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



H6

DATE: **AUG 25 2011** OFFICE: CIUDAD JUAREZ, MEXICO

File: [REDACTED]

IN RE: Applicant: [REDACTED]

APPLICATION: Application for Waiver of Grounds of Inadmissibility under § 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 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 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.

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 *Decision of the Field Office Director*, dated December 8, 2008.

On appeal, counsel asserts that the applicant's spouse submitted sufficient evidence to show that she will suffer extreme hardship if her husband is not able to return to the U.S. for ten years. *Form I-290B, Notice of Appeal or Motion*, received January 16, 2009.

The record submitted on appeal contains, but is not limited to the applicant's spouse's hardship affidavit; a medical record from [REDACTED] D.O., P.A.; a medical record from [REDACTED] M.D., P.A.; lab results from Quest Diagnostics; a sinus rhythm/unconfirmed analysis of unknown content or origin; various school records for the applicant's spouse; pay stubs; statements from two checking accounts; mortgage and auto loan statements; utility bills; an insurance statement, a credit card statement; and billing statements from Direct TV and T-Mobile. The record also contains an earlier affidavit from the applicant's spouse; auto insurance verifications; tax returns and W-2s for 2004, 2005, and 2006; a mortgage "Good Faith Estimate," Earnest Money Contract, and Release of All Claims and Hold Harmless Agreement; copies of wedding and other personal photos; earlier checking and billing statements; reference letters concerning the applicant and his spouse; and two Spanish language letters that were submitted without certified English translations.¹ The entire record, with the exception of the Spanish language letters, was reviewed and considered in rendering this decision on the appeal.

Section 212(a)(9) of the Act provides:

(B) ALIENS UNLAWFULLY PRESENT.-

¹ 8 C.F.R. § 103.2(a)(3) requires 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."

(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.

...

(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 record reflects that the applicant entered the United States without inspection in June 2001 and remained until September 2007. The applicant accrued unlawful presence for the entire time that he was in the United States. As the applicant was unlawfully present in the United States for more than one year and seeks readmission within 10 years of his October 2007 departure, he is inadmissible under section 212(a)(9)(B)(i)(II) of the Act, 8 USC § 1182(a)(9)(B)(i)(II). The applicant does not contest this finding on appeal.

A waiver of inadmissibility under section 212(9)(B)(v) of the Act is dependent on a showing that the bar to admission would impose 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 the 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-Morales*, 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.

In this case, the record reflects that the applicant's wife is a 27-year-old native of Cuba and citizen of the United States. With regard to separation from the applicant, she asserts hardship of an emotional, physical, and financial nature. With respect to emotional hardship, the applicant's

spouse states that she and the applicant have been together since November 2001, have a very special relationship, are best friends who never argue and trust each other completely, and that it will be impossible for them to remain separated for much longer. See *Hardship Affidavit*, dated December 30, 2008.

The applicant's spouse also states that separation from the applicant has caused her to suffer "serious medical problems" including panic attacks, for which she has been prescribed Lorazepam, irregular heartbeat and pounding for which she has been referred to a cardiologist, chest pain, and leg pain caused by varicose veins, all of which began when her husband's waiver was not granted. *Id.*

The evidence submitted does not support a finding of medical hardship. The record contains a medical report from [REDACTED] D.O., P.A., dated February 15, 2008; "Progress Notes" from [REDACTED] M.D., dated November 21, 2008; lab reports from Quest Diagnostics dated November 22, 2008; and a document labeled "Sinus Rhythm Normal ECG", dated November 21, 2008. The medical report from Dr. [REDACTED] shows that, on February 15, 2008, the applicant's wife complained of: (1) chest pain and heart pounding; (2) sinus trouble since that morning with coughing and sneezing; and (3) varicose veins that are getting painful. The medical report also shows that Dr. [REDACTED] recommended the scheduling of an EKG and 24-hour Holter Monitor and gave the applicant's spouse samples of Claritin to be taken daily. The "Progress Notes" contains handwritten notes, some of which are not legible. However, the document indicates that the applicant's spouse was there for a physical and that her symptoms included palpitations. The lab reports and the "Sinus rhythm Normal ECG" are sufficient to show that the applicant's spouse had various tests done in November of 2008. However, it is not clear whether these tests were done as part of a routine physical or in connection to a medical condition suffered by the applicant's spouse. Further, there is no explanation provided for the results of these tests and the AAO is not qualified to interpret the data submitted.

Although the medical evidence in the record shows that the applicant's spouse has complained of chest pains, palpitations and pain in her legs due to varicose veins, there is nothing in the record to show that these are symptoms of a significant medical condition which would cause hardship to the applicant's spouse. Further, the AAO notes that there is no evidence in the record to show that the applicant's spouse suffers from panic attacks or that she has been prescribed Lorazepam. Nor is there evidence in the record that the applicant's spouse has been referred to a cardiologist. 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)). Therefore, the AAO finds that the evidence in the record is insufficient to establish that the applicant's spouse will suffer uncommon hardship as a result of any medical conditions.

The applicant's spouse additionally asserts financial hardship, as she is now responsible for paying all the household bills herself, and is also sending money to her husband who has been unable to find work in Mexico. See *Hardship Affidavit*, dated December 30, 2008. The AAO notes, however, that no evidence was submitted to show that the applicant has received financial

assistance from his spouse. She states that her monthly net income is roughly \$2,000 and her monthly expenses roughly \$1,700. She notes that her income includes a part-time job she now works two nights per week. The applicant's spouse states that during her husband's first 15 months in Mexico she travelled four times to see him, at an expense of more than \$1,000 each visit, and adds that she cannot continue to afford this. *Id.* No evidence has been submitted regarding expenses related to the applicant's spouse's travels to Mexico. The financial records submitted support the income and expense estimates asserted by the applicant's spouse. The evidence also supports a finding, however, that even with no monetary contribution from her husband the applicant's spouse is able to meet her financial obligations. Though frequent travel to visit her husband in Mexico may no longer be affordable, the applicant's spouse earns sufficient income to pay the mortgage, car loan, utilities, insurance, cellular phone, Direct TV, and still purchase food, clothing, and other necessities with a small surplus to spare. Although adding a part-time job to supplement one's income can be understandably challenging, it is not the type of hardship that goes beyond that normally experienced by family members of inadmissible aliens. Here the applicant's spouse submitted no evidence to show that working two nights per week at Marshalls has caused extreme hardship of a financial, physical, or emotional nature. Accordingly, no such hardship has been established.

The AAO acknowledges that separation from the applicant may have caused various difficulties for the applicant's spouse. However, it finds the evidence in the record insufficient to demonstrate that the challenges encountered by the applicant's spouse, when considered cumulatively, go beyond those normally experienced by family members of inadmissible aliens to meet the extreme hardship standard.

With regard to relocation to Mexico, the applicant's spouse states that she will relocate provided she is able to obtain legal status in Mexico and that she and her husband are able to obtain employment which allows them to work and survive in Mexico. See *Hardship Affidavit*, dated December 30, 2008. She asserts, however, that by relocating to Mexico she would not have health insurance which could result in the worsening of her medical problems. No evidence was submitted to support the assertion either that health insurance would be unavailable to the applicant's spouse in Mexico, or that a lack thereof could exacerbate any medical condition.

The applicant's spouse additionally asserts that she would have no legal status to live or work in Mexico, and that she and the applicant would be homeless due to their inability to secure employment. No evidence was presented to support these assertions. Without evidence that she would be legally barred from employment or prevented based on lack of skill, experience, education, opportunity, or for some other reason, the AAO cannot determine that the applicant's spouse would be unable to work in Mexico. Going on record without supporting documentation is not sufficient to meet the applicant's burden of proof in this proceeding. 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)). Neither was evidence submitted to confirm that the applicant is unable to find work in Mexico. Again without such evidence, AAO cannot determine that the applicant's employment prospects are so dire and/or so permanent that he and his wife are truly at risk for homelessness in Mexico should she relocate there.

The final relocation hardship asserted is that of being “permanently” separated from her mother, father, and younger brother who need her very much. See *Hardship Affidavit*, dated December 30, 2008. The applicant’s spouse does not explain why relocation to Mexico would be a permanent separation from her family members in the U.S. no specific details were submitted concerning any medical issues her parents may have or any other reasons they are unable to travel, the permanency aspect is left unexplained and unsupported. She states that she is very close to all three and that they live in the same subdivision as her. She asserts that her brother depends on her “completely” for emotional support, and that her mother does not work, has “various physical ailments,” and also needs her support. *Id.* No information was provided or evidence submitted with regard to her mother’s ailments. Nor was any explanation offered or evidence submitted to support the assertion of her brother’s complete emotional dependence upon her.

The AAO recognizes that separation from her family in the United States would cause difficulty for the applicant’s spouse. However, without evidence such as medical records detailing her mother’s ailments; documentation showing the financial and other support provided by applicant’s spouse to her mother; medical and/or psychological records detailing her brother’s condition and his dependence upon her; affidavits from her mother, brother, and/or father explaining the close nature of their relationships, the impact her relocation to Mexico would have upon them, and how that would in turn cause hardship to her, the AAO cannot determine that separation from her mother, father, and brother via relocation to Mexico would result in an extreme hardship upon the applicant’s spouse.

With regard to relocation the applicant has, therefore, failed to demonstrate the required extreme hardship to his wife. Accordingly, the AAO finds that the applicant has failed to demonstrate that the challenges his spouse faces are unusual or beyond the common results of removal or inadmissibility to the level of extreme hardship.

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 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 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**.