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

U.S. Citizenship and Immigration Services

H6

[redacted]

FILE: [redacted] Office: MEXICO CITY, MEXICO (CIUDAD JUAREZ) Date: FEB 25 2011

IN RE: Applicant: [redacted]

APPLICATION: Application for Waiver of Ground 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:

[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,

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Acting District Director, Mexico City, Mexico, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

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 ten years of her last departure from the United States. The applicant is married to a United States citizen (USC) and is the beneficiary of an approved Petition for Alien Relative (Form I-130). The applicant seeks a waiver of inadmissibility pursuant to section 212(a)(9)(B)(v) of the Act, 8 U.S.C. § 1182(a)(9)(B)(v), in order to reside in the United States with her USC husband and children.

The acting district director found that the applicant failed to establish extreme hardship to her spouse, and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) accordingly. *Decision of the Acting District Director*, dated October 8, 2008. On appeal, counsel asserts that the acting district director did not consider all the relevant factors of hardship in the aggregate, and that the applicant's spouse will suffer extreme hardship if the waiver request is denied. *See Form I-290B, Notice of Appeal*, dated November 4, 2008 and the accompanying brief in support of the appeal.

The record includes, but is not limited to, counsel's brief in support of the appeal, statements from the applicant's spouse,[1] a copy of a psychological evaluation of the applicant's spouse by [redacted] a statement from [redacted] in Mexico, regarding the applicant's spouse's medical condition, a letter from [redacted] Los Angeles, California, regarding the applicant's spouse's medical condition, copies of laboratory and diagnostic tests regarding the applicant's spouse, a statement from the applicant, a statement from a principal in Mexico regarding the applicant's children, and copies of news articles on the security situation in Mexico. The entire record was reviewed and considered in rendering this decision on 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- . . . .

[1] The AAO notes that some of the statements submitted into evidence were written in Spanish with no accompanying English translation. 8 CFR section 103.2(b)(3) provides that any document containing foreign language submitted to United States Citizenship and Immigration Services (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.

> (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 [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 [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.

In the present case, the applicant claims that she entered the United States in February 1996 without being inspected and admitted or paroled. On November 15, 2005, the applicant's United States citizen husband filed a Form I-130 on the applicant's behalf, which was approved on April 18, 2006. In July 2004, the applicant voluntarily departed the United States. On October 4, 2007, the applicant was found inadmissible under section 212(a)(9)(B)(i)(II) of the Act by a United States Consular Officer in Ciudad Juarez, Mexico. On October 24, 2007, the applicant filed a Form I-601 waiver. On October 8, 2008, the acting district director denied the Form I-601, finding that the applicant failed to establish extreme hardship to her spouse. The applicant accrued unlawful presence from April 1, 1997, the effective date of the unlawful presence law under the Act, until July 2004, when she voluntarily departed the United States. The applicant's unlawful presence for more than one year and departure from the United States triggered the ten-year bar in section 212(a)(9)(B)(i)(II) of the Act. Thus, the applicant is inadmissible to the United States 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 or parent of the applicant. Hardship to the applicant or her children can be considered only insofar as it results in hardship to a qualifying relative. The applicant's husband 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).

As a qualifying relative is not required to depart the United States as a consequence of an applicant's inadmissibility, two distinct factual scenarios exist should a waiver application be denied: either the qualifying relative will join the applicant to reside abroad or the qualifying relative will remain in the United States. Ascertaining the actual course of action that will be taken is complicated by the fact that an applicant may easily assert a plan for the qualifying relative to relocate abroad or to remain in the United States depending on which scenario presents the greatest prospective hardship, even

though no intention exists to carry out the alleged plan in reality. *Cf. Matter of Ige,* 20 I&N Dec. 880, 885 (BIA 1994) (addressing separation of minor child from both parents applying for suspension of deportation). Thus, we interpret the statutory language of the various waiver provisions in section 212 of the Act to require an applicant to establish extreme hardship to his or her qualifying relative(s) under both possible scenarios. To endure the hardship of separation when extreme hardship could be avoided by joining the applicant abroad, or to endure the hardship of relocation when extreme hardship could be avoided by remaining in the United States, is a matter of choice and not the result of removal or inadmissibility. As the Board of Immigration Appeals stated in *Matter of Ige*:

> [W]e consider the critical issue . . . to be whether a child would suffer extreme hardship if he accompanied his parent abroad. If, as in this case, no hardship would ensue, then the fact that the child might face hardship if left in the United States would be the result of parental choice, not the parent's deportation.

Id. See also Matter of Pilch, 21 I&N Dec. 627, 632-33 (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 deportation, 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. at 631-32; *Matter of Ige*, 20 I&N Dec. at 883; *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.*

We observe that 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., In re 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).

Family separation, for instance, has been found to be a common result of inadmissibility or removal in some cases. *See Matter of Shaughnessy*, 12 I&N Dec. at 813. Nevertheless, family ties are to be considered in analyzing hardship. *See Matter of Cervantes-Gonzalez,* 22 I&N Dec. at 565-66. The question of whether family separation is the ordinary result of inadmissibility or removal may depend on the nature of family relationship considered. For example, in *Matter of Shaughnessy*, the Board considered the scenario of parents being separated from their soon-to-be adult son, finding that this separation would not result in extreme hardship to the parents. *Id.* at 811-12; *see also U.S. v. Arrieta*, 224 F.3d 1076, 1082 (9th Cir. 2000) ("Mr. Arrieta was not a spouse, but a son and brother. It was evident from the record that the effect of the deportation order would be separation rather than relocation."). In *Matter of Cervantes-Gonzalez*, the Board considered the scenario of the respondent's spouse accompanying him to Mexico, finding that she would not experience extreme hardship from losing "physical proximity to her family" in the United States. 22 I&N Dec. at 566-67.

The decision in *Cervantes-Gonzalez* reflects the norm that spouses reside with one another and establish a life together such that separating from one another is likely to result in substantial hardship. It is common for both spouses to relocate abroad if one of them is not allowed to stay in the United States, which typically results in separation from other family members living in the United States. Other decisions reflect the expectation that minor children will remain with their parents, upon whom they usually depend for financial and emotional support. *See, e.g., Matter of Ige*, 20 I&N Dec. at 886 ("[I]t is generally preferable for children to be brought up by their parents."). Therefore, the most important single hardship factor may be separation, particularly where spouses and minor children are concerned. *Salcido-Salcido*, 138 F.3d at 1293 (quoting *Contreras-Buenfil v. INS,* 712 F.2d 401, 403 (9th Cir. 1983)); *Cerrillo-Perez*, 809 F.2d at 1422.

Regardless of the type of family relationship involved, the hardship resulting from family separation is determined based on the actual impact of separation on an applicant, and all hardships must be considered in determining whether the combination of hardships takes the case beyond the consequences ordinarily associated with removal or inadmissibility. *Matter of O-J-O-*, 21 I&N Dec. at 383. Nevertheless, though we require an applicant to show that a qualifying relative would experience extreme hardship both in the event of relocation and in the event of separation, in analyzing the latter scenario, we give considerable, if not predominant, weight to the hardship of

separation itself, particularly in cases involving the separation of spouses from one another and/or minor children from a parent. *Salcido-Salcido*, 138 F.3d at 1293.

In this case, the record reflects that the applicant's spouse, is a 59-year-old native of Mexico and citizen of the United States. The applicant and her husband were married in Huntington Park, California, on May 25, 2002, and they have four children. The record reflects that the applicant and her children currently reside in Mexico. The applicant's spouse states that he is suffering extreme emotional and financial hardship as a result of family separation and the denial of the applicant's waiver request.

Regarding the emotional and financial hardship of separation, the applicant's husband states that he is depressed because of separation from his family. The applicant's spouse states that he has problems with his prostate and that he has high cholesterol, that when the applicant was in the United States, she planned all his meals and made sure that he ate well, but now that the applicant is away, he has not been able to manage his diet well, which has contributed to his poor health. *See Undated "To Whom it May Concern" letter from* The applicant's spouse also states that he is concerned about his children's well being in Mexico, that his children cry whenever he called them, that they do not want to attend school in Mexico and that they want to return to the United States. *Id.* The applicant's spouse also states that he cannot bring his children back to the United States because he does not have anyone to take care of them while he is at work. *Id.*

Counsel asserts that the applicant's spouse was forced to send his children to Mexico because he had difficulties taking care of them without the applicant, that the applicant's children have difficulties adjusting to life in Mexico, and that they are in personal and family therapy. *See Appeal Brief from Counsel,* dated November 25, 2008. Counsel also asserts that the applicant's spouse has serious medical problems, and that the medical problems have been aggravated because of separation from the applicant and his four children. *Id.* Counsel further asserts that the applicant's spouse has depleted his financial resources "due to their current situation of being separated." *Id.* The record contains a letter from , dated November 13, 2008, stating that the applicant's spouse has been treated in his office for multiple health conditions. states that the applicant's spouse is suffering from an enlarged prostate and a high prostate specific antigen, an indication of inflammation of the prostate; high blood pressure and lower back pain, and that the lower back pain interferes with his normal daily activities. states that the applicant's spouse needs to remain in the United States to perform periodic blood tests in order to monitor any possibility of prostate cancer, and for further evaluation and treatments. The record contains copies of laboratory and diagnostic tests administered to the applicant's spouse. The record also contains a copy of a "Privileged & Confidential Psychological Information" report on the applicant's spouse by dated November 13, 2008.

states that the applicant's spouse presents a profile that includes a complex of physical and emotional/adjustment issues due to the long term separation from his family. states that the applicant's spouse needs the applicant to help him manage his medical problems and assist him with physical movement that he can no longer manage due to his medical problems. states that the applicant's children have been distraught by family separation, that his oldest child has begun acting out and posing management problems for the applicant, and that the family has sought

individual and family therapy to deal with the problems, but that they need the applicant's spouse's direction and they need him to serve as a role model to the children in order to overcome the problems. states that the applicant's spouse is highly impacted by "his sense of worthlessness and failure as a father who is not presently able to assist in the rearing of his four sons and the resultant guilt he feels that his wife is bearing this burden alone." recommends that the family be re-united with the applicant's spouse in the United States so that "the variety of physical and emotional hardships that have resulted in serious adaptive functioning problems for [the applicant's spouse] and so that he can have the assistance he needs to confront the medical and physical needs that he has."

The AAO acknowledges that separation from the applicant may have caused some challenges to the applicant's spouse, however, the evidence in this record is insufficient to demonstrate that the challenges encountered by the applicant's spouse, meet the extreme hardship standard. The record does not contain documentation to support finding that the applicant's spouse needs a caregiver to assist him because of his medical problems, that the applicant is that caregiver and that the absence of the applicant has resulted in extreme hardship to her spouse. Also, the record does not contain documentation to establish that the application's children have had difficulties adjusting to life in Mexico, which has impacted the applicant's spouse thereby rendering his hardship extreme. 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)). Additionally, although the input of any mental health professional is respected and valuable, the AAO notes that the submitted assessment by is based on an interview with the applicant's spouse. In that the conclusions reached in the submitted assessment are based solely on the interview of the applicant's spouse, the AAO does not find the report to reflect the insight and elaboration commensurate with an established relationship with a mental health professional, thereby rendering the report speculative and diminishing its value to a determination of extreme hardship. While counsel and claim financial hardship to the applicant's spouse as a result of family separation, the record does not contain information about the family's income and expenses. Without such evidence, the AAO cannot conclude that family separation has caused extreme financial hardship to the applicant's husband. Finally, hardships faced by the applicant's child as a result of family separation are not considered in the extreme hardship analysis, except as it may cause hardship to the applicant's husband. As noted above, the record does not contain evidence to establish that the applicant's children have difficulties adjusting to life in Mexico, which has caused extreme hardship to the applicant's spouse. Accordingly, the AAO finds that the applicant has failed to establish that the challenges her husband faces rise to the level of extreme hardship.

Regarding relocation, no claim was made that the applicant's spouse would suffer extreme hardship if he relocated to Mexico to be with the applicant. Therefore, the AAO cannot make a determination of whether the applicant's spouse would suffer extreme hardship if he moved to Mexico.

In sum, although the applicant's spouse claims hardships based on family separation, the record does not support a finding that the difficulties, considered in the aggregate, would rise beyond the common results of removal or inadmissibility to the level of extreme hardship. *See Perez,* 96 F.3d at 392; *Matter of Pilch*, 21 I&N Dec. at 631. Although the distress caused by separation from one's

family is not in question, a waiver of inadmissibility is only available where the resulting hardship would be unusual or beyond that which would normally be expected upon removal. *See id.* The AAO therefore finds that the applicant has failed to establish extreme hardship to her spouse, as required for a waiver of inadmissibility under section 212(a)(9)(B)(v) of the Act.

Section 291 of the Act, 8 U.S.C. § 1361, provides that the burden of proof is on the applicant to establish eligibility for the benefit sought. Here, the applicant has not met that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.