-2 Wage and Tax Statements for all four years, applicant supplied Form 1099-MISC for the first three years and Form W-2 for 2007.

> 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 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...

A waiver of inadmissibility under section 212(a)(9)(B)(v) 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 child can be considered only insofar as it results in hardship to a qualifying relative. The applicant's U.S. citizen 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 provided a list of factors it deemed relevant in determining whether an applicant has established extreme hardship to a qualifying relative. 22 I&N Dec. 560, 565 (BIA 1999). 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; the Board added that not all of these factors need be analyzed in any given case and emphasized that the list is 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, while 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, or cultural readjustment 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, although 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)); conversely, *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 case-by-case whether denial of admission would result in extreme hardship to a qualifying relative.

Counsel says that the applicant's U.S. citizen wife will suffer emotional, physical, and financial hardship if the applicant is unable to reside in the United States. The applicant's wife claims to be devastated as a result of this separation and "overwhelmed emotionally" to see the children missing their father. She reports visiting her husband in Mexico, despite the expense and danger this entails. She states she worries about his safety and, as sole provider for her children in the applicant's absence, concerns about her own safety weigh upon her when she travels to be with him. The applicant's wife has several medical conditions that she claims are worsened by anxieties resulting from their separation, and she reports visiting doctors during trips to visit applicant in Mexico. While many of the letters in the record confirm the emotional toll stemming from applicant's absence, they also show that applicant's spouse has an extensive support network in the United States: two lawful permanent resident parents, four U.S. citizen siblings and one lawful permanent resident sibling, and extended family (aunts, uncles, cousins). Utilizing this support, she and the children moved in with her parents after the applicant returned to Mexico.

The qualifying spouse says the separation is imposing financial hardship. She reports that, while she owns a house with the applicant, his absence has forced her to move the family in with her parents so she could save money by discontinuing utilities and other expenses of home ownership. Counsel states that having three generations under one roof has been difficult, as applicant's parents have a

small house. The record indicates that the applicant earned about half of the family's reported income from 2004 to 2006, but that his contribution to household income dropped significantly in 2007. The record further suggests that the home owned by the applicant and his wife is paid off, and his wife is gainfully employed. Finally, the AAO notes that, despite submission of a number of bills and expenses, applicant has not shown that his wife is unable to meet her financial obligations. Without further evidence of the family's financial situation, the record falls short of establishing particularly harsh financial consequences beyond those commonly or typically associated with geographical separation of husband and wife.

For all these reasons, the cumulative effect of the emotional, physical, and financial hardships the applicant's wife is experiencing due to her husband's inadmissibility does not rise to the level of extreme. The AAO concludes based on the evidence provided that, were his wife to remain in the United States without the applicant due to his inadmissibility, she would not suffer extreme hardship beyond those problems normally associated with family separation.

The qualifying relative contends that she would experience hardship if she relocated abroad to reside with the applicant. The record shows applicant's wife left Mexico while not yet three years old and entered the United States on an immigrant visa. Therefore, she has no recollection of life outside the United States. Further, her parents, siblings, and extended family live here. Regarding the impact on the qualifying relative of relocating abroad, the record reflects that she has significantly greater family ties to the United States than the native Mexico she left as a child.

Statements of applicant's spouse further enumerate the negative impact upon her of relocating abroad. Despite speaking Spanish, she claims that her job prospects will be few due to high unemployment in Mexico and her inability to write Spanish correctly. Conversely, she has been working for the same U.S. employer since 1995. She states that she is unwilling to relocate her children to Mexico and that taking them abroad would consign them to extreme poverty, poor educational prospects, and risks to their personal safety that would be too painful to bear. Based on a totality of the circumstances, the AAO concludes that the applicant has established that his U.S. citizen spouse would suffer extreme hardship were she to relocate abroad to reside with the applicant.

The documentation in the record, when considered in its totality, reflects that although the applicant has established that his U.S. citizen spouse would suffer extreme hardship were she to relocate abroad to reside with the applicant, it fails to establish that the applicant's U.S. citizen spouse would suffer extreme hardship were she to remain in the United States while the applicant resides abroad. The record demonstrates that the applicant's spouse faces no greater hardship than the unfortunate, but expected, disruptions, inconveniences, and difficulties arising whenever a spouse is removed from the United States or refused admission. 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.

Although the applicant has demonstrated that his qualifying relative would experience extreme hardship if she relocated abroad to reside with the applicant, we can find extreme hardship

warranting a waiver of inadmissibility only where an applicant has shown extreme hardship to a qualifying relative in both the scenario of relocation *and* the scenario of separation. 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 relocate and thereby suffer extreme hardship can easily be made for purposes of the waiver even where there is no actual intention to relocate. *Cf. Matter of Ige*, 20 I&N Dec. 880, 886 (BIA 1994). Furthermore, to relocate and suffer extreme hardship, where remaining in the United States and being separated from the applicant would not result in extreme hardship, is a matter of choice and not the result of inadmissibility. *Id.*, *also cf. Matter of Pilch*, 21 I&N Dec. 627, 632-33 (BIA 1996). As the applicant has not shown extreme hardship from separation, we cannot find that 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, the burden of establishing that the application merits approval remains entirely with the applicant. Section 291 of the Act, 8 U.S.C. § 1361. The applicant has not met that burden. Accordingly, this appeal will be dismissed.

ORDER: The appeal is dismissed. The waiver application is denied.