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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

#6

DATE: AUG 0 1 2012 Office: MEXICO CITY 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 AAO inappropriately applied the law in reaching its decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen in accordance with the instructions on Form I-290B, Notice of Appeal or Motion, with a fee of $630. The specific requirements for filing such a motion can be found at 8 C.F.R. § 103.5. **Do not file any motion directly with the AAO.** Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires any motion to 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, entered the United States without authorization in January 2001 and lived here until June 2009, when she voluntarily departed. The applicant accrued unlawful presence beginning on her eighteenth birthday, April 3, 2003. As a result, she 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 one year or more. The applicant does not contest this finding of inadmissibility. Rather, she is seeking a waiver of inadmissibility in order to reside in the United States with her U.S. citizen spouse.

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 District Director,* July 13, 2010.

On appeal, the applicant asserts that USCIS failed to attribute proper weight to the evidence submitted and also provides new documentary evidence. In support of the appeal, an accredited representative submitted a brief and documents, including pay stubs, tax return, and W-2 statement; employment and support letters; a personal loan; and birth certificates. The record also contains statements from the applicant and her husband, support letters, and financial records. The entire record was reviewed and considered in rendering this decision.

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

> (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.
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> . . . .
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> (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 her children 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.[1] 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.*

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[1] The AAO notes that, although the brief asserts that the applicant's parents are lawful permanent residents (LPR), the record fails to establish their LPR status. In addition, because the record contains no evidence regarding hardship to the applicant's parents, we limit our analysis on appeal to hardship claims pertaining to the applicant's husband.

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.

The applicant's husband asserts he will suffer physical, emotional, and financial hardship if the applicant is unable to reside in the United States, but the evidentiary record does not support these contentions. He claims to have severe allergies that can cause sinus problems, and says that his wife takes care of him during painful episodes, including providing him necessary medication. He claims to be suffering from stress and depression associated with being a single working parent to two young children. He also claims to be having financial difficulties due to the need to pay someone to care for his children while he works during the day and the need to maintain two households. Regarding physical hardship, there is no medical evidence of the claimed health condition, of any medication prescribed for it, or of any training that qualifies the applicant to administer special treatment. Similarly absent from the record is any evidence concerning the stress and depression claimed showing that they are beyond the usual or typical emotional response to loss of a beloved family member.

Regarding financial hardship due to separation, the applicant's husband asserted in a 2009 statement submitted with the waiver application that his monthly expenses approached $1000, excluding food costs. Other than documentation of a personal loan and a reference letter from someone purporting to have sold the qualifying relative a mobile home (for an undisclosed price), there is no documentation of his claimed expenses, such as utilities, food, clothing, or housing costs. Tax filings reflecting that he is the family's sole wage earner support the claim that his wife was a homemaker and stay-at-home mother to her children, but there is no indication of the cost of his children's daycare necessitated by the applicant's departure. The AAO notes that letters from the qualifying relative's parents indicate emotional support for their son's family, and there is no evidence to support the assertion in the appeal brief that they are unable to help in other ways. Although financial documentation shows the applicant's husband to have limited income, nothing in the record indicates the cost of supporting his wife in Mexico or that it results in financial hardship. We note, too, the lack of any evidence of the efforts she has made to defray her living costs in

Mexico by working. Therefore, the evidence falls short of establishing particularly harsh consequences beyond those commonly or typically associated with separation of husband and wife.

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

The qualifying relative contends that he would experience hardship by relocating abroad to reside with the applicant. Regarding ties to the United States, the record shows the applicant's husband has several siblings and both parents in the United States, but is silent regarding his remaining ties to Mexico. Documentation suggests that the applicant's husband has not, in recent years, worked for a single employer, but rather held a series of jobs. There is no evidence[2] substantiating assertions regarding his poor employment prospects in Mexico, or that he or his wife have looked for jobs there. Similarly lacking is evidence that he or his children suffer serious medical conditions or that suitable medical care is unavailable where they would relocate. The applicant's husband expresses concern about the security situation in Mexico and the risk of moving there, but U.S. government reporting is inconclusive. Although the U.S. Department of State cautions U.S. travelers about crime and violence in Mexico, it specifically notes that "No advisory is in effect" for a number of states. *See Travel Warning—Mexico,* U.S. Department of State, February 8, 2012.

Regarding the impact on a qualifying relative of relocating abroad, although the record suggests that the applicant's husband has greater ties to the United States than to Mexico, including family and employment, there is no indication how his personal or economic situation would be affected by relocating abroad. Although parts of Mexico have been deemed dangerous to U.S. citizens and rural medical care has been found not up to U.S. standards, the record does not establish health or safety as relevant to the qualifying relative's relocation decision. Based on a totality of the circumstances, the AAO concludes the applicant has not demonstrated that her husband would suffer extreme hardship were he to relocate abroad to reside with the applicant.

The AAO recognizes that the applicant's husband will endure hardship as a result of separation from the applicant and that he has concerns about raising his children alone. However, his situation, if he remains in the United States, is typical to individuals separated as a result of removal or inadmissibility and does not rise to the level of extreme hardship based on the record. As regards

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[2] The AAO notes that the applicant submitted with her waiver application documents in Spanish without the English translation required pursuant to 8 C.F.R. § 103.2(b)(3)--*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.

As these may not be considered due to their failure to comply with the applicable regulation, there is no cognizable evidence supporting contentions regarding employment in Mexico.

establishing extreme hardship in the event the qualifying relative relocates abroad based on the denial of the applicant's waiver request, the record likewise fails to support a finding that any hardship would be extreme.

The record, reviewed in its entirety and in light of the *Cervantes-Gonzalez* factors, cited above, does not support a finding that the applicant's husband will face extreme hardship if the applicant is unable to reside in the United States. Rather, the record demonstrates that he will continue to face no greater hardship than the unfortunate, but expected, disruptions, inconveniences, and difficulties arising whenever a family member is removed from the United States and/or refused admission. Although the AAO is not insensitive to the applicant's husband's situation, the record does not establish that the hardship he claims to be facing rises to the level of "extreme" as contemplated by statute and case law.

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.