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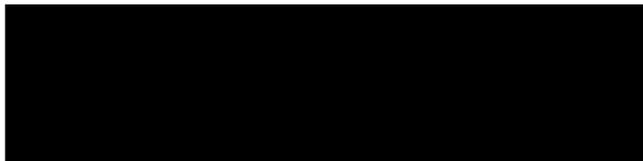
**PUBLIC COPY**

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



**U.S. Citizenship  
and Immigration  
Services**

Htg.



DATE: AUG 25 2011 OFFICE: CIUDAD JUAREZ, MEXICO

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:

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 law was inappropriately applied by us in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$630. 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 "Perry Rhew".

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 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 her last departure from the United States. The applicant does not contest this finding of inadmissibility. Rather, he seeks a waiver of inadmissibility in order to reside in the United States with his U.S. citizen spouse and their three children.

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 Field Office Director's Decision*, dated May 14, 2009.

On appeal, the applicant's spouse states that she, her husband, and their three children have suffered extreme hardship since the applicant's absence from the United States. Notice of Appeal or Motion (Form I-290B). Specifically, the applicant's spouse states that she and her daughter have been suffering from mental distress. *Id.* The applicant's spouse also states that her husband is a proud, hard working man in the strawberry fields who supports her and their children. *Id.* She further states that without the applicant, she is unable to provide for their children. *Id.* She also states that the applicant has never done anything wrong or to undermine U.S. law, and that he is very sorry that he came with his parents and without legal documentation to the United States at the age of 16 years. *Id.* Additionally, she states that the applicant never intended to offend or to be disloyal to the United States. *Id.*

In support of the appeal, the record includes, but is not limited to: Notice of Appeal or Motion (Form I-290B); two letters of support from the applicant's wife; copies of birth certificates for two of the applicant's children; a medical letter; a letter from a counseling center; Application for Waiver of Grounds of Inadmissibility (Form I-601); Petition for Alien Relative (Form I-130). The entire record was reviewed and considered in rendering a decision on the appeal.

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

**(B) 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.

...

(iii) Exceptions.-

(I) Minors.-No period of time in which an alien is under 18 years of age shall be taken into account in determining the period of unlawful presence in the United States under clause (i).

...

(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. No court shall have jurisdiction to review a decision or action by the Attorney General [Secretary] regarding a waiver under this clause.

The record establishes that the applicant entered the United States without inspection in or around February 2000 and remained until in or around January 2008, when he voluntarily departed. The AAO finds that the the Field Office Director incorrectly calculated the timeframe for which the applicant accrued unlawful presence by finding, "The applicant unlawfully resided in the United States from February 2000, when he entered the United States without inspection until January 2008." *Field Office Director's Decision*, dated May 14, 2009. At the time of the applicant's entry without inspection into the United States, the applicant was approximately 16 years of age. Section 212(a)(9)(B)(iii) of the Act provides, in pertinent part that, an individual does not accrue unlawful presence while under 18 years of age. The applicant did not turn 18 years of age until February 25, 2002. Accordingly, the applicant did not accrue unlawful presence from in or around February 2000 through in or around January 2008, but from February 25, 2002 until in or around January 2008.

Nevertheless, the AAO finds that the Field Office Director's incorrect calculation of unlawful presence is harmless error given that the applicant still accumulated more than one year of unlawful presence by remaining in the United States without inspection from February 25, 2002 until in or around January 2008. As the applicant is seeking admission within 10 years of departure, he is inadmissible pursuant to 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 or parent of the applicant. Hardship to the applicant or his children can be considered only insofar as it results in hardship to a qualifying relative. The applicant's wife 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-Morales*, 21 I&N Dec. 296, 301 (BIA 1996).

The record contains references to hardship the applicant's children would experience if the waiver application were denied. It is noted that Congress did not include hardship to an alien's children as a factor to be considered in assessing extreme hardship. In the present case, the applicant's spouse is the only qualifying relative for the waiver under section 212(i) of the Act, and hardship to the applicant's children will not be separately considered, except as it may affect the applicant's spouse.

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 applicant’s spouse states that she and her children will suffer extreme financial hardship if the applicant does not return to the United States because the applicant’s spouse does not have the means to support their children and will not be able to pay the rent for their home, and thereby, their family will be without shelter. *Letter of Support from* [REDACTED] dated February 26, 2008. The applicant’s spouse also states that she will suffer extreme financial hardship without the applicant because she and the applicant would like to buy a property on which to build a house, and to do so, they will need to save money and take out a loan. *Letter of Support from* [REDACTED] undated.

The applicant’s spouse states that she and her children will suffer not only extreme financial hardship, but also extreme emotional hardship if the applicant does not return to the United States. *Letter of Support from* [REDACTED] dated February 26, 2008. Specifically, the applicant’s spouse states that she is going crazy without the applicant, and their daughter cries for him everyday and is getting ill. *Id.* Also, the applicant’s spouse states that their children wake-up at night, crying and screaming the applicant’s name. *Letter of Support from* [REDACTED] undated. She has to call the applicant so that the children can sleep comfortably. *Id.* The applicant’s spouse further states that the daughter has asked, “Why is my dad not with me[?] [D]oes he like us anymore?” *Id.*

In support of the extreme emotional hardship that she has suffered, the applicant’s spouse has submitted a letter from a counseling center, indicating that the applicant’s spouse and their

daughter have been depressed since being separated from the applicant. *Letter of Support from [REDACTED] Director of the [REDACTED] Life Center*, dated June 11, 2009. The applicant's spouse also submitted a letter from the children's pediatrician, stating, "The children have not seen their father for several months now, and [a]re feeling lonely and sad as they miss him a lot." *Letter of Support from Dr. [REDACTED] M.D.*, dated May 4, 2009.

To begin, the record does not contain any supporting evidence concerning the financial hardship that the applicant's spouse states she is experiencing due to long-term separation from her spouse. 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)). Contrarily, the record indicates that the applicant's spouse's parents financially assist the applicant's spouse since the applicant has been outside the United States: "Even though that [sic] my parent are [sic] helping me by letting me borrow money." *Letter of Support from [REDACTED] [REDACTED]* undated. Based on the record, the AAO cannot conclude that the separation from the applicant would result in extreme financial hardship to the applicant's spouse.

Nor does the record contain sufficient evidence of the applicant's spouse's emotional hardship. As noted above, the record contains general statements that the applicant's spouse "was very depressed as was her daughter regarding separation from husband Saul [sic]." *Letter of Support from [REDACTED] Director of the [REDACTED] Life Center*, dated June 11, 2009. However, there is nothing in the record to indicate what specifically the applicant's spouse has been experiencing since the applicant has been outside the United States and how the applicant's absence has affected the applicant's spouse's ability to function on a daily basis. Moreover, the record does not contain any evidence how the applicant's children's emotional well-being has directly impacted the applicant's spouse during the applicant's absence from the United States. Accordingly, the record does not indicate that the level of emotional hardship experienced by the applicant's spouse goes beyond that normally experienced by relatives of inadmissible family members.

Additionally, the appeal does not mention how the applicant's spouse would experience extreme hardship if she were to relocate to Mexico. Nor has it been established that the applicant's spouse would be unable to travel to Mexico on a regular basis to visit the applicant. And, it has not been established whether the applicant's spouse has any family or social ties in Mexico.

The AAO recognizes that the applicant's spouse will endure hardship as a result of separation from the applicant. However, her situation if she remains in the United States is typical to individuals separated as a result of removal and does not rise to the level of extreme hardship based on the record. In regards to establishing extreme hardship in the event the qualifying relative relocates abroad based on the denial of the applicant's waiver request, the AAO notes that this criterion has not been addressed.

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 United States 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 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.