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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: JAN 12 2012 Office: CIUDAD JUAREZ FILE: [redacted]

IN RE: Applicant: [redacted]

APPLICATION: Application for Waiver of Grounds of Inadmissibility under section 212(a)(9)(B) of the Immigration and Nationality Act, 8 U.S.C. § 1182(a)(9)(B), and section 212(a)(6)(E)(i) of the Immigration and Nationality Act, 8 U.S.C. § 1182(a)(6)(E)(i)

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 record reflects that the applicant, a native and citizen of Mexico, entered the United States without authorization in October 2004 and did not depart the United States until November 2007. The applicant was thus 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 more than one year. The applicant was also found to be inadmissible to the United States pursuant to section 212(a)(6)(E)(i) of the Immigration and Nationality Act, 8 U.S.C. § 1182(a)(6)(E)(i), for bringing her minor son into the United States in October 2004 without inspection. The applicant does not contest these findings of inadmissibility. Rather, she seeks a waiver of inadmissibility under section 212(a)(9)(B)(v) of the Act, 8 U.S.C. § 1182(a)(9)(B)(v), to reside in the United States with her U.S. citizen spouse, and a waiver of inadmissibility under section 212(d)(11) of the act, 8 U.S.C. § 1182(d)(11).

The field office director concluded that the applicant had failed to establish that extreme hardship would be imposed on a qualifying relative and denied the Application for Waiver of Ground of Excludability (Form I-601) accordingly. The field office director further concluded that, as the applicant was inadmissible under section 212(a)(9)(B)(i)(II) of the Act, the applicant was not eligible for a waiver of section 212(a)(6)(E)(i) of the Act under section 212(a)(9)(B)(v) of the Act. *Decision of the Field Office Director,* dated February 4, 2009.

On appeal, the applicant asserts that her children will suffer if the waiver is denied. The record contains the following documentation: a statement by the applicant's attorney, dated November 2, 2007; a statement by the applicant's husband dated October 30, 2007; statements by the applicant and the applicant's spouse submitted in conjunction with the form I-290B, Notice of Appeal or Motion, written in Spanish, and provided without translation; photographs; financial documents including a copy of the applicant's 2006 federal income tax return, and copies of the applicant's spouse's pay stubs; and documentation which was included with the Form I-601 application. The entire record was reviewed and considered in rendering a decision on the appeal.

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

> 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...

Section 212(a)(6)(E) of the Act provides, in pertinent part:

> (E) Smugglers.-
>
> (i) In general.-Any alien who at any time knowingly has encouraged, induced, assisted, abetted, or aided any other alien to enter or to try to enter the United States in violation of law is inadmissible.
>
> . . . .
>
> (iii) Waiver authorized.-For provision authorizing waiver of clause (i), see subsection (d)(11).

Section 212(d)(11) of the Act provides:

> (11) The Attorney General may, in his discretion for humanitarian purposes, to assure family unity, or when it is otherwise in the public interest, waive application of clause (i) of subsection (a)(6)(E) in the case of any alien lawfully admitted for permanent residence who temporarily proceeded abroad voluntarily and not under an order of removal, and who is otherwise admissible to the United States as a returning resident under section 211(b) and in the case of an alien seeking admission or adjustment of status as an immediate relative or immigrant under section 203(a) (other than paragraph (4) thereof), if the alien has encouraged, induced, assisted, abetted, or aided only an individual who at the time of the offense was the alien's spouse, parent, son, or daughter (and no other individual) to enter the United States in violation of law.

The Field Office Director determined that the applicant is not eligible for a waiver under section 212(d)(11) of the Act because she is inadmissible under section 212(a)(9)(B)(i)(II) of the Act, and is therefore "not otherwise admissible". The Field Office Director erred in making this determination because section 212(d)(11) allows for a waiver in two separate instances: for aliens lawfully

admitted for permanent residence who temporarily proceeded abroad voluntarily and who are *otherwise admissible to the United States as returning residents*, and for aliens seeking adjustment of status or an immigrant visa as an immediate relative or immigrant under section 203(a) of the Act who were involved only in the smuggling of a spouse, parent, son or daughter. As the applicant is not applying for a waiver as alien lawfully admitted for permanent residence, the requirement that she otherwise be admissible does not apply to her. She may therefore apply for a waiver under section 212(d)(11) of the Act because the only alien she assisted to illegally enter the United States was her son.

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 the applicant's 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. 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 reflects that the applicant is a twenty-six year-old native and citizen of Mexico who entered the United States in October 2004 without inspection. The applicant accrued unlawful presence in the United States until November 2007, when the applicant voluntarily departed the United States. The applicant's qualifying relative in this case is her husband, a U.S. Citizen living in Riverside, California, whom she married on September 21, 2005.

The applicant's attorney contends that the applicant's husband will suffer financial hardship if the waiver for the applicant is not granted. The applicant's attorney asserts that the applicant and her spouse have significant financial ties to the United States and that the applicant's spouse is employed by PCI Industries of Ontario, California. The applicant's attorney further asserts that the applicant's husband is just able to meet his monthly expenses with his current income, and that any increase in expenses or decrease in income would create severe financial hardship for the applicant's spouse. *See Statement of* [redacted]., dated November 2, 2007. In support of these contentions, the record includes a copy of the applicant's spouse's 2006 federal income tax return, copies of the applicant's spouse's earning statements from PCI Industries of Ontario, California, a bank statement, a title to an automobile, an insurance statement, and a letter from the applicant's spouse's landlord regarding rent. However, the evidence provided is insufficient to conclude that the qualifying spouse is unable to meet his financial obligations in the applicant's absence. Courts considering the impact of financial detriment on a finding of extreme hardship have repeatedly held that, while it

must be considered in the overall determination, "[e]conomic disadvantage alone does not constitute "extreme hardship." *Ramirez-Durazo v. INS*, 794 F.2d 491, 497 (9th Cir. 1986).

The applicant's attorney asserts that if the waiver is not granted to the applicant, it would result in significant detrimental psychological effects to the applicant's spouse. *See Statement of* [redacted] dated November 2, 2007. However, no documentation was submitted to support this assertion. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *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)). The applicant's attorney further asserts that if the waiver is not granted to the applicant, that it would have a severe detrimental impact on the future educational and to the applicant's children. *See Statement of* [redacted] dated November 2, 2007. However, as stated above, under section 212(a)(9)(B)(v) of the Act, children are not qualifying relatives, and no evidence was submitted concerning the effects of any hardship to the applicant's children on the applicant's husband.

The AAO recognizes that the applicant's spouse will endure 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.

The applicant's attorney states that the applicant would have an extremely difficult time adjusting to life and work in Mexico. The applicant's attorney also states that the economic, political and social problems in Mexico are evidence that the applicant and her family would suffer hardship if the applicant is denied admission to the United States. *See Statement of* [redacted] dated November 2, 2007. The applicant's spouse states that he does not earn enough money to travel back and forth to Mexico, and that he would not like to return to Mexico as he would not earn enough money for his family. The evidence on the record includes general information on conditions on Mexico and on U.S.-Mexico economic relations, and is insufficient to establish that the applicant and her spouse would be unable to find adequate employment in Mexico. Further, although counsel states that the applicant's husband was born and raised in the United States and his family members reside in California, the applicant's spouse states that he moved to Mexico when he was two years old and returned to the United States fifteen years later. Further, no evidence was submitted concerning his family members in the United States. Based on the evidence on the record, the applicant has not established that her spouse would suffer hardship beyond the common results of removal if he were to relocate to Mexico to reside with the applicant.

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 U.S. citizen spouse will face extreme hardship if the applicant is unable to reside in the United States. Rather, the record demonstrates that she will face no greater hardship than the unfortunate, but expected, disruptions, inconveniences, and difficulties arising whenever a spouse is removed from the United States and/or refused admission. Although the AAO is not insensitive to the applicant's spouse's situation, the record does not establish that the hardship she would face rises to the level of "extreme" as contemplated by statute and case law.

As the applicant has not established eligibility for a waiver under section 212(a)(9)(B)(v) of the Act, no purpose would be served in addressing whether she merits a discretionary waiver under section 212(d)(11) of the Act for humanitarian purposes or to assure family unity, or whether such a waiver is otherwise in the public interest.

In proceedings for application for waiver of grounds of inadmissibility, 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. The waiver application is denied.