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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals
20 Massachusetts Ave. NW MS 2090
Washington, DC 20529-2090

U.S. Citizenship and Immigration Services

[redacted]

H6

DATE: JAN 2 5 2012 OFFICE: MEXICO CITY, MEXICO File: [redacted]

IN RE: Applicant: [redacted]

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

ON BEHALF OF APPLICANT:

SELF-REPRESENTED

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, 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)(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 readmission within 10 years of her last departure from the United States. The applicant seeks a waiver of inadmissibility in order to reside in the United States with her U.S. citizen spouse.

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 the Field Office Director,* dated September 14, 2009.

On appeal, the applicant's spouse asserts extreme hardship of an emotional, economic, and medical nature if his wife's waiver is not granted. See *Hardship Letter 2*, received October 9, 2009.

The record contains but is not limited to: Form I-601 and denial letter; the applicant's spouse's hardship letter on appeal; several character reference letters; checking account and billing statements; past-due notices; marriage license; family photographs; and Form I-130. The record also contains a number of Spanish language documents including a document titled "Hace Constar" bearing a photo of the applicant; three character reference letters; and a hardship letter from the applicant's spouse, dated September 12, 2008. These Spanish language documents were not accompanied by full certified English translations as required pursuant to 8 C.F.R. § 103.2(b)(3).[1] Because the applicant failed to submit the required translations of the documents, the AAO cannot determine whether the evidence supports the applicant's claims. *Id.* Accordingly, the Spanish language evidence is not probative and will not be accorded any weight in this proceeding. The entire record, with the exception of the Spanish language documents described, was reviewed and considered in rendering a decision on the appeal.

Section 212(a)(9) of the Act provides:

(B) ALIENS UNLAWFULLY PRESENT.-

[1] 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.

> (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 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 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 regarding a waiver under this clause.

The record reflects that the applicant entered the United States without inspection in or about January 2002 and remained until June 2008 when she voluntarily departed to Mexico.[2] The applicant accrued unlawful presence for the entire time she was in the United States. As the applicant was unlawfully present in the United States for more than one year and seeks readmission within 10 years of her June 2008 departure she is inadmissible under section 212(a)(9)(B)(i)(II) of the Act, 8 USC § 1182(a)(9)(B)(i)(II). The applicant does not contest this finding on appeal.

A waiver of inadmissibility under section 212(9)(B)(v) of the Act is dependent on a showing that the bar to admission would impose 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 the 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).

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[2] The applicant asserts on *Form I-601*, Application for Waiver of Grounds of Inadmissibility, page 1, number 11, that she "entered U.S. approximately September 1993" at McAllen, Texas and "stayed until removal at interview 06-06-08." There is insufficient evidence to establish that the applicant was removed from the United States in June 2008, so the AAO will treat her departure as voluntary. The AAO notes that whether the applicant entered the U.S. in September 1993 or in January 2002, she is still inadmissible under § 212 (a)(9)(B)(i)(II) for being unlawfully present in the U.S. for more than one year and seeking readmission within 10 years of her June 2008 departure.

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.

In this case, the record reflects that the applicant's spouse is a 59-year-old native and citizen of the United States who married the applicant on March 9, 2007. Asserting familial hardship, the applicant's spouse states that his wife's daughter ran away from home after he had to leave her unsupervised "in one of the various times that I have had to go see my wife to appear in questioning to the case..." See *Hardship Letter*, received October 9, 2009. He states "this situation has already cause one of the biggest damage that it can cause and cannot be compare to nothing. Like leaving your daughter at home by herself and having to leave to do things outside of USA, with the surprising news that she is not with us anymore." *Id.* There is nothing in the record to corroborate these statements. The applicant's daughter is not listed on Form I-601 or Form I-130 and her age and other circumstances are unknown to the AAO. As such, the AAO is unable to conclude that the applicant's spouse is experiencing significant familial hardship.

The applicant's spouse asserts medical hardship on appeal, stating: "I need to be submitted to a hernia surgery, which I have not been able to go because I need my wife here for anything that might be needed." See *Hardship Letter*, received October 9, 2009. The record contains no documentary evidence concerning the applicant's spouse's health or medical condition, and no explanation or evidence addressing whether any other individual could care for him in the event of such surgery.

The applicant's spouse states that his economic situation is not good and is "already destroyed in short words because of this request of waiver I had to borrow money from three different sources. Begging people because the time that we have to submit this request is coming to an end." See *Hardship Letter*, received October 9, 2009. The record contains *Business Checking Account Statements*, showing a balance of $11.00 in February 2009 and $25.00 in August 2009; *Personal Checking Account Statement*, showing a balance of $388.11 in July 2009; two "*10 Day Past Due Notices*," (one dated September 11, 2009 and another September 14, 2009) related to a $208.95 auto payment; and a *Utilities and Services Bill*, dated January 2007 – two months prior to the applicant's marriage to her spouse. While these billing statements are helpful in demonstrating that the applicant's spouse has had some difficulty meeting financial obligations, they paint an incomplete picture. The record contains no documentary evidence demonstrating the income of the applicant's spouse or any earnings by the applicant prior to her departure to Mexico. Nor does the record contain a complete budget or other documentary evidence relating the applicant's spouse's financial difficulties to separation from the applicant.

The AAO acknowledges that separation from the applicant may cause various difficulties for the applicant's spouse. However, it finds the evidence in the record insufficient to demonstrate that

the challenges encountered by the qualifying relative, when considered cumulatively, meet the extreme hardship standard.

The applicant's spouse does not address the possibility of relocating to Mexico to be with the applicant, and makes no assertions of hardship related thereto. Accordingly, the AAO is unable to consider relocation-related hardship to the applicant's spouse.

The applicant has, therefore, failed to demonstrate the challenges her spouse faces are unusual or beyond the common results of removal or inadmissibility to the level of extreme hardship. Accordingly, the AAO finds that the applicant has failed to demonstrate extreme hardship to a qualifying relative.

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. 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. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.