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

U.S. Citizenship and Immigration Services

H4

[redacted]

DATE: MAY 30 2012 OFFICE: MONTERREY, MEXICO FILE: [redacted]

IN RE: [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:

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 Form I-601, Application for Waiver of Grounds of Inadmissibility was denied by the Field Office Director, Monterrey, Mexico, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The record reflects the applicant is a native and citizen of Mexico who entered the United States without admission in August 2002. He remained unlawfully in the United States until December 2008. The applicant 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 for more than one year and seeking readmission within ten years of his departure from the United States. The applicant has a U.S. citizen spouse, and he is the beneficiary of an approved Form I-130, Petition for Alien Relative. He 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), in order to live in the United States with his wife and children.

In a decision dated April 8, 2010, the director concluded the applicant failed to establish that a qualifying relative would experience extreme hardship if he were denied admission into the United States. The director also found the applicant did not establish that he merited a favorable exercise of discretion. The waiver application was denied accordingly.

The applicant asserts on appeal that his U.S. citizen wife will experience extreme hardship if he is denied admission into the United States. In support of his assertions, the applicant submits letters from his wife and friends, financial evidence, documents establishing identity and relationships, photographs, and information relating to their children. The record also contains Spanish-language documentation.

8 C.F.R. § 103.2(b)(3) provides that:

> 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.

Because the Spanish-language evidence is not accompanied by certified English translations, it cannot be considered in the applicant's case. The entire remaining record was reviewed and considered in rendering a decision on the appeal.

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

> (i) [A]ny 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 reflects the applicant was unlawfully present in the United States between August 2002 and December 2008, when he returned to Mexico. Inadmissibility under section 212(a)(9)(B)(i)(II) of the Act, which is triggered upon departure, remains in force until the alien has been absent from the United States for ten years. The applicant was unlawfully present in the United States for over one year and he has remained outside of the country for less than ten years. He is therefore inadmissible under section 212(a)(9)(B)(i)(II) of the Act. The applicant does not contest his inadmissibility under section 212(a)(9)(B)(i)(II) of the Act.

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

> 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.

Section 212(a)(9)(B)(v) of the Act provides that a waiver of the bar to admission is dependent first upon a showing that the bar imposes an extreme hardship on a qualifying family member. Once extreme hardship is established, it is but one favorable factor to be considered in the determination of whether the Secretary should exercise discretion. *Matter of Mendez,* 21 I&N Dec. 296 (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,* 22 I&N Dec. 560, 565 (BIA 1999), the Board of Immigration Appeals (Board) provided a list of factors it deemed relevant in determining whether an alien has established extreme hardship to a qualifying relative. 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).

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 applicant's U.S. citizen wife is his qualifying relative under section 212(a)(9)(B)(v) of the Act. The applicant refers to hardship his U.S. citizen children would experience if the waiver application is denied. Congress did not include hardship to an alien's children as a factor to be considered in assessing extreme hardship under section 212(a)(9)(B)(v) of the Act. Hardship to the applicant's children will therefore not be considered, except as it may affect the applicant's spouse.

The applicant's wife indicates in her letters that she and the applicant have three U.S. citizen children under age ten, their children cry and ask where their father is daily, and that the two younger children require speech therapy. She states the applicant was the family's sole source of

income prior to his departure; she now relies on her salary of $9.25 an hour, government assistance, and financial help from friends; and she fears she will lose an investment on a house she is in the process of buying. The applicant's wife states she also requires therapy and anti-depressant medication for separation-related problems; she worries about crime and violence in Mexico, and that adjusting to life in Mexico would be hard on their children.

Documentary evidence in the record corroborates the applicant's wife's statements that she receives biweekly therapy; works part-time, earning [redacted]; and made an offer to purchase a home. Letters from friends attest to the applicant's good character and confirm the applicant's wife is struggling to raise their children on her own.

Speech evaluation evidence reflects the applicant's wife brought their two year-old daughter for speech therapy evaluation in 2009, expressing concern that their daughter did not talk much, was aggressive, and appeared to have anger issues and nightmares more than four times a week. Evaluation results reflect their daughter has no impairments or special concerns, but would benefit from weekly speech and language therapy. A speech evaluation for the applicant's son, done when he was 3 years old, reflects his formal language skills are slightly below average, but his speech intelligibility is very good, and speech articulation skills are within age expectation levels.

Upon review, the AAO finds that the evidence in the record, when considered in the aggregate, fails to establish the applicant's wife would experience hardship that rises beyond the common results of removal or inadmissibility if the applicant is denied admission into the country, and his wife remains in the United States. Although the record contains evidence of the applicant's wife's part-time work and salary, the record lacks evidence of her family's expenses and her reliance on outside assistance. Moreover, the record lacks evidence showing that the applicant supported the family prior to his departure. The record also lacks evidence to clarify or establish that the applicant's wife purchased a home, or that she lost the deposit she made with her offer. Furthermore, although some evidence indicates their daughter would benefit from weekly speech and language therapy, the record fails to demonstrate that the applicant's wife is experiencing extreme emotional hardship due to her children's speech therapy needs. In addition, the evidence fails to clarify or provide a diagnosis for the applicant's wife's conditions. It does not address the reasons for her therapy, establish that she requires medication for her symptoms, or demonstrate that she is experiencing emotional hardship beyond that normally experienced upon inadmissibility or removal of a family member.

The cumulative evidence in the record also fails to establish that the applicant's wife would experience extreme hardship if she moved with her family to Mexico. The applicant indicates his wife and family would experience emotional and physical hardship due to acculturation issues and due to the crime and violence in Mexico; however no documentary evidence was submitted to corroborate these claims. It is noted that U.S. Department of State country-conditions information recommends that travel to several areas in the state of Guerrero should be deferred due to an increase in the murder rate as a result of violence among rival criminal organizations. An exception is made for the city of Acapulco, where the applicant lives, however. *See* http://travel.state.gov/travel/cis_pa_tw/tw/tw_5665.html. The record lacks evidence to indicate or

establish the applicant's family would face safety or other concerns in Mexico that would cause his wife to experience hardship beyond that normally experienced upon inadmissibility or removal of a family member.

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 an 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. *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.