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U.S. Department of Homeland Security
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

[redacted]

H6

DATE: Office: CIUDAD JUAREZ, MEXICO FILE: [redacted] JUL 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,

for 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 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 Lawful Permanent Resident (LPR) of the United States 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.

The Field Office Director found that the applicant failed to establish extreme hardship to a qualifying relative, and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) accordingly. *Decision of the Field Office Director*, dated January 12, 2009.

On appeal, counsel asserts that denial of the applicant's waiver request would result in extreme hardship to her spouse and children. *See Form I-290B, Notice of Appeal*, dated February 9, 2009, and a letter brief submitted by counsel in support of the appeal, dated March 10, 2009.

The record includes, but is not limited to, an affidavit and statements from the applicant's spouse. The statements are written in Spanish with no accompanying English translation.[1] The record also includes, counsel's brief in support of the appeal, copies of employment and tax documents relating to the applicant's spouse, a Social Security Statement for the applicant's spouse, copies of money transfer receipts, copies of automobile insurance billing statements and a cancellation notice for non-payment, and copies of internet news articles on employment and gang violence 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] 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.

The record reflects that, on November 26, 2007, the applicant stated to a Department of State consular officer in Ciudad Juarez, Mexico that she had entered the United States without inspection in November 2002 and had remained until she voluntarily departed in June 2004. Based on this history, the AAO finds that the applicant accrued unlawful presence from the date of her entry without inspection in November 2002 until she departed the United States in June 2004. Accordingly, she is inadmissible pursuant to section 212(a)(9)(B)(i)(II) of the Act for having accrued more than one year of unlawful presence in the United States and seeking admission within ten years of her 2004 departure.

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 an applicant or other family members can be considered only insofar as it results in hardship to a 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-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.

In this case, the record reflects that the applicant's spouse, [redacted], is a native of Mexico and an LPR of the United States, that he and the applicant were married in [redacted] on March 6, 1985, and that they have a seven-year-old United States citizen [redacted] It is appears from the record that [redacted] resides in Mexico with the applicant.

The applicant's spouse states that separation from the applicant and [redacted] has caused and continues to cause him emotional and financial hardship. Regarding the emotional hardship of separation, the applicant's spouse states that he is personally suffering a great deal of stress and depression, anguish, sleeplessness and loneliness, which will eventually "put [his] marriage in jeopardy thereby negatively affecting [his] family." *See Affidavit by* [redacted] dated March 8, 2009. The applicant's spouse also claims that his worry over the applicant and Noe is affecting his job performance and that he is concerned that his employment will be terminated for ineffective job performance. The applicant's spouse further states that as a result of their separation, [redacted] is depressed; cries a lot, does not want to sleep, and often has nightmares. *Id.* He asserts that he is concerned that [redacted] will grow up without the love, care and affection of both parents, and that [redacted] will not be able to obtain a good education, to which he is entitled, in the United States. *Id.* The applicant's spouse further indicates that he is concerned for the safety and security of his family in Mexico because of the poverty and street crime in Mexico. He states "I do not want my family to live in the abject poverty and high crime of rural Mexico." *Id.*

Regarding the financial hardship of separation, the applicant's spouse states that he cannot afford childcare for [redacted] in the United States and also asserts that he cannot afford to maintain two households, one in the United States and one in Mexico. He contends that although he sends $150 a month to the applicant, it is not enough to pay for her and his son's maintenance, which "causes [him] great mental stress and anguish." *Id.*

Counsel asserts on appeal, that continued separation from the applicant will threaten her spouse's long-term employment prospects because his current employer's leave policy will mean that he will only be able to see his family once a year for two weeks. Counsel further asserts that if the waiver request is denied, the applicant's spouse would be required to maintain two households, which will be a financial hardship for him. *See Letter from Counsel Re: Brief and Evidence in Support of Form I-290B Notice of Appeal,* dated March 10, 2009.

The AAO acknowledges that separation from the applicant has resulted in hardship for her spouse. However, it does not find the evidence in the record sufficient to demonstrate that the challenges he faces, even when considered in the aggregate, meet the extreme hardship standard. The emotional hardship of separation claimed by the applicant's spouse is not supported by medical records, detailed testimony, or other evidence that would establish the nature and severity of that hardship. 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)). The AAO notes that the applicant indicated to the consular officer that her only period of unlawful presence in the United States was from 2002 to 2004 and the record reflects that the applicant and her spouse were married in Mexico in 1985. If this is so, then it appears that the applicant and her spouse have previously endured long periods of separation. The record fails to address why this separation in particular is causing emotional hardship to the applicant's spouse.

While the AAO also acknowledges claims by the applicant's spouse regarding [redacted] we note that children are not qualifying relatives under section 212(a)(9)(B)(v) of the Act. Any hardship to them

must, therefore, be evaluated in terms of its impact on the applicant's spouse, the only qualifying relative in this case. However, other than the statement from the applicant's spouse, the record lacks any documentation to demonstrate the nature and severity of hardships suffered by [redacted] or that these hardships have resulted in hardship to the applicant's spouse. As previously indicated, the emotional hardship of separation claimed by the applicant's spouse is not supported by the record.

The record contains copies of the applicant's spouse's W-2 forms for 2007 and 2008, an employment letter that establishes the applicant's spouse's wages as of 2009, tax records for 2006, 2007 and 2008, copies of automobile insurance billing statements from November 30, 2006 and December 30, 2006, as well as money order receipts dated in May, September and November 2006, and January, and March 2007. The AAO notes that while this evidence allows us to determine the applicant's spouse's income, we have no detailed documentation of the spouse's financial obligations at the time of filing the appeal. The AAO acknowledges that the money order receipts indicate that between May 2006 and March 2007, the applicant's spouse transferred a significant amount of money to the applicant, however, the record lacks evidence to establish that he continues to provide her with support, as he claims. Accordingly, the AAO cannot determine the extent to which separation has caused financial hardship to the applicant's spouse.

The AAO further notes that the applicant's spouse claims that his worry over the applicant has affected his job performance and jeopardized his employment. The record however, does not support this claim as the employment letter in the record, dated March 3, 2009, indicates that the applicant's spouse is an employee in good standing. Accordingly, the evidence in the record even when considered in the aggregate, does not contain sufficient proof to establish that the applicant's spouse would experience extreme hardship if the applicant's waiver application is denied and he remains in the United States.

The applicant's spouse states that he is concerned about the safety of the applicant and [redacted] in Mexico, due to the violence related to drug trafficking. In support of this claim, the record contains news articles on drug-related violence in Mexico. The AAO acknowledges the applicant's spouse's claim which is noted as a country-wide problem in Mexico. In light of this violence, which has resulted in the U.S. Department of State's issuance of a 2011 travel warning advising U.S. citizens against travel to certain areas of Mexico, we have considered whether the applicant's spouse would be at risk from drug violence if he were to join the applicant and [redacted] in Mexico. The record indicates that the applicant and her spouse are from Guanajuato, and that they would likely return to the area as the applicant and her son are currently residing there. Guanajuato is not one of the locations identified by the Department of State in its travel warning as prone to drug-related violence. Therefore the AAO does not find the threat of drug violence to be a factor that should be considered in determining extreme hardship to the applicant's spouse upon relocation.

The applicant's spouse also states that he is concerned that if relocates to Mexico to live with the applicant and [redacted] he will not find employment in Mexico that will allow him to earn enough to support his family in Mexico. *See Affidavit by* [redacted], dated March 8, 2009. Counsel on appeal, asserts that a move to Mexico will negatively impact the applicant's spouse's financial status, his standard of living and that of his family, which will increase his mental stress

and anguish. *See Letter from Counsel Re: Brief and Evidence in Support of Form I-290B Notice of Appeal,* dated March 10, 2009. In support of these claims, the applicant has submitted an internet news article *"Mexico Faces Up to Unemployment Growth,* (Published September 21, 2005) that discusses unemployment in Mexico. However, general economic conditions in the country of relocation do not establish hardship in the absence of evidence that the conditions would specifically impact the qualifying relative. Therefore, based on the totality of the evidence in the record, the AAO does not find the applicant to have demonstrated that denial of her waiver request will result in extreme hardship to her spouse if he relocates to Mexico.

In sum, the hardships claimed by the applicant's spouse, even when considered in the aggregate, do not rise beyond the common results of removal or inadmissibility and, therefore, do not establish that a qualifying relative would suffer extreme hardship, as required to establish eligibility 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 she 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.