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U.S. Citizenship
and Immigration
Services



DATE: APR 05 2013 Office: CIUDAD JUAREZ FILE: [REDACTED]

IN RE: Applicant: [REDACTED]

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

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 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 that any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

A handwritten signature in black ink, appearing to read "Ron Rosenberg".

Ron Rosenberg
Acting Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Field Office Director, Cd. Juarez, Chih., Mexico, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal is dismissed.

The applicant is a native and citizen of Mexico who was found to be inadmissible to the United States pursuant to sections 212(a)(9)(B)(i)(II) of the Immigration and Nationality Act (Act), 8 U.S.C. § 1182(a)(9)(B)(i)(II), as an alien seeking admission within 10 years of departure or removal after having been unlawfully present in the United States for one year or more, and 212(a)(2)(A)(i)(I) of the Act, 8 U.S.C. § 1182(a)(2)(A)(i)(I), for having been convicted of a crime involving moral turpitude. The applicant is the spouse of a U.S. citizen. She seeks a waiver of inadmissibility pursuant to sections 212(a)(9)(B)(v) and (h) of the Act, 8 U.S.C. §§ 1182(9)(B)(v) and (h), in conjunction with an immigrant visa application, in order to obtain admission to the United States as a lawful permanent resident.

The director found that the applicant had not established that the bar to her admission would result in extreme hardship to the qualifying relative, as required for a waiver under sections 212(a)(9)(B)(v) and (h) of the Act, and denied the applicant's Form I-601, Application for Waiver of Grounds of Inadmissibility accordingly. *Field Office Director's Decision*, dated November 24, 2010.

On appeal, counsel asserts that the applicant has demonstrated extreme hardship to her qualifying relative. *See Form I-290B, Notice of Appeal or Motion*, dated December 16, 2010.

The record of evidence includes, but is not limited to, counsel's briefs; statements from the applicant's U.S. citizen husband; birth certificates for the applicant's husband's four U.S. citizen sons from a prior relationship; the applicant's husband's child support records for his sons; a psychological evaluation of the applicant's U.S. citizen husband; the applicant's immigration court records; and the applicant's criminal records. The entire record was reviewed and all relevant evidence considered in reaching a decision on the appeal.

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

(B) ALIENS UNLAWFULLY PRESENT.-

(i) In general.- Any alien (other than an alien lawfully admitted for permanent residence) who-

(I) was unlawfully present in the United States for a period of more than 180 days but less than 1 year, voluntarily departed the United States (whether or not pursuant to section 244(e) prior to the commencement of proceedings under section 235(b)(1) or section 240), and again seeks admission within 3 years of the date of such alien's departure or removal, or

(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.

(ii) Construction of unlawful presence.- For purposes of this paragraph, an alien is deemed to be unlawfully present in the United States if the alien is present in the United States after the expiration of the period of stay authorized by the Attorney General or is present in the United States without being admitted or paroled.

(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.

Section 212(a)(2)(A) of the Act states, in pertinent parts:

(i) [A]ny alien convicted of, or who admits having committed, or who admits committing acts which constitute the essential elements of –

(I) a crime involving moral turpitude (other than a purely political offense) or an attempt or conspiracy to commit such a crime . . . is inadmissible.

Section 212(h) of the Act states, in pertinent part:

The Attorney General [Secretary of Homeland Security] may, in his discretion, waive the application of subparagraph (A)(i)(I), (B), . . . of subsection (a)(2) and subparagraph (A)(i)(II) of such subsection insofar as it relates to a single offense of simple possession of 30 grams or less of marijuana if –

(1)(A)

(B) in the case of an immigrant who is the spouse, parent, son, or daughter of a citizen of the United States or an alien lawfully admitted for permanent residence if it is established to the satisfaction of the Attorney General [Secretary] that the alien's denial of admission would result in extreme hardship to the United States citizen or lawfully resident spouse, parent, son, or daughter of such alien

The record indicates that the applicant last entered the United States without inspection in approximately July or August of 2001. She thereafter remained in the United States unlawfully. On September 20, 2006, the applicant was convicted of attempted possession of a forged instrument, a class E felony, as defined by [REDACTED] of the [REDACTED]. She was sentenced to a maximum term of 32 months, which was suspended, and was placed on probation for twelve months under special conditions. The applicant was subsequently placed into removal proceedings before the [REDACTED] pursuant to a Notice to Appear (NTA), issued on or about October 19, 2006. The record indicates that on March 21, 2007, the applicant conceded removability as charged under sections 212(a)(2)(A)(i)(I) (for having been convicted of a crime involving moral turpitude) and 212(a)(6)(A)(i) (for being present in the United States without being inspected or paroled) of the Act. The Immigration Judge granted the applicant voluntary departure until October 11, 2007 with an alternative order of removal to Mexico, in the event she failed to comply with the voluntary departure order. The record indicates that the applicant complied with the terms of the court's order and departed the United States on or about July 13, 2007.

The applicant has not disputed inadmissibility under section 212(a)(2)(A)(i)(I) of the Act, for having been convicted of a crime involving moral turpitude based on her criminal conviction, and section 212(a)(9)(B)(i)(II) of the Act, 8 U.S.C. § 1182(a)(9)(B)(i)(II), as an alien seeking admission within 10 years of departure or removal after having been unlawfully present in the United States for one year or more, from approximately August 2001 to July 13, 2007. As the record does not show the findings of inadmissibility to be in error, the AAO will not disturb the determinations. The applicant is the beneficiary of an approved Form I-130, Petition for Alien Relative, by her U.S. citizen husband, and seeks a waiver of her inadmissibility pursuant to sections 212(a)(9)(B)(v) and (h) of the Act. Based on the approved Form I-130, the AAO is satisfied that the applicant's U.S. citizen husband is a qualifying relative for purposes of her waiver application.

Sections 212(a)(9)(B)(v) and (h) of the Act provide 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. *See 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*, 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. 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. 1998) (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.

Counsel contends that the applicant's U.S. citizen husband, [REDACTED] will suffer extreme hardship upon separation. He maintains that [REDACTED] is suffering emotionally and psychologically because of the ongoing separation from his wife and minor U.S. citizen daughter, [REDACTED]. [REDACTED] asserts in his statements that he misses his wife and child. He states that his wife helped him with his drinking problem and that since her departure to Mexico, he has become depressed. He states that he also has four sons from a prior relationship, two of whom, [REDACTED], now reside with him. [REDACTED] says he needs his wife to help him raise his sons, who suffer from diabetes. In addition, he states that he wants his daughter to come to the United States where she can

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have a good education. Moreover, he is worried about his wife and daughter's safety in Mexico, due to the drug wars and kidnapping that is occurring there. He states that he has been able to visit them only four times since they departed the United States in 2007.

In support of the psychological hardship claim, counsel has submitted a psychological evaluation of the [REDACTED], by clinical psychologist, [REDACTED], dated November 14, 2009. [REDACTED] concludes that [REDACTED] who is now 38 years old, has developed a pattern of posttraumatic stress disorder (PTSD), manifested in clinically severe depression and anxiety, and also somatization disorder (development of physical symptoms as a result of psychological factors), as a result of the long term separation from his wife and daughter. The report indicates that [REDACTED] reported that although previously only a social drinker, since approximately one year prior to the evaluation, his alcohol use has become excessive due to his depressive feelings relating to his separation from his wife and child. He indicated that the applicant had helped him stay away from his alcohol and drug abusing friends and live a more responsible life. [REDACTED] reported that he has difficulty sleeping, has occasional nightmares. Based on the results of a Minnesota Multiphasic Personality Inventory-2 (MMPI-2) test, which was consistent with the clinical presentation, [REDACTED] found that [REDACTED] suffers from PTSD, rooted in his emotionally unstable childhood with an abusive, alcoholic father. [REDACTED] asserts that the major psychological conditions [REDACTED] currently suffers will become more severely exacerbated should he have to relocate or continue to be separated from his wife and daughter.

We note that the AAO issued a Request for Further Evidence (RFE) on January 29, 2013, requesting duplicates of missing evidence in the record and any additional evidence in support of hardship, including the birth certificate of the applicant's and [REDACTED] U.S. citizen child, [REDACTED]. However, that birth certificate was not provided, nor did the applicant provide any other evidence that may cumulatively establish paternity, including [REDACTED] hospital or medical records or school records. Thus, the record currently does not demonstrate that the applicant and her husband have a child in common. Similarly, although the RFE requested a statement from the applicant, such statement was not proffered. The record therefore contain no statements from the applicant or [REDACTED] family in the United States, including his mother or siblings in the United States, to corroborate the hardship claims, including the history of childhood abuse [REDACTED] suffered or his more recently claimed excessive alcohol use. Additionally, although the applicant's husband claims that he has visited his wife and child in Mexico, there is no evidence of these trips or any other evidence of the ongoing relationship and emotional ties between the applicant and her spouse.

Moreover, we note that although [REDACTED] indicates that he explicitly recommended that [REDACTED] seeks psychotherapeutic care, including medications, back in 2009, there is no indication in response to the January 2013 RFE that the applicant's husband has ever sought such treatment. The two undated statements submitted in response to the RFE from [REDACTED] do not make any reference to ongoing psychological problems he is suffering or whether he is receiving any treatment for any such problems. We also note that [REDACTED] does not comment on the likelihood that proper treatment would enable the applicant's to manage his conditions better, should the ongoing separation from his wife and child continue. Additionally, [REDACTED] finding that the applicant's husband also suffers from somatization disorder, manifesting as stress related headaches, chronic back pain, significant weight loss, and an episode of what may have been an anxiety attack, are not

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supported by medical records or other independent evidence, including the applicant's husband's own statement, statements from family members or friends close to him, or a letter even from the massage therapist who he purportedly sees for his chronic back pain. Finally, the AAO notes that it can give very little weight to [REDACTED] findings which hypothesize that [REDACTED] and [REDACTED] would likely become victims of violent crime in Mexico and that Natalia's unspecified poor health would continue to worsen. While we acknowledge [REDACTED] expertise in the field of psychology, it is not been established that he is an expert on country conditions in Mexico, and we cannot give great weight to his opinion as to what the applicant or [REDACTED] may face in Mexico, particularly where he makes no attempt to specify the authoritative source of his information. We also find it significant that the report, nor the record, addresses whether the applicant or her daughter, or anyone they know, have faced or been targeted by any threats or violence in the five years they have been residing in Mexico.

The applicant in his statements, and as he reported to [REDACTED], indicate that he is suffering financial hardship as a result of the separation from his wife and child in Mexico. He indicates that he is having difficulty paying his bills because he has to support his four sons in the United States, as well as the applicant and [REDACTED] in Mexico. In addition, he states it is expensive to visit the latter in Mexico and expresses concern in the psychological evaluation regarding the costs he has incurred for the applicant's immigration case and the \$3,000 loan from his mother. The evaluation also suggests that [REDACTED] cannot afford medical care, even to see a dentist for a broken tooth. However, the applicant has not proffered any documentary evidence in support of [REDACTED] claim of financial hardship. The record does contain [REDACTED] 2009 Form I-864, Affidavit of Support, filed in support of the applicant's visa application, and which indicates that his annual income was over \$49,000. However, the record contains no evidence of [REDACTED] income or expenses (outside of child support records), such as, for example, social security earnings statements, tax returns, bills, and other evidence of debt or financial obligations, to enable the AAO to meaningfully assess the financial impact of his ongoing separation from the applicant. Similarly, we note that there is no evidence that [REDACTED] provides any financial support to the applicant and the couple's daughter in Mexico. 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)).

Having carefully reviewed the record, the AAO finds that it does not demonstrate that the hardships suffered by the applicant's husband, considered in the aggregate, rise to the level of extreme hardship. The applicant has not satisfied her burden to show the hardship her husband would suffer constitutes "significant hardship over and above the normal disruption of social and community ties" normally associated with deportation or refusal of admission. *Matter of O-J-O-*, 21 I&N Dec. at 385.

The AAO also considers whether the applicant has demonstrated that her husband will suffer extreme hardship upon relocation to Mexico. The record indicates that [REDACTED] is a native of Mexico and a naturalized U.S. citizen since 2006. He reported to [REDACTED] that he has resided in the United States since he was five years old and that he communicates in both the English and Spanish languages. Thus, it appears that relocation to Mexico would not entail having to adjust to a new language. The record also discloses that the applicant's husband has four U.S. citizen sons from a

prior relationship, all of whom are under the age of eighteen. The psychological evaluation also indicates that the applicant's husband reported that he has a close relationship with his mother in the United States, that he is gainfully employed in the United States, and that he provides child support for his sons, who also receive health insurance coverage through his employee benefits.

The record, however, does not provide any corroboration of the familial, community, and employment/financial ties that [REDACTED] claims. We note that outside of providing child support, there is no evidence to indicate that [REDACTED] has any ongoing contact or relationship with his four sons, let alone evidence of his physical custody of two of his sons as he asserts. Moreover, the psychological evaluation indicates that [REDACTED] had previously been convicted of domestic violence involving his previous girlfriend, his sons' mother. Thus, this raises a question as to whether [REDACTED] has, or even is permitted, custody of his children. The record contains no proof that his sons reside with him or statements from his sons or their mother as to [REDACTED] involvement in their lives. Likewise, there is no evidence that his sons or their mother are financially dependent on the child support that [REDACTED] provides. The applicant's husband also discusses diabetes conditions of his sons and their dependence on his health insurance for their medical needs, as well as his ill father's reliance on him for transportation to his medical checkups. Yet, here too, the applicant has failed to provide corroborating evidence, including medical records to show that [REDACTED] sons and his father are in fact ill and evidence that his sons are covered under his health insurance. The record is similarly lacking statements from [REDACTED] mother, proof of his employment and income, and other ties in the United States.

The AAO also considers [REDACTED] assertion in his evaluation that [REDACTED] current position as a chef is not well remunerated in Mexico and that he does not have the educational or work background to compete effectively with Mexican workers. Further, he states that [REDACTED] would have to face a number of significant dangerous situations and could potentially become a victim of violent crime. Once again, we observe that these conclusory findings are outside the realm of [REDACTED] expertise, and they are also not supported anywhere in the record. The record does not contain any background materials about the location or locations in Mexico where the applicant's spouse may reside, or even a statement from the applicant herself about the conditions she has experienced, and continues to experience, in Mexico since returning there in 2007. Moreover, we note that the evaluation does not indicate that [REDACTED] himself expressed these concerns relating to his possible relocation. In fact, to the contrary, the evaluation reports that [REDACTED] expressly stated that he feels he has to remain in the United States in order to provide for his sons and that he would likely bring his daughter, [REDACTED] to the United States, where she can go to school and would have safer and better living conditions. [REDACTED] also does not express any intention of relocation to Mexico in his written statements, should the applicant's waiver application be denied. Based on the foregoing, the AAO is unable to conclude that the applicant has demonstrated extreme hardship to her husband upon relocation to Mexico.

In this case, the record does not contain sufficient evidence to show that the hardships faced by the qualifying relative, considered in the aggregate, rise beyond the common results of removal or inadmissibility to the level of extreme hardship. The AAO therefore finds that the applicant has failed to establish extreme hardship to his qualifying relative as required under sections 212(a)(9)(B)(v) and 212(h) of the Act. She, therefore, remains inadmissible to the United States

under sections 212(a)(9)(B)(i)(II) and 212(a)(2)(A)(i)(I) of the Act. Since the applicant failed to establish statutory eligibility for the waiver, the AAO finds that no purpose would be served in considering whether she merits a waiver in the exercise of discretion.

In proceedings for a 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. In discretionary matters, the applicant bears the full burden of proving his or her eligibility for discretionary relief. *See Matter of Ducret*, 15 I&N Dec. 620 (BIA 1976). Here, the applicant has not met that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.