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

U.S. Citizenship and Immigration Services

[redacted]

#6

DATE: NOV 14 2011 OFFICE: CIUDAD JUAREZ, MEXICO 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, 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 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 admission within 10 years of her last departure from the United States. The applicant is the spouse of a U.S. Citizen and is the beneficiary of an approved Petition for Alien Relative. Through counsel, the applicant does not contest this finding of inadmissibility. Rather, she 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 with her husband and their son in the United States.

The Field Office 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 Inadmissibility (Form I-601) accordingly. *See Decision of Field Office Director, Ciudad Juarez, Mexico*, dated March 27, 2009.

On appeal, counsel asserts that the evidence shows that the applicant's U.S. citizen spouse and child will suffer extreme hardship if the applicant is not allowed to adjust to a lawful permanent resident of the United States. *Form I-290B, Notice of Appeal or Motion*, dated April 23, 2009.

The record includes, but is not limited to: Notice of Entry of Appearance as Attorney or Representative (Form G-28); Notice of Appeal or Motion (Form I-290B); Application for Waiver of Grounds of Inadmissibility (Form I-601); Petition for Alien Relative (Form I-130); a brief from counsel; a letter of support from the applicant; a letter of support from the applicant's spouse; letters of support from the applicant's mother-in-law, friends, and the applicant's spouse's co-worker; an employment letter; copies of income tax returns; copy of a check for services rendered; copies of residential tax receipts; copy of a social security statement; telephone bills; copies of remittances; a divorce decree; photographs; immunization records; and behavioral health evaluations. [1] The entire record, with the exception of the Spanish-language documents, was reviewed and considered in rendering a decision on the appeal.

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

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[1] The AAO notes that the letters of support are in the Spanish language. 8 C.F.R. § 103.2(b)(3) states:

> Translations. Any document containing foreign language submitted to USCIS shall be accompanied by a full English language translation which the translator has certified as complete and accurate, and by the translator's certification that he or she is competent to translate from the foreign language into English.

The AAO also notes that the letters of support do not contain a certified translation to the English language. Accordingly, the AAO will not consider the letter of support.

(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.

...

(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. No court shall have jurisdiction to review a decision or action by the Attorney General [Secretary] regarding a waiver under this clause.

The record establishes that the applicant entered the United States without inspection by U.S. immigration officials on or about August 6, 2003 and remained until in or around January 2008, when she voluntarily departed to Mexico. The applicant accrued unlawful presence from on or about August 6, 2003 until in or around January 2008, a period in excess of one year. As the applicant is seeking admission within 10 years of departure, she is inadmissible pursuant to section 212(a)(9)(B)(i)(II) of the Act.

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 her child can be considered only insofar as it results in hardship to a qualifying relative. The applicant's husband 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 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 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 child 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(a)(9)(B)(v) of the Act, and hardship to the applicant's child will not be separately considered, except as it may affect the applicant's spouse.

Counsel contends that the applicant's spouse will suffer extreme emotional and financial hardship as a result of separation from the applicant. *See I-290B Brief in Support of Appeal*, dated May 19, 2009. Specifically, counsel contends that the spouse has already endured extreme emotional hardship because he has been prohibited from enjoying his fatherhood, from adequately providing for his child, and from the joy of having a child because his son was separated from him soon after birth based on the applicant's inadmissibility. *Id.* In support of the emotional problems that the spouse has been experiencing, counsel states: " ... In the past, [the applicant's spouse] has suffered from extreme depression. At one point [he] was hospitalized for a week because of severe depression ... [His] depressive illness has been increasing and his family in concern [sic] about what he might do if he does not get treated. [He] refuses to get treated as he is already in a depressive stage ... Having been separated from his child when the child was so young has created psychological harm on both[] [the applicant's spouse] and his child ...Moreover, with the current situation in Mexico with the drug cartels[] [the applicant's spouse] has been in complete anxiety thinking that his family will be victims of the crime in Mexico." *Id.* Also, counsel submitted a behavioral health assessment, recommending what the spouse could do to assist him in coping with his situation. *See Statement of Disposition, Issued by the University of Behavioral Health, El Paso*, illegible date. Also in support of the emotional hardship that the spouse has been experiencing, the spouse's mother states: "When [the applicant] was denied admission to the United States[] because of her accumulation of unlawful presence, my son was emotionally incapable of staying by himself. Not only because his wife was now in another country, but also because his United States citizen child was no longer with him." *Letter of Support from* [redacted], undated.

In support of the financial problems that the applicant's spouse has experienced, counsel contends: "The reason [the applicant] and child have been able to survive in Mexico is because [the applicant's spouse] is employed in the United States and has not visited his family in over a year so he can send them money to survive [sic]." *I-290B Brief in Support of Appeal, supra.* In support of his contention, counsel submitted copies of telephone bills with past due amounts ranging from $6.57 – $384.75 and copies of remittances, totaling $1,581.97 from April 2008 –

[2] The AAO notes that the applicant's mother's letter incorrectly indicates that the mother's last name is [redacted]. This appears to be a typo given that the letter also indicates the mother's correct last name as [redacted], and the mother signed the letter with the last name [redacted].

April 2009.[3] *See at&t Statements*, dated April 25, May 25, June 25, November 25, and December 25, 2008; January 25, February 25, and March 25, 2009; *see also MoneyGram Receipts*.

The evidence on the record is insufficient to establish that the applicant's spouse suffers from depression as asserted by counsel. The record contains a copy of a boilerplate behavioral health evaluation that includes illegible, handwritten information. Given that the written information is indiscernible, the AAO cannot determine whether the evaluation contains a clear explanation of the current medical condition of the spouse. Absent an explanation in plain language from the treating mental health expert of the exact nature and severity of any condition and a description of any treatment or family assistance needed, the AAO is not in the position to reach conclusions concerning the severity of a medical condition or the treatment needed. Accordingly, the AAO cannot conclude that continued separation from the applicant would result in extreme hardship to the applicant's spouse due to the spouse's emotional state.

Additionally, the record is sufficient to establish that the applicant's spouse has had the responsibility of financially supporting two households since the applicant's absence, and therefore, has experienced some financial hardship. However, the record is insufficient to establish that the spouse is unable to support himself. Further, the record does not include any evidence concerning the applicant's inability to provide financial support to her and her spouse's households. Specifically, the record does not include any evidence of conditions in Mexico that preclude the applicant from obtaining gainful employment there so that she can contribute to the necessary financial expenditures to maintain her and her spouse's households. Accordingly, the record does not establish that the financial hardship goes beyond what is commonly experienced by relatives of inadmissible family members. Based on the record, the AAO cannot conclude that continued separation from the applicant would result in extreme hardship to the applicant's spouse due to financial hardship.

Also, the record is sufficient to establish that the applicant and her child have resided in Ciudad Juarez, Mexico since the applicant voluntarily departed from the United States in or around January 2008. And, credible country conditions information indicates that narcotics-related violence has occurred in the border regions of Mexico, including Ciudad Juarez and that Ciudad Juarez has the highest murder rate in Mexico. *See* U.S. Department of State, *Travel Warning*, dated April 22, 2011, *available at* http://travel.state.gov/travel/cis_pa_tw/tw/tw_5440.html. The AAO recognizes the applicant's spouse's concern for his wife and child as a result of conditions in Mexico. And, based on this concern, the spouse may experience some hardship. However, there is no evidence in the record to indicate that the applicant and child would be specifically impacted by conditions in Mexico. Accordingly, any hardship that the applicant's spouse would experience upon continued separation does not go beyond what is commonly experienced by qualified relatives of inadmissible family members.

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[3] The AAO notes that two copies of remittances provided by counsel are illegible. Thereby, the AAO is not in a position to determine the exact dates that the remittances were provided.

The AAO recognizes that the applicant's spouse may experience some hardship as a result of separation from the applicant. However, the AAO finds that even when this hardship is considered in the aggregate, the record fails to establish that the applicant's spouse will suffer extreme hardship as a result of separation from the applicant.

Also, counsel contends that the applicant's spouse would endure extreme hardship if he were to relocate to Mexico to be with the applicant and their son. *See I-290B Brief in Support of Appeal, supra.* Specifically, counsel states: " ... If [the applicant's spouse] decides to move to Mexico, the extreme hardship will still exist as he would have to adapt to a country and customs that he is not familiar to [sic], he will have no job, no medical coverage, and will be removed from his immediate family who has grown with [sic] ... This will result as [his] work and form of support is in the United States. He cannot leave his country to a country where the unemployment rate is increasing and where he would not have an opportunity to provide for his family because he is not a citizen of that country ... [he] has a son from a prior marriage who lives in the United States and with whom he has a relationship ... [His] child will have to attend a school in Mexico[,] preventing him from learning the English language and knowing about his country. This will also prevent [him] from providing his child with the education he also dreamed of for his child and of the opportunities he thought his child will [sic] receive ... [He] wants the best possible medical care available for his child and his wife which is only available in the United States. Mexico does not provide medical support as this country does. If we add that to the fact that he will not be able to work in Mexico because he is not a citizen of that country, [he] will not be able to provide any medical care for his family ... Now, [he] is being forced to decide between his mother[,] who has helped him throughout this horrible period[,] and his wife and child ... Mexico is a country that is very dangerous to live because of lack [sic] of good government and now health problems. Any work experience [he] may have is completely irrelevant in Mexico because he is not a citizen of that country ... If he relocates to Mexico[,] he will not be able to support his family and help his mother in the United States ... [his] job in the United States as a general construction worker will be very difficult to find in Mexico because of the different construction rules, tools, and material use [sic] in that country." *Id.*

The record does not contain any evidence to support counsel's assertion. As previously noted, credible country conditions information indicates that narcotics-related violence has occurred in the border regions of Mexico, including Ciudad Juarez and that Ciudad Juarez has the highest murder rate in Mexico. *See* U.S. Department of State, *Travel Warning, supra.* However, the record does not contain any evidence concerning how the applicant's spouse would be specifically impacted or targeted by the criminal elements in Mexico if the spouse were to relocate there. And, although the spouse's relocation to Mexico would entail being separated from his family in the United States, including his mother, there is no evidence in the record that indicates that the spouse supports his mother and that separation from his family in the United States would cause hardship to him.

Also, the record does not contain any country conditions information concerning economic and social conditions as well as employment opportunities in Mexico. Moreover, the record indicates that the applicant's spouse is originally from Mexico and came to the United States when he was

approximately 23 years old. *See U.S. Certificate of Naturalization for* [redacted], [redacted] *see also Petition for Alien Relative (Form I-130)*, approved February 8, 2005. Yet, the record does not contain any information concerning whether the spouse maintains any family or social ties as well as property there. And, there is no evidence that the spouse lost his Mexican citizenship or that his experience and skills acquired in the United States in the construction industry are not transferable to Mexico. Accordingly, the AAO cannot conclude that the applicant's spouse's relocation to Mexico would result in hardship to the spouse.

The AAO recognizes that the applicant's spouse will endure some 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. In regards to establishing extreme hardship in the event the qualifying relative relocates abroad based on the denial of the applicant's waiver request, the AAO notes that this criterion has not been established.

In this case, the record does not contain sufficient evidence to show that the hardship faced by the qualifying relative, considered in the aggregate, rises 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 United States 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.