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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

H6

[redacted]

DATE: JUL 12 2012 OFFICE: CIUDAD JUAREZ, MEXICO File: [redacted]

IN RE: Applicant: [redacted]

APPLICATION: Application for Waiver of Grounds of Inadmissibility under Section 212(9)(B)(v) of the Immigration and Nationality Act, 8 U.S.C. § 1182(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 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 with the field office or service center that originally decided your case by filing a 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,

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 under 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 his departure from the United States. The applicant seeks a waiver of inadmissibility, in order to reside in the United States with his 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 January 28, 2010.

On appeal the applicant's spouse states that she needs her husband to support and take care of her needs, she cannot support herself or be alone with all the pressure she faces, and she needs her own house and live as a normal wife and person. *See Form I-290B, Notice of Appeal or Motion,* received March 4, 2010.

The record contains, but is not limited to immigration applications and petitions; a psychological evaluation; a hardship letter; medical-related records and printouts for the applicant's spouse and spouse's mother; a general power of attorney from the applicant's spouse's mother to applicant's spouse; and letters from family and friends/colleagues in support of the waiver. The record also contains two Spanish-language documents that are not accompanied by full, certified English translations as required under 8 C.F.R. § 103.2(b)(3).[1] These include an undated letter from the applicant's spouse and a letter from [redacted] dated June 21, 2008. Because the required translations were not submitted for these documents, the AAO will not consider them in this proceeding. The entire record, with the exception of the Spanish-language documents described, was reviewed and considered in rendering this decision on the appeal.

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

(B) ALIENS UNLAWFULLY PRESENT.-

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[1] 8 C.F.R. § 103.2(b)(3). Translations. Any document containing foreign language submitted to United States Citizenship and Immigration Services (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.

The record reflects that the applicant entered the United States without inspection in or about December 2004 and voluntarily departed to Mexico in or about June 2007. The applicant accrued unlawful presence for a period in excess of one year. As the applicant is seeking admission within 10 years of his departure, he is inadmissible pursuant to section 212(a)(9)(B)(i)(II) of the Act.

A waiver of inadmissibility under section 212(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 can be considered only insofar as it results in hardship to a qualifying relative. In the present case, the applicant's spouse is his only qualifying relative. 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's spouse is a 52-year-old native of Mexico and citizen of the United States who has been married to the applicant since May 2005. She contends that the applicant began living with her and her mother in February 2005 and has been supporting them financially since then. The applicant's spouse indicates that her mother is a kidney dialysis patient who also suffers from cardiac disease and high blood pressure, is unable to work, and relies on her and her husband for food and shelter. Supporting medical documents have been submitted. The record contains no documentary evidence, however, showing that the applicant supports his spouse or mother-in-law financially. No financial documentation establishing the applicant's spouse's current income and expenses and/or assets and liabilities has been provided to demonstrate that the applicant's spouse is experiencing economic hardship in the absence of the applicant. Nor has financial documentation been submitted to show the family's household income or expenses prior to the applicant's 2007 departure to Mexico. As noted in the Field Office Director's decision, without supporting financial evidence the economic impact of the applicant's absence cannot be determined.

The applicant's spouse states that she suffers from [redacted] and general pain from [redacted] Supporting medical documents have been

submitted. The applicant's spouse maintains that she also suffers from depression. In a handwritten July 2008 "Patient Progress Note," [redacted] PAC assesses the applicant's spouse with [redacted], and [redacted] and prescribes several medications though only [redacted] can be deciphered. A psychological evaluation, dated February 23, 2010, has been submitted on appeal. Therein, [redacted] asserts that the applicant's spouse has suffered anxiety since being separated from her husband, is taking care of her mother who is very ill, and is under very high pressure because she has to come and go from one city to another to be with her husband and to attend her mother. [redacted] relays that the applicant's spouse told her the stress is so much she is taking strong anti-depressive medicines. [redacted] observed "signs of insecurity, impulsive, isolation, retirement, and very high indicators of significative depression." [*sic*]. She recommends that the applicant's spouse receive psychological therapy and continue taking the anti-depressant advised by her doctor. While the AAO recognizes that the applicant has a number of health-related conditions, the record does not establish the severity of these conditions or the impact they have on her daily life. Nor does the record establish the impact the applicant's absence has had on his spouse's health or that the difficulties experienced are beyond those normally associated with a spouse's inadmissibility or removal.

The AAO acknowledges that separation from the applicant has caused and may continue to 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 possibility of the applicant's spouse relocating to Mexico has not been addressed in the record and the AAO will not speculate in this regard. Accordingly, the AAO finds the evidence insufficient to demonstrate that the applicant's U.S. citizen spouse would suffer extreme hardship were she to relocate to Mexico to be with the applicant.

The applicant has, therefore, failed to demonstrate that the challenges his 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. 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.