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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

H6

[redacted]

Date: JUL 0 8 2011 Office: CIUDAD JUAREZ FILE: [redacted]

IN RE: Applicant: [redacted]

APPLICATION: Application for Waiver of Grounds of Inadmissibility pursuant to section 212(a)(9)(B)(v) of the Immigration and Nationality Act (the 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,

Ellen C. Johnson

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Field Office Director, Ciudad Juarez. The matter 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 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. The applicant is married to a U.S. citizen and 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 with his wife and child in the United States.

The field office director found that the applicant failed to establish extreme hardship to a qualifying relative and that the favorable factors in the case do not outweigh the unfavorable factors. The field office director denied the application accordingly. *Decision of the Field Office Director*, dated January 20, 2009.

On appeal, the applicant's wife submits additional evidence of hardship and contends that her health has gotten worse and that her mental condition has changed since her husband's departure from the United States.

The record contains, *inter alia*: a marriage certificate of the applicant and his wife, [redacted] indicating they were married [redacted] two letters from [redacted] a letter from [redacted] a letter from [redacted] counselor; letters of support; a letter from the couple's son's physician and copies of his medical reports; a letter from the applicant's former employer; copies of bills; and an approved Petition for Alien Relative (Form I-130). The entire record was reviewed and considered in rendering this 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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> . . . .

> (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.

In this case, the record shows, and the applicant does not contest, that he entered the United States in January 2001 without inspection and remained until November 2007. The applicant accrued unlawful presence of over six years. He now seeks admission within ten years of his last departure. Accordingly, he is inadmissible to the United States under section 212(a)(9)(B)(i)(II) of the Act for being unlawfully present in the United States for a period of one year or more and seeking admission to the United States within ten years of his last departure.

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 applicant's wife, [redacted], states that she and the applicant have two children together. [redacted] states that it would be hard for their daughter to get pulled out of school and "learn a whole new schooling in Mexico." According to [redacted], her family has suffered great emotional and financial hardship since her husband's departure. She contends her husband is the source of strength and security for their family. [redacted] states she is emotionally devastated, depressed, and has been forced to seek professional counseling. In addition, [redacted] states that she is working two jobs, has been forced to ask for government assistance in the form of food stamps and daycare assistance, and has asked friends and family for financial assistance. She states she pays $660 per month in rent, $330 per month for food, and a total of $481 in other bills. [redacted] contends she makes $8.75 per hour and only works part-time due to her son's medical conditions of asthma and club feet. She contends her son, [redacted] wears braces on his feet and gets treatment at [redacted] She also states that she never knows when [redacted] will have an asthma attack. *Letters from* [redacted], dated February 12, 2009, and undated.

A letter from [redacted], states that [redacted] has had asthma since he was an infant. *Letter from* [redacted], dated [redacted] 2007. Copies of [redacted] medical records indicate he has bilateral clubfoot deformities and has received regular treatment for his condition. The medical records indicate he had serial cast treatment at an orthopaedic center since he was one month old, had surgery on March 27, 2006, when he was twenty-two months old, and wears ankle-foot orthoses. In addition, the medical records indicate [redacted] was hospitalized for five days in April 2005 due to asthma and that he takes [redacted]

A letter from [redacted] brother states that the applicant needs to return to the United States because he needs to be with his son and his stepdaughter. He states that the applicant is the only father his stepdaughter has ever known. In addition, [redacted] brother contends that [redacted] was happy and easygoing before her husband's departure, but that she is now emotionally distraught. He also states that [redacted] is struggling financially, working two jobs, has been forced to ask family and friends for financial assistance, and is relying on the government for food stamps and daycare assistance. *Letter from* [redacted] undated.

A letter from [redacted] states that [redacted] initiated counseling services in January 2009 due to her struggle dealing with her husband's departure from the United States. According to the counselor, the applicant was the main financial provider for the family and [redacted] is concerned about supporting her family on her income alone, particularly considering her hours were cut from 40 hours a week to 29 hours a week. The counselor further contends that the applicant's children are struggling without his presence. The counselor states [redacted] has been diagnosed with Adjustment Disorder with Depressed Mood and that she experiences a great deal of sadness and hopelessness. *Letter from* [redacted] *and* [redacted], undated.[1]

The AAO recognizes that [redacted] has endured hardship since the applicant departed the United States and is sympathetic to the family's circumstances. However, neither the applicant nor his wife discuss the possibility of [redacted] relocating to Mexico to avoid the hardship of separation and they do not address whether such a move would represent a hardship to her. If [redacted] decides to stay in the United States, their situation is typical of individuals separated as a result of inadmissibility or exclusion and does not rise to the level of extreme hardship based on the record.

Regarding the letter from [redacted], although the counselor contends [redacted] has been in counseling since January 2009, the letter is undated and was submitted with the applicant's appeal in February 2009. Therefore, the record fails to reflect a long-term, ongoing relationship between a mental health professional and the applicant's wife. In addition, the counselor does not specify whether any psychological tests were used to diagnose [redacted] Furthermore, the counselor fails to address whether [redacted] mental health might improve should she relocate to Mexico to be with her husband. In sum, the record does not show that [redacted] hardship is extreme or that her situation is unique or atypical compared to others in similar circumstances. *See Perez v. INS*, 96 F.3d 390 (9th Cir. 1996) (holding that the common results of deportation are insufficient to prove extreme hardship and defining extreme hardship as hardship that was unusual or beyond that which would normally be expected upon deportation).

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[1] The record also contains a letter from [redacted] that is written in Spanish and has not been translated into English. The regulation at 8 C.F.R. § 103.2(b)(3) requires that any document containing foreign language submitted to United States Citizenship and Immigration Services 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. Consequently, this document cannot be considered.

Regarding the financial hardship claim, there is insufficient evidence in the record to show that [redacted] hardship is extreme. Although the record contains some copies of bills, there is no evidence, such as copies of tax records or pay stubs, addressing either the applicant's previous wages or [redacted] current wages or income. There is no evidence, such as a letter from the state, corroborating [redacted] claim that she is receiving food stamps or assistance for childcare expenses. Similarly, although [redacted] and her brother contend she has had to ask friends and family for financial assistance, there is no letter from any friend or family member providing any specifics regarding the extent to which they have purportedly financially supported her. Although the AAO does not doubt that [redacted] has experienced some financial hardship since the applicant departed the United States, without more detailed information addressing the couple's total income and expenses, there is insufficient evidence in the record to determine the extent of her financial hardship.

To the extent [redacted] has asthma and problems with his feet, hardship to the applicant's child can be considered only insofar as it results in hardship to [redacted] the only qualifying relative in this case. Although the record contains copies of [redacted] medical records, there is no letter in plain language from any health care professional addressing the prognosis, treatment, or severity of [redacted] health conditions. In addition, the applicant has not addressed whether [redacted] may be able to receive adequate monitoring and treatment of his conditions in Mexico. Without more detailed information, the AAO is not in the position to reach conclusions regarding the severity of any medical condition or the treatment and assistance needed.

A review of the documentation in the record fails to establish the existence of extreme hardship to the applicant's wife caused by the applicant's inadmissibility to the United States. 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, 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.