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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

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U.S. Citizenship  
and Immigration  
Services



Htg

Date: **NOV 10 2011**

Office: CIUDAD JUAREZ

FILE: 

IN RE: Applicant: 

APPLICATION: Application for Waiver of Grounds of Inadmissibility under section 212(a)(9)(B) of the Immigration and Nationality Act, 8 U.S.C. § 1182(a)(9)(B)

ON BEHALF OF APPLICANT:



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,

f/

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, a native and citizen of Mexico, last entered the United States without authorization in about 1992.<sup>1</sup> The applicant 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 does not contest this finding of inadmissibility. Rather, he seeks a waiver of inadmissibility under section 212(a)(9)(B)(v) of the Act, 8 U.S.C. § 1182(a)(9)(B)(v), to reside in the United States with his U.S. lawful permanent resident spouse.

The field office director concluded that the applicant had failed to establish that extreme hardship would be imposed on a qualifying relative and denied the Application for Waiver of Ground of Excludability (Form I-601) accordingly. *Decision of the Field Office Director*, dated December 23, 2008.

The record contains the following documentation: a brief submitted by the applicant's attorney, dated February 20, 2009; a declaration submitted by the applicant's spouse, dated February 19, 2009; financial documents, including a copy of the applicant's 2006 federal income tax return, a copy of a 2003 Social Security Statement for the applicant's spouse, and a copy of a gas bill; statements of the applicant's children and other relatives; and information on country conditions in Mexico. 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:

Aliens Unlawfully Present.-

(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

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<sup>1</sup> The record is not clear as to when the applicant last entered the United States. An October 21, 1992 Form I-213, Record of Deportable Alien, indicates that the applicant entered the United States without inspection in October 1990. The 1992 Record of Deportable Alien states that the applicant was granted voluntary return to Mexico; however, there is no record that the applicant actually departed the United States at that time. Records from the applicant's interview with a consular officer indicate that the applicant was unlawfully present in the United States from 1992 to September 2007.

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 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...

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. lawful permanent resident 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.

The applicant’s attorney asserts that the applicant’s spouse would be emotionally destroyed by an extended separation from the applicant, and that she has trouble sleeping and has lost her appetite, resulting in a loss of 20 pounds. See *Brief in Support of Appeal*, dated February 20, 2009. The applicant’s spouse states that she is depressed, that her health is suffering, that she has trouble sleeping at night because of worries and anxiety about the future, and that she has lost her appetite. See *Declaration of* [REDACTED], dated February 19, 2009. However, the record contains no further evidence of the emotional or psychological condition of the applicant’s spouse, and the evidence on the record is insufficient to establish that she is experiencing hardship beyond the common results of removal or inadmissibility as a result of separation from the applicant.

The applicant’s attorney asserts that the applicant and his spouse depend upon each other to pay the monthly bills, and that the applicant’s wife would not be able to pay the monthly living expenses by herself. See *Brief in Support of Appeal* dated February 20, 2009. The applicant’s spouse states that, while continuing her employment as a nursing assistant, she is experiencing financial hardship, and needs the applicant to help pay the bills. See *Declaration of* [REDACTED], dated February 19, 2009. In support of this assertion, the applicant submitted financial documents, including a copy of a 2006 federal income tax return, a copy of a 2008 gas and electric bill, and a copy of a 2003

Social Security Statement for the applicant's spouse. The evidence submitted is insufficient to conclude that the qualifying spouse is unable to meet her financial obligations in the applicant's absence. Courts considering the impact of financial detriment on a finding of extreme hardship have repeatedly held that, while it must be considered in the overall determination, "[e]conomic disadvantage alone does not constitute "extreme hardship." *Ramirez-Durazo v. INS*, 794 F.2d 491, 497 (9th Cir. 1986).

The record indicates that the applicant's spouse has resided in the United States since 1980, and is a Lawful Permanent Resident of the United States. The applicant's spouse has four children who are U.S. Citizens (the two younger children being the natural children of the applicant). The applicant's spouse's eldest son is 29 years old and has his own family; the second son is now 27 years old. The applicant's attorney asserts that the applicant's spouse has her extended family residing in the United States. See *Brief in Support of Appeal* dated February 20, 2009. However, there is no evidence in the record to support this assertion. On the Form G-325A Biographic Information submitted by the applicant's spouse on March 20, 2001, for the names of her father and mother, the applicant's spouse listed "none." There is no other indication in the record that the applicant's spouse has her extended family living in the United States. 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)).

Further, the applicant has not addressed whether he has family ties in Mexico. The applicant's spouse stated that the applicant is living in Jalisco, Mexico. See *Declaration of* [REDACTED] dated February 19, 2009. According to the applicant's Form G-325A dated March 20, 2001, the applicant's parents are living in Jalisco, Mexico. The AAO is thus unable to ascertain whether and to what the extent he would receive assistance from family members for both himself and his spouse.

The applicant's attorney states that Mexico suffers from a lack of employment opportunities, and that the applicant would not be able to find anything other than employment at subsistence wages. See *Brief in Support of Appeal* dated February 20, 2009. However, there is nothing in the record to support this assertion. As stated above, 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)).

In addition, the applicant's attorney states that Mexico suffers from crime. See *Brief in Support of Appeal* dated February 20, 2009. The applicant's spouse also states that there are news stories about murders, drug trafficking, and kidnappings in Mexico, and that she is afraid to expose her children to such conditions. See *Declaration of* [REDACTED] dated February 19, 2009. In support of these contentions, the applicant submitted eight news articles from the Los Angeles Times, and two travel alerts from the U.S. Department of State. However, none of these articles refer to any criminal activity in Jalisco, Mexico, where the applicant resides.

The AAO recognizes that the applicant's spouse will endure hardship as a result of separation from the applicant. However, her situation, if she remains in the United States, is typical to individuals separated as a result of removal and does not rise to the level of extreme hardship based on the record.

The record, reviewed in its entirety and in light of the *Cervantes-Gonzalez* factors, cited above, does not support a finding that the applicant's U.S. lawful permanent resident spouse will face extreme hardship if the applicant is unable to reside in the United States. Rather, the record demonstrates that she will face no greater hardship than the unfortunate, but expected, disruptions, inconveniences, and difficulties arising whenever a spouse is removed from the United States and/or refused admission. Although the AAO is not insensitive to the applicant's spouse's situation, the record does not establish that the hardship she would face rises to the level of "extreme" as contemplated by statute and case law.

In proceedings for application for waiver of grounds of inadmissibility, 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. The waiver application is denied.