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

U.S. Citizenship and Immigration Services

[redacted]

DATE: NOV 25 2011 OFFICE: MEXICO CITY (CD. 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:

SELF-REPRESENTED

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,

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the District Director, Mexico City, Mexico, and 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 entered the United States without admission or parole in September 1999 and departed the United States in February 2006. The applicant filed an application for adjustment of status on April 10, 2002. The applicant accrued over a year of unlawful presence in the United States from September 1999 until April 10, 2002. The applicant 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 his last departure from the United States. The applicant is a beneficiary of an approved Petition for Alien Relative, as a spouse of a U.S. citizen, who seeks a waiver of inadmissibility in order to reside in the United States with his U.S. citizen spouse and child.

The District Director concluded that the record failed to establish the existence of extreme hardship for a qualifying relative and denied the application accordingly. *See Decision of the District Director*, dated May 8, 2009.

On appeal, the applicant's spouse stated that she and their child are suffering economically and emotionally in the absence of her husband. The applicant's spouse further stated that she could not relocate to Mexico because there are no employment opportunities and it will create a hardship for their child's education.

In support of the waiver application and appeal, the applicant submitted a letter from his spouse, a letter from a doctor, legal documents, money orders, identity documents, documents and a letter from their child's school, letters of support, and financial documents including pay statements and bills. The entire record was reviewed and considered in rendering a decision on the appeal.

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

> (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.
>
> . . . .

> (v) Waiver.-The Attorney General 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 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. No court shall have jurisdiction to review a decision or action by the Attorney General regarding a waiver under this clause.

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 qualifying relative in this case is his U.S. citizen spouse. The record contains references to hardship the applicant's child would experience if the waiver application were denied. It is noted that Congress did not include hardship to an alien's child as a factor to be considered in assessing extreme hardship. In the present case, the applicant's spouse is the only qualifying relatives for the waiver under section 212(a)(9)(B)(v) of the Act, and hardship to the applicant's child will not be separately considered, except as they may affect the applicant's spouse.

In the present case, the record reflects that the applicant is a forty-two year-old native and citizen of Mexico who resided in the United States from September 1999, after entering without admission or parole, to February 2006, when he returned to Mexico. The applicant's spouse is a forty-eight year-old native of Dominican Republic and citizen of the United States. The applicant is currently residing in Mexico and the applicant's spouse and child are residing in Bronx, New York.

The applicant's spouse asserts that she and her son are suffering from emotional hardship due to the absence of her spouse. *See Letter from* [redacted] dated May 28, 2009. The applicant's spouse claims that due to separation from her spouse, she is suffering from chronic depression, loss of appetite, and insomnia, while her son is angry and doing poorly in school. *Id.* In support of her assertions, the applicant's spouse submitted a letter from a physician stating that the applicant's spouse suffers from a chronic depressive state with crying spells, loss of appetite, and insomnia. *See Letter from* [redacted] dated May 23, 2009. The physician further states that the applicant's son is doing poorly in school and has problems interacting with other children. *Id.* It is noted that [redacted] letterhead indicates that he is a doctor of internal medicine and blood diseases and his submitted one-page letter does not contain a report or details concerning any psychological examination of the applicant's spouse or son. There is further no

indication as to extent and duration of a doctor-patient relationship between the physician and the applicant's spouse and son.

The applicant's spouse also submitted a letter from her priest indicating that she is down and depressed and that her son's schoolwork is suffering due to the absence of the applicant. *See Letter from* [redacted] In addition, the applicant's spouse submitted school records indicating that her son is in second grade, working below his grade level, and has problems maintaining focus and understanding his classwork. *See Mid-Year Progress Report 2008/2009*. Letters in support of the applicant note that the applicant's son is sad and states that he misses his father. *See Letter from* [redacted] dated June 2, 2009; *Letter from* [redacted] dated May 29, 2009. It is initially noted that the applicant's son is not a qualifying relative in the context of this application so that his hardship will only be considered insofar as it affects the applicant's spouse. Also, a letter submitted by the applicant's son's kindergarten teacher states that the applicant's son has had difficulties with focus, lack of effort, and task completion since kindergarten. *See Letter from* [redacted] dated December 10, 2007. It is further noted that the applicant has been absent from the United States throughout his son's academic career and there is no detailed evaluation in the record concerning his son's academic difficulties. It is acknowledged that separation from a spouse or parent nearly always creates a level of hardship for both parties, but there is no indication that the emotional hardship suffered by the applicant's spouse or her son has impacted the applicant's spouse's ability to perform in her work and daily life. There is insufficient evidence in the record to find that the applicant's spouse is suffering a level of emotional hardship beyond the common results of inadmissibility of removal.

The applicant's spouse asserts that since she has been living without her husband's income, the bills have become overwhelming. *See Letter from* [redacted] dated May 28, 2009. The applicant's spouse calculates that her monthly expenses amount to $796.45 and states that her monthly income is $1000.00. *Id.* The applicant's spouse submitted payment stubs, household bills, and money order receipts in support of her assertions. There is no indication from the record or from the applicant's spouse's own calculations that she has been unable to maintain her financial obligations in her husband's absence. Further, the 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, it is not enough by itself to justify an extreme hardship determination. *See INS v. Jong Ha Wang*, 450 U.S. 139 (1981) (upholding BIA finding that economic detriment alone is insufficient to establish extreme hardship).

The applicant's spouse claims that she cannot relocate to Mexico to join her husband because there are no jobs in Mexico and her son would have a problem with his education in Mexico, where he does not speak the language. *See Letter from* [redacted] dated May 28, 2009. The applicant's spouse further asserts that her husband is not working in Mexico and is living in a one-bedroom home with family members. *Id.* The applicant's spouse is a native of Dominican Republic and there is no evidence in the record indicating the nature of her relationships with any relatives living in the United States. There has been no documentation submitted concerning employment, education, or economic conditions in Mexico, including the area where the applicant

lives. The applicant's spouse has submitted money order receipts to indicate that she sends money to her husband in Mexico, but there is no evidence concerning the extent of the applicant's financial obligations in Mexico. The applicant's spouse states that her son is having difficulties in school in the United States and that his problems would worsen in Mexico, but there is no evaluation detailing her son's academic problems and how relocation would impact his progress. *Id.* Again, it is also noted that the applicant's son is not a qualifying relative for the purposes of this application. Going on record without supporting documentary evidence generally is not sufficient for purposes of meeting the burden of proof in these proceedings. *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 record contains insufficient evidence to find that the applicant's spouse would suffer hardship beyond the common consequences of inadmissibility or removal if she relocated to Mexico.

Although the depth of concern and anxiety over the applicant's immigration status is neither doubted nor minimized, the fact remains that Congress provided for a waiver of inadmissibility only under limited circumstances. While the prospect of separation or involuntary relocation nearly always results in considerable hardship to individuals and families, in specifically limiting the availability of a waiver of inadmissibility to cases of "*extreme* hardship," Congress did not intend that a waiver be granted in every case where a qualifying relationship exists. U.S. court decisions have repeatedly held that the common results of removal are insufficient to prove extreme hardship. *See Hassan v. INS*, 927 F.2d 465, 468 (9th Cir. 1991), *Perez v. INS*, 96 F.3d 390 (9th Cir. 1996); *Matter of Pilch*, 21 I&N Dec. 627 (BIA 1996) (holding that emotional hardship caused by severing family and community ties is a common result of deportation and does not constitute extreme hardship); *Matter of Shaughnessy*, 12 I&N Dec. 810 (BIA 1968) (holding that separation of family members and financial difficulties alone do not establish extreme hardship). "[O]nly in cases of great actual or prospective injury . . . will the bar be removed." *Matter of Ngai*, 19 I&N Dec. 245, 246 (BIA 1984).

In this case, the record does not contain sufficient evidence to show that the hardships faced by the qualifying relative, considered in the aggregate, rise beyond the common results of removal or inadmissibility to the level of extreme hardship. The AAO therefore finds that the applicant has failed to establish extreme hardship to his lawful permanent resident spouse as required under section 212(a)(9)(B)(v) of the Act. As the applicant has not established extreme hardship to a qualifying family member no purpose would be served in determining whether the applicant 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. 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.