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

U.S. Citizenship and Immigration Services

PUBLIC COPY

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[redacted]

Date: JUL 07 2011 Office: MEXICO CITY (CIUDAD JUAREZ) FILE: [redacted]

IN RE: [redacted]

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:

[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,

Michael Rhumway

for Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Field Office Director, Ciudad Juarez, Mexico. The matter 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 admission within 10 years of his last departure from the United States. The applicant seeks a waiver of grounds of inadmissibility in order to reside in the United States with his U.S. citizen spouse.

The field office director concluded that the applicant had failed to establish that his bar to admission would impose extreme hardship on a qualifying relative, his United States citizen spouse, and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) accordingly.

On appeal, counsel asserts that the applicant's spouse is experiencing extreme hardship as a result of the applicant's inadmissibility.

In support of the application, the record contains, but is not limited to, a brief from counsel, a list of the applicant's spouse's medications, and a letter from the applicant's spouse. The entire record was reviewed and considered in rendering a decision on the appeal.

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

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

The record shows that the applicant entered the United States without inspection in January 1990. The applicant remained in the United States until departing in November 2007. The applicant accrued unlawful presence from April 1, 1997, the date of the enactment of unlawful presence provisions under the Act, until November 2007. The applicant is attempting to seek admission into the United States within ten years of his November 2007 departure from the United States. The applicant is, therefore, inadmissible to the United States under section 212(a)(9)(B)(II) of the Act for having been unlawfully present in the United States for a period of more than one year and seeking admission to the United States within ten years of his last departure. The applicant does not dispute his inadmissibility on appeal.

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 can be considered only insofar as it results in hardship to a qualifying relative. The applicant's U.S. citizen 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.

On appeal, counsel asserts in a brief dated February 16, 2009 that the applicant's spouse is suffering from depression and anxiety as a result of her separation from the applicant. Counsel states that the applicant's spouse is 54 years old and cannot financially support herself. Counsel contends that the applicant's spouse is suffering from the loss of the applicant's financial support.

The applicant's spouse asserts in a letter filed with the waiver application that she loves the applicant and has difficulty eating and sleeping because of his inadmissibility. She states that she will not be able to cover her mortgage, utility and car payments without the applicant's financial support, and she is concerned her credit will suffer. She notes that he earns the primary income for their household. She contends that she is suffering emotionally, spiritually and economically.

The AAO notes that the record contains a list of the applicant's spouse's medications. However, the applicant has not submitted a letter from a medical professional diagnosing the applicant's spouse with a medical condition, and stating the prognosis and treatment plans. The AAO is not in a position to interpret the significance of the prescribed medications on the applicant's spouse's health, and their relevance to her separation from the applicant. Because of these deficiencies, the submitted "medications list" will not be given any weight in the cumulative assessment of hardship.

The AAO notes further that the applicant has not provided any evidence to support the claims of financial hardship to his spouse. The record before the AAO does not contain evidence of the

income the applicant earned during his residence in the United States. Nor does it show the income the applicant's spouse is currently earning as a housekeeper. Further, the record does not contain evidence of their expenses, such as mortgage statements, utility bills and car loans. 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)). Accordingly, the AAO cannot determine that the applicant's spouse is suffering financial hardships as a result of the applicant's inadmissibility.

The AAO acknowledges that the applicant's spouse is suffering emotional hardship as a result of her separation from the applicant. In *Salcido-Salcido v. INS,* 138 F.3d 1292, 1293 (9th Cir. 1998), the Ninth Circuit Court of Appeals, referring to the separation of an alien from qualifying relatives, held that "the most important single hardship factor may be the separation of the alien from family living in the United States," and that "[w]hen the BIA fails to give considerable, if not predominant, weight to the hardship that will result from family separation, it has abused its discretion." (Citations omitted). While we will give significant weight to the emotional impact of separation, we cannot find that the applicant's spouse is suffering extreme hardship based on this factor alone. The applicant has not submitted evidence to show that the emotional hardship of separation is atypical and beyond what would normally be expected. Based on the foregoing, the applicant has not demonstrated that his spouse will suffer extreme hardship upon separation from him.

On appeal, counsel asserts that the applicant's spouse no longer has connections with family and friends in Mexico. Counsel contends that "[c]rime in Mexico today is out-of-control." Counsel states that "[d]aily we see news reports of mass murders, drug dealers ruling cities, and corruption in government." Counsel concludes that "[t]o cause a member of our society to relocate to such conditions is beyond reason and should be considered cruel and unusual."

The applicant's spouse asserts that she has been in the United States for many years and the culture of Mexico is "very different." She states that "there are too many deaths in Mexico" and "too many violent people." She states that "[e]veryday you see killings, homicides, suicides, murders, accidents."

The AAO observes that applicant's spouse has not stated, and the record does not demonstrate, where the applicant resides in Mexico. The applicant's Biographic Information Form (Form G-325A) and waiver application only list his address in Madill, Oklahoma. The Department of State travel warning on Mexico indicates that the majority of the violence in the country is regional, near the U.S.-Mexico border. *See U.S. Department of State, Travel Warning, Mexico*, dated April 22, 2011. Furthermore, the applicant has not described his experiences in Mexico, and whether he has been a victim of violence in the country. Therefore, the AAO is not in a position to make a determination on the safety concerns the applicant's spouse would have if she relocated to Mexico.

The record reflects that the applicant's spouse was granted permanent resident status in February 1983. The AAO recognizes that the applicant's spouse would suffer some cultural readjustment if she decided to relocate to Mexico after residing in the United States for over 28 years. However,

cultural readjustment is a common hardship associated with relocating to maintain family unity. The applicant's spouse is a native of Mexico and her adjustment to her native country should be minimized by her familiarity with the culture. Furthermore, she should not face any language barriers in the country. While we will give some weight to the hardship of relocation, this factor alone does not rise to the level of extreme hardship.

Accordingly, the applicant has not established that denial of the present waiver application would result in extreme hardship to his spouse, as required for a waiver under section 212(a)(9)(B)(v) of the Act. Having found the applicant statutorily ineligible for relief, no purpose would be served in discussing whether he 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. *See* 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. The waiver application is denied.