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

U.S. Citizenship and Immigration Services

DATE: MAY 21 2013 OFFICE: SAN BERNARDINO FILE:

IN RE:

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:

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 Field Officer Director, San Bernardino, California, and an appeal was dismissed by the Administrative Appeals Office (AAO). This matter is now before the AAO on a motion to reopen. The motion will be granted and the underlying application will be remain denied.

The record reflects that 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 his last 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 and child.

The Field Office Director concluded that the record failed to establish the existence of extreme hardship for a qualifying relative and denied the application accordingly. *See Decision of the Field Office Director*, dated May 3, 2011. On appeal, the AAO also determined that the applicant had not established extreme hardship to his spouse and dismissed the appeal accordingly. *See Decision of the AAO*, dated December 7, 2012.

The applicant has submitted a motion to reopen the dismissal of his appeal. Based on the updated psychological documentation submitted concerning the applicant's spouse's condition, the motion to reopen will be granted. In the applicant's motion to reopen, counsel for the applicant asserts that the applicant has submitted sufficient evidence demonstrating that the applicant's spouse is suffering extreme hardship upon separation from the applicant.

In support of the applicant's motion to reopen, the applicant submitted an updated letter concerning his spouse's psychological condition. The entire record was reviewed and considered in rendering this decision.

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

> (B) ALIENS UNLAWFULLY PRESENT.-
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> (i) In general.- Any 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.
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> . . . .

> (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 applicant is a native and citizen of Mexico who entered the United States without admission or parole on September 2, 2001 and departed from the United States on September 5, 2010. The applicant began to accrue unlawful presence in the United States on his 18th birthday, on October 6, 2002. The applicant accrued unlawful presence in the United States from October 6, 2002 until his departure on September 5, 2010. Accordingly, the applicant accrued over one year of unlawful presence in the United States, and is inadmissible under section 212(a)(9)(B)(i)(II) of the Act.

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, parent, son or daughter of the applicant. Hardship to the applicant can be considered only insofar as it results in hardship to a 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).

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 27-year-old native and citizen of Mexico. The applicant's spouse is a 21-year-old native of Mexico and citizen of the United States. The applicant is currently residing in Mexico and his spouse and child are residing in Center, Texas.

The applicant's spouse asserts that she and her son miss and love the applicant. The record contains a behavioral health evaluation of the applicant's spouse from June 2, 2011, stating that the applicant's spouse was experiencing symptoms of depression and anxiety. The applicant's spouse was tentatively diagnosed with major depressive disorder and adjustment disorder with anxiety. The record also contains a mental health evaluation by a professional counselor, dated December 16, 2012, stating that the applicant's spouse misses the applicant and that the responsibility she feels as a single parent drains her energy. The tests administered by the counselor indicated moderate depression and mild anxiety. The applicant's spouse was diagnosed

with major depressive disorder. The applicant's spouse also asserts that her son's health has been affected by separation from the applicant and that he cries all the time. It is noted that the applicant's son is not a qualifying relative in the context of this application and that the record does not contain any medical or psychological documentation concerning the applicant's son. It is acknowledged that separation from a spouse or child nearly always creates hardship for both parties and the record indicates that the applicant's spouse is suffering emotional hardship upon separation from the applicant. It is also noted that the applicant's spouse is currently employed part-time and the record does not contain any information from her employer indicating that she is experiencing difficulty performing her work.

The applicant's spouse asserts that she is suffering a financial crisis due to separation from the applicant. The professional counselor evaluation indicates that the applicant's spouse is currently residing in her parents' home with her parents and siblings. The evaluation further indicates that the applicant's spouse is employed in a doughnut shop. There is no information in the record concerning the extent of the applicant's spouse's financial obligations. There is also no information concerning the applicant's spouse's income. Accordingly, there is no indication that the applicant's spouse is unable to meet her financial household obligations. In the aggregate, there is insufficient evidence in the record to demonstrate that the applicant's spouse is suffering from hardship due to separation from the applicant that is beyond the common results of the inadmissibility or removal of a spouse.

The applicant's spouse asserts that she cannot relocate to Mexico because she would be unable to financially support her family. The applicant's spouse also asserts that she and her son's education would suffer in Mexico and she would fear for their safety. As noted, the applicant's spouse's son is not a qualifying relative in the context of this application. The applicant's spouse asserts that she graduated from high school in 2009 and wished to take nursing classes in the United States. There is no indication that the applicant's spouse has enrolled in any classes, even prior to the applicant's departure on September 5, 2010. The applicant's spouse's desire for higher education is speculative and there is no information in the record indicating that she could not pursue this goal in Mexico. The record does not contain any background country conditions concerning Mexico. Going on record without supporting documentary evidence generally is not sufficient for purposes of meeting the burden of proof in these proceedings. *See 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 record also does not indicate that the applicant's spouse is financially supporting the applicant in Mexico. In fact, the behavioral health evaluation of the applicant's spouse indicates that the applicant is residing with his mother in Mexico and that his father is providing support. There is no information concerning the extent of the applicant's financial obligations in Mexico and whether his other family members could or would assist his family in relocation.

The record indicates that the applicant's spouse is residing with her family members in the United States and her father submitted a letter on the applicant's behalf stating that he would worry about the his daughter's family's safety if they relocated to Mexico. It is noted that the applicant's Form G-325A indicates that his parents reside in Guanajuato, Mexico. The most recent Department of

State travel advisory concerning Mexico, dated November 20, 2012, indicates that there are no travel advisories in effect for this region of Mexico. It is noted that the applicant's spouse is also a native of Guanajuato, Mexico. In this case, the record contains insufficient evidence to show that the hardships faced by the qualifying relative, if she were to relocate to Mexico, rise to the level of extreme hardship.

The AAO therefore finds that the applicant has failed to establish extreme hardship to his U.S. citizen spouse as required under section 212(a)(9)(B)(v) of the Act. As the applicant has not established extreme hardship to a qualifying family member, no purpose would be served in balancing positive and negative factors to determine whether the applicant merits this 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 prior decision of the AAO will be affirmed and the underlying application will remain denied.

ORDER: The motion to reopen is granted, the prior decision of the AAO is affirmed, and the application remains denied.