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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]

Date: MAR 2 8 2013 Office: MEXICO CITY 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)

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 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 in accordance with the instructions on 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,

Ron Rosenberg
Acting Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the District Director, Mexico City, Mexico. An appeal of the denial was dismissed by the Administrative Appeals Office (AAO). The matter is now before the AAO on motion. The motion will be granted and the underlying application remains denied.

The record reflects that the applicant, a native and citizen of Mexico, entered the United States without authorization in 2006 and remained in the United States until October 2008. The applicant 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 more than one year. The applicant does not contest this finding of inadmissibility. Rather, he 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 his lawful permanent resident parents.

The District 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 Grounds of Inadmissibility (Form I-601) accordingly. *Decision of the District Director,* dated October 29, 2010.

The AAO, reviewing the applicant's Form I-601 on appeal, concurred with the District Director that extreme hardship to a qualifying relative had not been established, as required by the Act. *Decision of the AAO*, dated September 13, 2012. Consequently, the appeal was dismissed. *Id.*

The applicant submitted the Form I-290B, Notice of Appeal or Motion, on October 9, 2012. On motion to reopen, counsel states that the applicant filed his original waiver application *pro se*, and has now retained counsel. Counsel submitted further documentary evidence to support the applicant's claim that his qualifying relatives will suffer extreme hardship if the waiver application is not approved.

The record contains the following documentation: a brief filed by applicant's counsel; a joint statement by the applicant's parents; a statement from the applicant's sister; medical documentation for the applicant's mother; and documentation which was submitted in support of the applicant's initial Form I-290B, Notice of Appeal or Motion, and Form I-601, Application for Waiver of Grounds of Inadmissibility.

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.
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> . . . .
>
> (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...

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 can be considered only insofar as it results in hardship to a qualifying relative. The applicant's lawful permanent resident parents are the only qualifying relatives 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 v. INS*, 138 F.3d 1292, 1293 (9th Cir. 1993), (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 indicates that the applicant's father came to the United States in 1989. Counsel states that the applicant's father encountered health problems in 2006, and that the applicant entered the United States in 2006 without inspection in order to assist his father to support the family financially and emotionally. The applicant's father states that he got sick in 2006, and that the applicant came to the United States in 2006 to help him get better. However, the record does not indicate the type or extent of the illness of the applicant's father, and contains no evidence to support the contention that he was sick in 2006. 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)).

Counsel contends that the applicant cared financially and emotionally for his parents and siblings, and that the family depends on the applicant not only for financial support, but also for long-term stability. However, there is no evidence in the record that would support these contentions.

Counsel further contends that the applicant's father continues his efforts to maintain the family, but that the situation has become cost prohibitive and emotionally draining. However, there is no

financial evidence in the record that would show that the applicant's father is unable to meet the financial obligations for the family in the applicant's absence, nor is there any evidence concerning any emotional hardship the applicant's father may be suffering in the applicant's absence.

The letter of the applicant's parents states that the applicant's mother is suffering from psychological hardship due to the separation from the applicant. The letter states that the applicant's mother has been going to therapy since being separated from the applicant. The record includes a statement from a doctor indicating that the applicant's mother has been under the doctor's care for depression and anxiety. However, the record contains no further detail about the condition of the applicant's mother or any treatment that may be required. The evidence on the record is insufficient to conclude that the emotional problems that the applicant's mother is experiencing are resulting in hardship beyond the common results of removal or inadmissibility.

The letter from the applicant's parents states that the applicant's mother is sick. The record includes medical documentation from 2010 and 2011 to indicate that the applicant's mother has been suffering from upper back and chest pain and nausea, but contains no detailed explanation from the treating physician concerning her condition or any treatment or assistance needed. Without more information on her current condition, including a specific diagnosis, description of the nature and severity of the condition, and prognosis for recovery, the AAO is not in the position to reach conclusions concerning the applicant's mother's medical condition. The letter from the applicant's parents further states that the applicant's four siblings in the United States have been assisting the applicant's father in getting the treatment necessary for the applicant's mother.

The AAO recognizes that the applicant's parents will endure hardship as a result of separation from the applicant. However, their situation, if they remain in the United States, is typical to individuals separated as a result of a relative being denied admission to the United States and does not rise to the level of extreme hardship based on the record.

Counsel contends that the applicant's parents cannot relocate to Mexico, as such a relocation would negatively impact the applicant's parents both financially and emotionally, and would jeopardize the long-term well-being of the family. However, there is no evidence in the record to support these contentions. The AAO notes that both the applicant's parents were born and raised in Mexico, and are familiar with the language and the customs of Mexico. Based on the evidence on the record, the applicant has not established that his parents would suffer hardship beyond the common results of removal if they 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 lawful permanent resident parents will face extreme hardship if the applicant is unable to reside in the United States. Rather, the record demonstrates that they will face no greater hardship than the unfortunate, but expected, disruptions, inconveniences, and difficulties arising whenever an adult son or daughter is removed from the United States and/or refused admission. Although the AAO is not insensitive to the applicant's parent's situation, the record does not establish that the hardship they would face rises to the level of extreme as contemplated by statute and case law.

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 application remains denied.

ORDER: The motion to reopen is granted and the waiver application remains denied.