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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

PUBLIC COPY

[redacted]

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FILE: [redacted] Office: MEXICO CITY, MEXICO Date:

JAN 24 2011

IN RE: [redacted]

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

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,

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Acting District Director, Mexico City, 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 was found to be inadmissible to the United States pursuant to section 212(a)(2)(A)(i)(I) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(2)(A)(i)(I), for having been convicted of a crime involving moral turpitude 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 ten years and seeking admission within ten years of his last departure. The applicant is the spouse of a U.S. citizen. He seeks a waiver of inadmissibility pursuant to sections 212(h), 8 U.S.C. § 1182(h), and 212(a)(9)(B)(v), 8 U.S.C. § 1182(a)(9)(B)(v) of the Act in order to reside in the United States.

The Acting District Director found that the applicant had failed to establish that the bar to his admission would impose extreme hardship on a qualifying relative and denied the Form I-601, Application for Waiver of Ground of Excludability, accordingly. *Acting District Director's decision*, dated June 24, 2008.

On appeal, counsel contends that the record establishes that the applicant's spouse will experience extreme hardship if the waiver application is denied. He further asserts that the applicant's conviction is not for a conviction for a crime involving moral turpitude. *Form I-290B, Notice of Appeal or Motion*, dated July 24, 2008.

In support of the application, the record contains, but is not limited to, statements from the applicant, his spouse, his stepchildren and his mother-in-law; medical statements relating to the applicant's spouse and mother-in-law; cable, telephone and utility bills; proof of the applicant's stepson's mortgage; a bank statement and court records relating to the applicant's conviction. The entire record was reviewed and all relevant evidence considered in arriving at a decision on the appeal.

Section 212(a)(2)(A) of the Act states, in pertinent part:

> (i) [A]ny alien convicted of, or who admits having committed, or who admits committing acts which constitute the essential elements of –
>
> > (I) a crime involving moral turpitude (other than a purely political offense) or an attempt or conspiracy to commit such a crime . . . is inadmissible.

Section 212(h) of the Act provides, in pertinent part:

> (h) The Attorney General [Secretary of Homeland Security] may, in his discretion, waive the application of subparagraph (A)(i)(I), (B), . . . of subsection (a)(2) . . . if –
>
> > (1)(A) [I]t is established to the satisfaction of the Attorney General that-

> (i) [T]he activities for which the alien is inadmissible occurred more than 15 years before the date of the alien's application for a visa, admission, or adjustment of status,
>
> (ii) the admission to the United States of such alien would not be contrary to the national welfare, safety, or security of the United States, and
>
> (iii) the alien has been rehabilitated; or
>
> (B) in the case of an immigrant who is the spouse, parent, son, or daughter of a citizen of the United States or an alien lawfully admitted for permanent residence if it is established to the satisfaction of the Attorney General [Secretary] that the alien's denial of admission would result in extreme hardship to the United States citizen or lawfully resident spouse, parent, son, or daughter of such alien . . . .

The record reflects that on October 5, 1995, the applicant pled guilty to Tampering With Governmental Record with Intent to Defraud or Harm Another under Texas Penal Code (Tex. Penal Code) § 37.10, a third degree felony for which the maximum sentence of imprisonment was ten years at the time of the applicant's conviction. The AAO will not, however, address whether the applicant's offense bars his admission to the United States. Were the AAO to find the applicant's conviction under Tex. Penal Code § 37.10 to be a conviction for a crime involving moral turpitude, his eligibility for a waiver would be considered under the less burdensome waiver requirements of section 212(h)(1)(A) of the Act as the activities that led to his conviction took place more than 15 years ago. However, considering the applicant's eligibility under the more generous requirements of 212(h)(1)(A) of the Act would serve no purpose since he is also inadmissible under section 212(a)(9)(B)(i)(II) of the Act for having accrued more than one year of unlawful presence in the United States. To obtain a waiver of his 212(a)(9)(B)(i)(II) inadmissibility, the applicant must meet the requirements of section 212(a)(9)(B)(v) of the Act, which require him to establish extreme hardship to a qualifying relative. Accordingly, the AAO will address the applicant's eligibility for a waiver under the more stringent requirement of section 212(a)(9)(B)(v). We note that the applicant's eligibility for a 212(a)(9)(B)(v) waiver will also waive any inadmissibility under section 212(a)(2)(A)(i)(I) of the Act.

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-
>
> . . . .
>
> (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 in 1993 and remained until June 2007, when he departed for an immigrant visa interview at the U.S. consulate in Ciudad Juarez, Mexico. Based on this history, the AAO finds the applicant to have accrued unlawful presence from April 1, 1997, the effective date of the unlawful presence provisions under the Act, until his June 2007 departure from the United States. As he accrued unlawful presence in excess of one year and is seeking immigrant admission within ten years of his 2007 departure, the applicant is inadmissible pursuant to section 212(a)(9)(B)(i)(II) of the Act.

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

> The Attorney General [now Secretary of Homeland Security] 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 . . . 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) 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. Accordingly, in this proceeding, hardship to the applicant or other family members will be considered only insofar as it results in hardship to his spouse, the only qualifying relative. If extreme hardship to a qualifying relative is established, the applicant is statutorily eligible for a waiver, and United States Citizenship and Immigration Services (USCIS) then assesses whether a favorable exercise of discretion is warranted. *See Matter of Mendez-Moralez,* 21 I&N Dec. 296, 301 (BIA 1996).

As a qualifying relative is not required to depart the United States as a consequence of an applicant's inadmissibility, two distinct factual scenarios exist should a waiver application be denied: either the qualifying relative will join the applicant to reside abroad or the qualifying relative will remain in the United States. Ascertaining the actual course of action that will be taken is complicated by the fact that an applicant may easily assert a plan for the qualifying relative to relocate abroad or to remain in the United States depending on which scenario presents the greatest prospective hardship, even though no intention exists to carry out the alleged plan in reality. *Cf. Matter of Ige,* 20 I&N Dec. 880, 885 (BIA 1994) (addressing separation of minor child from both parents applying for suspension of deportation). Thus, we interpret the statutory language of the various waiver provisions in section 212 of the Act to require an applicant to establish extreme hardship to his or her qualifying relative(s) under both possible scenarios. To endure the hardship of separation when extreme hardship could be avoided by joining the applicant abroad, or to endure the hardship of relocation when extreme hardship could be avoided by remaining in the United States, is a matter of choice and not the result of removal or inadmissibility. As the Board of Immigration Appeals (BIA) stated in *Matter of Ige*:

> [W]e consider the critical issue . . . to be whether a child would suffer extreme hardship if he accompanied his parent abroad. If, as in this case, no hardship would ensue, then the fact that the child might face hardship if left in the United States would be the result of parental choice, not the parent's deportation.

Id. See also Matter of Pilch, 21 I&N Dec. 627, 632-33 (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 BIA 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 BIA 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 BIA has also held that the common or typical results of deportation, 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. at 631-32; *Matter of Ige*, 20 I&N Dec. at 883; *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 BIA 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.*

We observe that 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., In re 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).

Family separation, for instance, has been found to be a common result of inadmissibility or removal in some cases. *See Matter of Shaughnessy*, 12 I&N Dec. at 813. Nevertheless, family ties are to be considered in analyzing hardship. *See Matter of Cervantes-Gonzalez,* 22 I&N Dec. at 565-66. The question of whether family separation is the ordinary result of inadmissibility or removal may depend on the nature of family relationship considered. For example, in *Matter of Shaughnessy*, the BIA considered the scenario of parents being separated from their soon-to-be adult son, finding that this separation would not result in extreme hardship to the parents. *Id.* at 811-12; *see also U.S. v. Arrieta*, 224 F.3d 1076, 1082 (9th Cir. 2000) ("Mr. Arrieta was not a spouse, but a son and brother. It was evident from the record that the effect of the deportation order would be separation rather than relocation."). In *Matter of Cervantes-Gonzalez*, the BIA considered the scenario of the respondent's spouse accompanying him to Mexico, finding that she would not experience extreme hardship from losing "physical proximity to her family" in the United States. 22 I&N Dec. at 566-67.

The decision in *Cervantes-Gonzalez* reflects the norm that spouses reside with one another and establish a life together such that separating from one another is likely to result in substantial hardship. It is common for both spouses to relocate abroad if one of them is not allowed to stay in the United States, which typically results in separation from other family members living in the United States. Other decisions reflect the expectation that minor children will remain with their parents, upon whom they usually depend for financial and emotional support. *See, e.g., Matter of Ige*, 20 I&N Dec. at 886 ("[I]t is generally preferable for children to be brought up by their parents."). Therefore, the most important single hardship factor may be separation, particularly where spouses and minor children are concerned. *Salcido-Salcido*, 138 F.3d at 1293 (quoting *Contreras-Buenfil v. INS,* 712 F.2d 401, 403 (9th Cir. 1983)); *Cerrillo-Perez*, 809 F.2d at 1422.

Regardless of the type of family relationship involved, the hardship resulting from family separation is determined based on the actual impact of separation on an applicant, and all hardships must be considered in determining whether the combination of hardships takes the case beyond the consequences ordinarily associated with removal or inadmissibility. *Matter of O-J-O-*, 21 I&N Dec. at 383. Nevertheless, though we require an applicant to show that a qualifying relative would experience extreme hardship both in the event of relocation and in the event of separation, in analyzing the latter scenario, we give considerable, if not predominant, weight to the hardship of separation itself, particularly in cases involving the separation of spouses from one another and/or minor children from a parent. *Salcido-Salcido*, 138 F.3d at 1293.

The AAO now turns to the question of whether the applicant in the present case has established that a qualifying relative would experience extreme hardship as a result of his inadmissibility.

The record contains an undated statement from the applicant's spouse[1] in which she asserts that she has lived in the United States since 1981 and that, if she relocated to Mexico, she would suffer extreme financial hardship. The applicant's spouse states that she would have to leave her current job in the United States, which she has held for the past seven years and that she has no skills that would

[1] The record also contains a July 9, 2007 Spanish-language statement from the applicant's spouse that is unaccompanied by a certified English-language translation, as required by the regulation at 8 C.F.R. § 103.2(b)(3). Accordingly, the AAO will not consider this statement.

allow her to obtain employment in Mexico. In her own affidavit, the applicant's mother-in-law states that if her son-in-law and daughter moved to Mexico, they would lose everything for which they have worked, their jobs, their savings, their house and everything else that they have. She asserts that, in Mexico, they would have to "start from the bottom and work their way up" and that this would be very hard to do in Mexico.

While the AAO notes these assertions regarding the financial hardship that the applicant and his spouse would suffer in Mexico, we do not find the record to support them. No evidence establishes that the applicant's spouse is currently employed in the United States or that she would be unable to obtain employment if she moved to Mexico. The record contains no documentation, e.g., a letter of employment, earnings statements or W-2 forms, of the applicant's spouse's employment and fails to provide proof, e.g., published country conditions materials, that establishes she would be unable to find employment in Mexico. Neither does it demonstrate that the applicant and his spouse own a home that would be lost if they moved to Mexico. 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)). Accordingly, the record does not establish that the applicant's spouse would experience extreme hardship if she joined the applicant in Mexico.

The AAO also finds the record to contain insufficient proof that the applicant's spouse would suffer extreme hardship if his waiver application is denied and she remains in the United States. In her statement, the applicant's spouse asserts that she currently earns $17,000 per year working in housekeeping [redacted] and that she does not earn enough to pay all her bills by herself. She states that her salary does not meet federal poverty guidelines.

The applicant's spouse also claims that she is suffering mentally and physically as a result of her separation from the applicant. She states that she has been receiving treatment and medication for high blood pressure and depression since January 2008. Her depression, she asserts, is the result of the applicant's absence and is aggravating her blood pressure. The applicant's spouse also indicates that she has stomach problems, is having tests run to determine the extent of these problems and has been taking medication for her stomach problems since February 2008. She states that she believes that her depression has also exacerbated her stomach problems. She asserts that the applicant's absence has prevented her from being properly cared for and that she is suffering from the stress that has been created by her separation from the applicant.

The applicant's spouse further indicates that, in the applicant's absence, the burden of looking after her mother has fallen on her. She states that her mother is 79-years-old and lives with her sister. When the applicant was in the United States, his spouse contends, he took her mother to the doctor. However, she states that the responsibility is now hers as her sister is a single mother who has a problem child. Caring for her mother, the applicant's spouse claims, has exacerbated her financial and medical problems.

Having reviewed the record, the AAO does not find it to demonstrate that the applicant's spouse would suffer significant financial, emotional or medical hardship as a result of her separation from the applicant. Although the applicant's spouse states that she does not earn enough money to meet her bills and that her salary does not meet federal poverty guidelines, the record fails to document

her employment or her annual salary. Going on record without supporting documentation is not sufficient to meet the applicant's burden of proof in this proceeding. *Id.* Without evidence of the applicant's spouse's income, the AAO is unable to determine the extent of the financial impact that the applicant's absence has had or would have on his spouse. Moreover, we note that the record does not establish that the applicant has been or would be unable to obtain employment in Mexico and, thereby, provide his spouse with financial assistance.

The record contains a July 9, 2008 medical statement from [redacted] who indicates that he is treating the applicant's spouse for multiple medical conditions such as anxiety disorder, major depression and hypertension, all of which have been exacerbated as a result of her separation from the applicant. In a July 1, 2008 statement, [redacted] reports that he has been treating the applicant's spouse since January 2008 and that she suffers from recurrent intractable abdominal pain and reflux esophagitis. Although the applicant's spouse is receiving the appropriate treatment, [redacted] notes, she has failed to completely respond to it. He states that he believes the resistance of her conditions to treatment is partly the result of ongoing social stresses.

The AAO notes the statement from [redacted] that indicates the applicant's spouse is being treated for anxiety and depression, as well as hypertension, which have worsened as a result of her separation from the applicant. We also observe, however, that with regard to his diagnoses of anxiety and depression, [redacted] statement fails to indicate the period of time that he has been treating the applicant's spouse or to provide the type of detailed analysis that normally supports a mental health diagnosis. [redacted] statement also fails to indicate the severity of the applicant's spouse's conditions, including her hypertension, or the extent to which they affect her ability to meet her daily responsibilities. Without greater detail, the AAO finds [redacted] statement to be of limited value to a determination of extreme hardship.

The AAO also notes that the statement from [redacted] who is treating the applicant's spouse for abdominal pain and reflux esophagitis reports that these conditions have responded to medication, although they have not been resolved. [redacted] does not, however, indicate the extent to which the applicant's spouse's conditions have responded to medication or what impacts they continue to have on the applicant's spouse's health. Accordingly, the AAO is unable to determine whether the applicant's spouse's abdominal pain and/or reflux esophagitis pose a significant medical hardship for the applicant's spouse.

The record also includes no documentation that establishes the applicant's absence has required his spouse to assume additional responsibilities for her mother. Although she claims that the applicant previously took her mother to the doctor and that this responsibility is now hers as her sister, with whom her mother lives, is a single parent with a problem child, no documentary evidence establishes that the applicant's spouse is currently responsible for taking her mother to the doctor or that her sister cannot do so because she is a single parent with a problem child. Further, there is nothing in the record to demonstrate that the applicant's spouse's responsibilities relating to her mother have had an impact on her financial and medical problems. Going on record without supporting documentation is not sufficient to meet the applicant's burden of proof in this proceeding. *Id.*

The applicant's mother-in-law claims that when the applicant was in the United States, he took care of her needs. She states that she suffers from arthritis and high blood pressure, and that the applicant

was the one who made sure that her daughter took her to the doctor and gave her medicine. The applicant's mother-in-law also states that if her son-in-law and daughter resided in Mexico, she would have no place to live, no one to take care of her and that her health would get worse as she would have no one to take her to the doctor or get her medicine.

The record also includes a June 6, 2007 statement from the applicant's stepson in which he claims that the applicant and his mother moved into his house because he had gone back to school and was unable to pay his mortgage by himself. He contends that if the applicant and his mother resided in Mexico, he would lose his house and would not be able to continue his education because he would have to work. In a June 7, 2007 statement, the applicant's stepdaughter asserts that she and the applicant had a father-daughter bond and have great communication. She further states that she and her family rely on the applicant and that she does not know what will happen to them if he is unable to return to the United States.

A health statement, dated July 15, 2008 and prepared by [redacted], indicates that the applicant's mother-in-law is being treated for essential hypertension, hyperlipidemia, osteoporosis, gastroesophageal reflux, anemia, diverticulosis and hiatal hernia for which she is taking medication. [redacted] states that the applicant's mother-in-law requires assistance to attend her medical appointments and to conduct daily activities. While the AAO acknowledges the medical problems of the applicant's mother-in-law, no evidence in the record establishes that the applicant's spouse is providing her with the assistance she requires or that the applicant's spouse's sister, with whom the applicant's mother-in-law lives, would be unable to do so. The record also fails to demonstrate that the applicant's stepson has received financial assistance from the applicant and his spouse or that he is attending school. Further, the applicant's mother-in-law and stepchildren are not qualifying relatives and the record fails to demonstrate how any hardship they would suffer would result in hardship to the applicant's spouse, the only qualifying relative in this proceeding. The AAO also notes that the record does not document the relationship of the applicant's spouse to her mother and children.

Based on the available evidence, the AAO does not find the record to establish that the applicant's spouse would experience extreme hardship if the waiver application is denied and she remains in the United States.

The AAO therefore finds that the applicant has failed to establish eligibility for a waiver of inadmissibility under section 212(a)(9)(B)(v) of the Act. Having found the applicant statutorily ineligible for relief, no purpose would be served in discussing whether he 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. *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.