U.S. Department of Homeland Security
U. S. Citizenship and Immigration Services
Office of Administrative Appeals (AAO)
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U.S. Citizenship and Immigration Services

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PUBLIC COPY

[redacted]

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DATE: NOV 14 2011 Office: CIUDAD JUAREZ, MEXICO FILE: [redacted]

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. The decision 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 admission within ten years of her last departure from the United States. The applicant is married to a United States citizen 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 spouse and children.

The Field Office Director found that the applicant had 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 20, 2009.

On appeal, counsel asserts that the director failed to make a particularized evaluation of the applicant's case and that the evidence in the record establishes that the continued separation from the applicant has caused her spouse extreme hardship. *See Form I-290B,* dated February 17, 2009 and *Counsel's Letter Brief in support of the Appeal,* dated February 17, 2009.

The record includes, but is not limited to, counsel's letter brief; statements from the applicant's spouse; supportive statements from family and friends; letters of employment for the applicant's spouse; copies of the applicant spouse's Earnings and Leave Statements for 2006 through 2009; copies of rental receipts from Public Storage; a copy of "Transaction History-Remitter Transactions;" and country conditions information on Mexico. The entire record was reviewed and considered in reaching a decision on the appeal.

Section 212(a)(9)(B) states in pertinent part:

> (B) 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 alien's departure or removal from the United States, is inadmissible.

In the present case, the record indicates that the applicant entered the United States in August 2002 without being inspected and remained until she voluntarily departed in June 2007. Accordingly, the applicant accumulated unlawful presence in the United States from December 19, 2004, the day after

she turned 18 years-of-age, until June 2007, when she voluntarily left the United States for Mexico. As the applicant accrued unlawful presence of more than one year and is seeking admission within ten years of her 2007 departure, she is inadmissible to the United States under section 212(a)(9)(B)(i)(II) of the Act and must seek a 212(a)(9)(B)(v) waiver of inadmissibility.

Section 212(a)(9)(B)(v) of the Act provides for a waiver of section 212(a)(9)(B)(i) inadmissibility as follows:

> The Attorney General [now Secretary of Homeland Security] 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 . . . 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 an applicant or other family members can be considered only insofar as it results in hardship to a qualifying relative. In this case, the applicant's spouse is the only qualifying relative. If extreme hardship to a qualifying relative is established, the applicant is statutorily eligible for a waiver, and United States Citizenship and Immigration Services 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 tics, 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 AAO now turns to the question of whether the applicant in the present case has established that a qualifying relative would experience extreme hardship as a result of her inadmissibility.

On appeal, counsel states that moving to Mexico will result in emotional hardship to the applicant's spouse. Counsel states that the applicant's spouse was born in the United States and has lived all his life here, and that he has significant family ties to the United States. Counsel contends that "[the applicant's spouse] derives strong emotional stability from having relatives close by and if he loses the little emotional stability he has now by a forced move to Mexico, [he] will not be able to continue to play the role of a happy and supportive husband and father to the applicant and their children." Counsel also states that the applicant's spouse does not have any family or community ties in Mexico, that the applicant resides with her family in Mexico, and that her spouse is not accustomed to her family. Counsel further states that moving to Mexico will cause emotional distress to the applicant's spouse because he will have to become accustomed to a new way of life, a new life-style, and the stress of being away from his stable job and his extensive, close-knit family. Counsel asserts that relocation to Mexico will result in the applicant's spouse giving up his employment in the United States for a minimum wage job in Mexico, which will prevent him from providing his family with the basic necessities of life. Counsel also contends that the applicant's spouse and his family will be exposed to harmful situations at the hands of the Mexican government and non-government entities, and that lawlessness is rampant in Mexico.

In support of these assertions, the record contains Resident Alien Cards, Naturalization Certificates and U.S. birth certificates which establish the applicant's spouse's immediate and extensive family ties to the United States. The record also contains the section on Mexico from the U.S. Department of State's Country Reports on Human Rights Practices – 2007; a 2006 Human Rights Watch report on violence against women in Mexico; and an internet article on the daily minimum wages in Mexico for 2008, published by Mexicanlaws.com, which listed the general minimum daily wages in Mexico for 2008 by geographical areas and professions.

The AAO acknowledges that the record reflects that the applicant's spouse has significant ties to the United States. We also note that the Department of State's human rights report on Mexico in 2007 establishes that the minimum wage in Mexico did not provide a decent standard of living for a worker and his or her family, and that the 2010 update of this document continues to report that the minimum wage in Mexico does not meet the basic need of a worker and that worker's family. Further, we observe that if the applicant's spouse were to relocate to Mexico, he will be residing in the State of Nayarit, Mexico, as that is the state where the applicant was born and where she currently resides with her parents. The AAO notes that due to the high level of drug-related violence in Mexico, the Department of State has issued a travel warning advising U.S. citizens against travel to certain areas of Mexico and that Nayarit is one of those areas identified as prone to drug-related violence.

While the record does not establish that the applicant's spouse who has gained job skills from his employment as an electrician's aide would be limited to minimum wage employment if he returns to Mexico, the AAO does take note of his family ties to the United States, the fact that he has never lived outside the United States and the drug violence in the State of Nayarit. When these hardship factors are added to the normal disruptions and difficulties created by relocation, the applicant has established that her spouse would suffer extreme hardship upon relocation.

On appeal, counsel states that the applicant's spouse has experienced and continues to experience emotional and financial hardship due to separation from the applicant and his children. Counsel states that the applicant's spouse is currently experiencing psychological and emotional stress as a result of "his wife's forced stay in Mexico," and the uncertainty of her return to the United States. Counsel states that the applicant's spouse has been forced to travel back and forth between the United States and Mexico so as to maintain contact with his children, and to foster the continuity of a strong marriage between him and the applicant. Counsel contends that this travel has placed a financial burden on the applicant's spouse. Counsel further states that the applicant's spouse was forced to place his belongings in storage and move in with his parents in order to be able to support himself and his family in Mexico.

In support of these assertions, the record contains copies of the applicant's spouse's Earnings and Leave Statements from 2006 through February 2009; a letter of employment from the California Institute of Technology, dated February 9, 2009; a letter from his father, [redacted] stating that the applicant lives with the family and that he contributes to household bills; copies of rental receipts from Public Storage, dating from August 31, 2007, through January 2009; and a copy of a Transaction History-Remitter Transactions and a copy of a single remittance transaction, showing that the applicant's spouse has remitted money from May 2007 through January 2009 to the applicant in Mexico.

Statements from family and friends of the applicant's spouse attest to the applicant's spouse's emotional hardship in the absence of the applicant and his children. In a statement, the applicant's spouse's brother, [redacted] expresses concerns about his brother's condition. [redacted] states that that ever since the applicant spouse's family left for Mexico, the applicant's spouse has been very depressed, hardly eats, has stopped communicating with his friends and family, does not go out very often, and watches television and sleeps all day. In another statement, the applicant's spouse's friend, [redacted] reports that he has observed how sad the applicant's spouse has been due to not having his family with him. [redacted] states that he has observed how sad the applicant's spouse becomes after he goes to visit his family in Mexico and his daughter does not remember him. [redacted] also states that he has noticed that the applicant's spouse is often depressed and quiet. [redacted], a co-worker of the applicant's spouse, who has worked with him for about two years, states that he has noticed that the applicant's spouse seem to be depressed because his family is in Mexico.

The AAO acknowledges the statements by the applicant's spouse's family and friends concerning his depression. However, the record contains no documentary evidence, such as a doctor's letter, medical records, psychological evaluation, or employer notices of poor performance, to support these assertions. Therefore, the record fails to establish the extent of the applicant's spouse's emotional hardship or demonstrate how separation from the applicant is affecting him.

As to the financial hardship claims, the AAO notes that while the applicant's spouse may be living with his parents, there is insufficient evidence to establish financial hardship. While counsel claims that the applicant's spouse's financial hardship required him to place his belongings in storage and move in with his parents, the address on the storage rental receipts is the same address that the applicant's spouse had in 2005 when he filed the petition on behalf of the applicant. Thus, the fact that the applicant's spouse is living with his parents does not offer proof of his current financial problems. Furthermore, while counsel claims that the applicant's spouse, in addition to paying for storage rental and sending money to his family in Mexico, is also responsible for helping pay his parents' rent, and utilities, there is no documentary evidence in the record of such payments. Going on the 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)). Without documentary evidence of the applicant's spouse's financial obligations, the AAO is unable to determine the extent of any financial hardship the applicant's spouse may currently be experiencing. Based on the record before us, the AAO finds that the applicant has failed to demonstrate that her spouse would experience extreme hardship if her waiver application is denied and he remains in the United States without her.

Although the applicant has demonstrated that the qualifying relative would experience extreme hardship if he relocated abroad to reside with the applicant, we can find extreme hardship warranting a waiver of inadmissibility only where an applicant has shown extreme hardship to a qualifying relative in the scenario of relocation *and* the scenario of separation. The AAO has long interpreted the waiver provisions of the Act to require a showing of extreme hardship in both possible scenarios, as a claim that a qualifying relative will relocate and thereby suffer extreme hardship can easily be made for purposes of the waiver even where there is no actual intention to relocate. *Cf. Matter of Ige*, 20 I&N Dec. 880, 886 (BIA 1994). Furthermore, to relocate and suffer extreme hardship, where remaining in

the United States and being separated from the applicant would not result in extreme hardship, is a matter of choice and not the result of inadmissibility. *Id.*, *also cf. Matter of Pilch*, 21 I&N Dec. 627, 632-33 (BIA 1996). As the applicant has not demonstrated extreme hardship from separation, we cannot find that refusal of admission would result in extreme hardship to the qualifying relative in this case.

Consequently, the applicant has failed to establish statutory eligibility for a waiver under section 212(i) of the Act. As the applicant is statutorily ineligible for relief, the AAO finds 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)(6)(C) 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 will be dismissed.