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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: FEB 29 2012 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 (the Act), 8 U.S.C. section 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 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. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native and citizen of Mexico. She was found to be inadmissible to the United States pursuant to 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 one year or more and seeking admission within ten years of her last departure. She is married to a United States citizen and has one U.S. citizen child and two lawful permanent resident children. 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).

The Field Office Director concluded that the applicant had failed to establish that the bar to her admission would impose extreme hardship on a qualifying relative, her U.S. citizen spouse, and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) on September 11, 2009.

On appeal, the applicant's spouse states that the applicant is remorseful for her unlawful entry, and asks that United States Citizenship and Immigration Services (USCIS) consider the impacts of the applicant's removal on their three children and grant the applicant's waiver. *Attachment, Form I-290B*, received on October 10, 2009.

The record includes, but is not limited to, a statement from counsel for the applicant; a statement from the applicant's spouse; statements from friends and family members of the applicant and her spouse; a copy of the U.S. State Department's Human Rights Report, published 2008; newspaper articles on violence in Mexico; medical documents pertaining to the applicant's nephew; copies of phone bills, auto insurance bills, utilities invoices; copies of wire transfer receipts, rent receipts and bills accrued by the applicant in Mexico; copy of a hospital record in Spanish;[1] copy of a 2009 tax return for the applicant's spouse; copies of educational records for the applicant's children; a statement from a statement from the Long Beach School District pertaining to the applicant's daughter; pictures of the applicant, her husband and their daughter; a letter from the applicant's employer, tax records and pay stubs for the applicant's spouse.

The entire record was reviewed and all relevant evidence considered in rendering this decision.

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

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[1] The AAO notes that the regulations at 8 C.F.R. § 103.2(b)(3) require that any document containing foreign language submitted to USCIS 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 such, the AAO will not be able to give this evidence consideration in this proceeding.

> (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.
>
> . . . .

The record indicates that the applicant entered the United States without inspection in April 2004 and remained until she departed in July 2008. As the applicant has resided unlawfully in the United States for over a year and is now seeking admission within ten years of her last departure from the United States, she is inadmissible under section 212(a)(9)(B)(i)(II) of the Act.

Section 212(a)(9)(B)(v) of the Act provides for a waiver of 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. Hardship to the applicant or her children 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 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, the applicant's spouse has asserted that it is not safe for his family in Mexico. *Statement of the Applicant's Spouse,* undated. The applicant's spouse has also asserted that his children are experiencing acculturation, emotional and medical problems in Mexico.

The record contains a copy of the 2008 Human Rights Report for Mexico, as well as a newspaper article on the death of two Americans in Mexico. In addition, the AAO takes note of the February 8, 2012, Travel Warning issued by the U.S. Department of State indicating that Transnational Criminal Organizations are currently engaged in direct conflict with the Mexican Government resulting in heightened crime and violence in the border regions. The AAO acknowledges that conditions are challenging and even dangerous in certain areas of Mexico. However, the record does not indicate that the applicant and her spouse would reside in or near an area of concern noted in the Human Rights report or in the recently issued travel warning for Mexico. Nor is there evidence that the applicant or her children have been impacted by crime or violence in Mexico.

The AAO notes that, as discussed above, children are not qualifying relatives in this proceeding. As such, any hardship to them is only relevant to the extent that it impacts the qualifying relative, in this case the applicant's spouse who is residing in the United States. The record contains a single hospital record which is in Spanish and cannot be considered. There is also a statement from the teacher of the applicant's daughter advising that it would be better for her educational development if she remained in the United States. While this evidence is sufficient to establish that the applicant's daughter may experience some hardship due to relocation, it is insufficient to corroborate the applicant's spouse's assertions of medical or physical hardship or that the applicant's children are experiencing impacts which rise above the common impacts of relocation to a degree that they constitute an indirect hardship on the applicant's spouse, who is residing in the United States. The AAO also notes that, although the applicant's spouse has asserted that he is unable to provide care for his children in the United States because they need their mother, the record does not establish that the applicant's spouse would be unable to provide child care for their children. Based on these observations the AAO does not find that the applicant's children will experience hardship to a degree that will indirectly create a impact on the applicant's spouse, either upon relocation or separation.

While the AAO acknowledges the applicant's spouse's concerns regarding conditions in Mexico, the record does not clearly establish the impacts, if any, that the applicant's spouse would experience upon relocation. Without evidence which more specifically relates the evidence of hardships to the applicant's spouse, the AAO does not find the record to establish that the impacts asserted upon relocation, even when considered in aggregate, rise to a degree of extreme hardship.

The applicant's spouse has submitted a statement asserting that he is suffering tremendous physical, emotional and financial hardship due to the applicant's inadmissibility. *Statement of the Applicant's Spouse*, dated October 6, 2009. He explains that his children are currently residing in Mexico with the applicant, and that they are experiencing behavioral and emotional problems due to the relocation to Mexico, as well as several hospitalizations due to illness. The applicant's spouse asserts that he is unable to care for their children in the United States because he has to work to sustain his family and because they need their mother for proper emotional development. Because of this, he states, his children are being denied what they rightfully deserve – an education in the United States. *Statement of the Applicant's Spouse*, dated October 1, 2008. The applicant's spouse

also asserts that he is experiencing extreme financial hardship by having to support two households on his income, and that he is also suffering from depression but cannot afford to seek medical help.

As previously discussed, children are not qualifying relatives in this proceeding. The record does not contain evidence which indicates that the applicant's children are suffering impacts in Mexico to such a degree that it creates an indirect hardship for the applicant's spouse. Nor does the record establish that the applicant's spouse would be unable to provide for his children in the United States. There is no evidence that he would be unable to afford child care services for the periods of time when his children are not in school. However, the AAO will give the emotional impact from separation from his children some consideration when weighing the emotional impact on the applicant's spouse due to separation.

The evidence of financial hardship is sufficient to indicate that the applicant's spouse is experiencing some financial impact due to the departure of his spouse. Costs include phone bills, travel costs, rent and living expenses in Mexico and wire transfer receipts indicating that the applicant's spouse is sending money to support the applicant. The AAO notes that these are common financial obligations, and that in this case, as noted by the applicant's spouse in his October 10, 2009, letter he is residing with his mother, mitigating the financial impact of the applicant's departure on him in the United States. In light of this fact, the AAO does not find the evidence in the record to sufficiently establish that the applicant's spouse is experience a financial impact which rises significantly above that commonly experienced by the relatives of inadmissible aliens who remain in the United States. Letters from family and friends all state that the applicant's spouse is struggling financially, and that he would be unable to care for their children, however, based on the applicant's spouse's income, the AAO cannot determine that he would be unable to meet his current financial obligations or afford child care if he were to have his children reside in the United States. The record does not establish that the applicant's spouse will experience any uncommon financial impact.

The applicant's spouse asserts his family has been devastated by the separation from the applicant, and that he is experiencing depression but cannot afford to seek medical assistance. Statement of the Applicant's Spouse, dated October 6, 2009. The AAO acknowledges that the applicant and her spouse have chosen to relocate their children to Mexico, resulting in separation from the applicant's spouse. The AAO will also take into account statements from family and friends attesting to the emotional and physical impact on their family. However, the AAO does not find the record to contain any objective evidence which allows it to distinguish the emotional impact on the applicant's spouse form that which is commonly experienced by relatives of inadmissible aliens who remain in the United States.

Even when the impacts asserted upon separation are examined in the aggregate, there is insufficient evidence to establish that they rise above the common impacts associated with separation from an inadmissible family member.

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 faces extreme hardship if his wife is refused

admission. The AAO recognizes that the applicant's spouse would prefer for his children to reside and be educated in the United States. These assertions, however, are common hardships associated with removal and separation, and do not rise to the level of "extreme" as informed by relevant precedent. U.S. court decisions have repeatedly held that the common results of removal or inadmissibility are insufficient to prove extreme hardship. *See Hassan v. INS,* 927 F.2d 465, 468 (9th Cir. 1991). In addition, *Perez v. INS,* 96 F.3d 390 (9th Cir. 1996), held that the common results of deportation are insufficient to prove extreme hardship and defined extreme hardship as hardship that was unusual or beyond that which would normally be expected upon deportation. The AAO therefore finds that the applicant has failed to establish extreme hardship to his U.S. citizen spouse as required 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 she 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 rests 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.