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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

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DATE: **NOV 25 2011** OFFICE: MEXICO CITY (CD. JUAREZ) FILE:

IN RE:

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:

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 Acting 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 2000 and departed in August 2007. 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. The applicant seeks a waiver of inadmissibility in order to reside in the United States with his U.S. citizen spouse.

The Acting District Director concluded that the record failed to establish the existence of extreme hardship to the applicant's spouse and denied the application accordingly. *See Decision of the Acting District Director*, dated August 19, 2008.

On appeal, counsel for the applicant contends that the applicant's spouse is suffering from emotional and financial hardship in the absence of her husband. Counsel claims that the applicant's spouse is suffering from serious depression and is unable to support herself financially. Counsel further claims that the applicant's spouse cannot relocate to Mexico for safety reasons and because her family members live in the United States.

In support of the waiver application and appeal, the applicant submitted identity documents, letters from his spouse and her parents, medical letters and prescriptions, bills, tax documents, family photographs, certificates, court paperwork, and documents written in Spanish, with no accompanying translation¹. 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-

....

¹ According to 8 C.F.R. § 103.2(b)(3), "[a]ny document containing foreign language submitted to 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 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 mother, who is not a U.S. citizen or lawful permanent resident, would experience if the waiver application were denied. It is noted that Congress did not include hardship to individuals who are not U.S. citizens or lawful permanent residents as a factor to be considered in assessing extreme hardship. In the present case, the applicant’s spouse is the only qualifying relative for the waiver under section 212(a)(9)(B)(v) of the Act, and hardship to the applicant’s mother will not be separately considered, except as it may affect the applicant’s spouse.

In the present case, the record reflects that the applicant is a thirty-one year-old native and citizen of Mexico who resided in the United States from 2000, after entering without admission or parole, to August 2007, when he returned to Mexico. The applicant’s spouse is a twenty-five year-old native of Mexico and citizen of the United States. The applicant is currently residing in Mexico and the applicant’s spouse is residing in El Paso, Texas.

Counsel for the applicant asserts that the applicant’s spouse has been seriously depressed ever since the applicant’s I-601 waiver denial. It is noted that the record does not contain medical documentation supporting counsel’s assertion. The applicant’s spouse states that it is very hard to be away from the applicant and that she wants to be with him again. *See Letter from* [REDACTED] [REDACTED] dated September 4, 2008. It is acknowledged that separation from a spouse nearly always creates a level of hardship for the parties involved. However, there is not sufficient evidence to find that the applicant’s spouse’s is experiencing hardship beyond the common

consequences of removal or inadmissibility. Counsel's assertions regarding the applicant's spouse's emotional hardship have been considered, but 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 applicant's spouse asserts that she helps the applicant out financially because he is only receiving sixty to eighty dollars a week at his job in Mexico. See *Letter from* [REDACTED] [REDACTED] notarized September 4, 2008. She further claims that she has been working overtime whenever it is available so that she can pay her bills. *Id.* There is no documentation indicating the amount and frequency of financial assistance the applicant's spouse is providing for the applicant. Further, there is no documentation indicating that the applicant is in receipt of any payments. Counsel for the applicant asserts that due to the applicant's absence, the applicant's spouse is "behind on almost everything like utilities bills and her credit cards are maxed out." The applicant's spouse lives with her parents in their home and pays them two hundred and fifty dollars per month for rent and utilities. See *Letter from* [REDACTED] [REDACTED] notarized September 4, 2008; *Letter from* [REDACTED] [REDACTED] dated September 3, 2008. Counsel submitted six monthly bills from the applicant's spouse's creditors from 2008². In the two instances where the applicant's spouse was past due on her accounts, the past due amount totaled \$9.95 and \$3.07, respectively. See [REDACTED] [REDACTED] closing date of March 26, 2008; [REDACTED] [REDACTED] closing date of May 12, 2008. On both of those accounts, the applicant's spouse had over 96% of her credit line available for use at the time of billing. *Id.* There is not sufficient evidence to find that the applicant's spouse is unable to support herself and suffering from extreme financial hardship. Further, the courts have found that though economic detriment is a factor for consideration, 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).

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

² It is noted that counsel submitted several of the applicant's spouse's [REDACTED] [REDACTED] However, these bills were written in Spanish and not accompanied by an English translation and certificate of translation.

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).

Counsel contends that the applicant’s spouse cannot relocate to Mexico because she would be putting herself at risk of violence. Counsel further states that the applicant’s spouse would leave behind her family, lose her job, and lose health benefits if she left the United States. The applicant’s spouse claims that she is a native of Mexico, but she has been living in the United States since she was three years old. See *Letter from* [REDACTED] notarized September 4, 2008. She states that she lives with her lawful permanent resident mother and U.S. citizen father, and comes from a close family. The applicant’s spouse notes that her parents, siblings, both sets of grandparents, and most of her aunts and uncles live in the United States. *Id.*

According to the applicant’s spouse, the applicant failed to find employment in Ciudad Juarez and had to move to Sonora to find a job. See *Letter from* [REDACTED] notarized September 4, 2008. She further states that she has had to subsidize his life in Mexico because he is only getting paid sixty to eighty dollars a week. *Id.* The applicant’s spouse claims that she does not know how she would live in Mexico, as her husband has not been able to support himself there. *Id.* Counsel for the applicant further asserts that the applicant’s spouse would be at risk in Mexico because it is “chaotic and out of control.” It is noted that the Department of State has recently issued travel warnings concerning the area where the applicant is living and working in Mexico:

You should be especially aware of safety and security concerns when visiting the northern border states of Northern Baja California, Sonora, Chihuahua, Nuevo Leon, and Tamaulipas. Much of the country's narcotics-related violence has occurred in the border region. More than a third of all U.S. citizens killed in Mexico in 2010 whose deaths were reported to the U.S. government were killed in the border cities of Ciudad Juarez and Tijuana. Narcotics-related homicide rates in the border states of [REDACTED] have increased dramatically in the past two years.

Travel Warning-Mexico, U.S. Department of State, dated April 22, 2011.

The record establishes that the applicant’s spouse is a twenty-five year-old naturalized U.S. citizen who has been living in the United States since she was three years old. She is employed and lives with her lawful permanent resident mother and U.S. citizen father in El Paso, Texas. Her family in the United States, apart from her parents, includes: two younger brothers, two sets of grandparents, ten aunts and uncles, and cousins. See *Letter from* [REDACTED] notarized September 4, 2008. The applicant is currently living and working in [REDACTED]. The applicant’s spouse is supplementing his income, as he is unable to fully support himself. It is noted that [REDACTED] is one of the areas in Mexico specifically highlighted by the Department of State in its travel warnings. If the applicant’s spouse relocated to Mexico, she would face security concerns as well as financial hardship. In this case, the record contains sufficient evidence to

show that the hardships faced by the qualifying relative, if she were to relocate to Mexico, rise to the level of extreme hardship.

The record, however, does not contain sufficient evidence to show that the hardships faced by the qualifying relative upon separation, 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 her U.S. citizen 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.

Although the applicant has demonstrated that the qualifying relative would experience extreme hardship if she 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.

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.