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

[REDACTED]

H6

DATE: **OCT 14 2011** OFFICE: CIUDAD JUAREZ, MEXICO

FILE: [REDACTED]

IN RE: Applicant: [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:

[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,

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Field Office Director, Ciudad Jurarez, 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 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. The applicant is the spouse of a U.S. Citizen and is the beneficiary of an approved Petition for Alien Relative. Through counsel, the applicant does not contest this finding of inadmissibility. Rather, she 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 with her husband in the United States.

The Field Office Director concluded that the applicant failed to establish that extreme hardship would be imposed on a qualifying relative and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) accordingly. *See Decision of District Director, Ciudad Juarez, Mexico*, dated March 26, 2009¹.

On appeal, counsel asserts that the Field Office Director's decision erroneously concluded that the applicant's U.S. citizen spouse's diabetic condition did not constitute extreme hardship. *Form I-290B, Notice of Appeal or Motion*, received April 25, 2009. Additionally, counsel asserts that the Field Office Director's decision failed to consider the emotional and economic hardship that the U.S. citizen spouse would suffer. *Id.* In support of the assertions, counsel indicates that evidence will be presented that demonstrates the U.S. citizen spouse's severe health, economic, and emotional consequences if the applicant were not permitted to return to the United States. *Id.*

The record includes, but is not limited to: Notice of Appeal or Motion (Form I-290B); Application for Waiver of Grounds of Inadmissibility (Form I-601); Petition for Alien Relative (Form I-130); a brief from counsel; letters of support from the applicant's spouse; letters of support from medical and mental health experts; medical reports and medical results; medical bills; copies of medical prescription receipts; an Internet article; letters of support from friends, co-workers, and community members; an employment letter; copies of earnings statements; copies of W-2s and income tax returns; copies of residential rental receipts; copy of a cable bill; copies of an automobile accident report; copy of an automobile title; copy of automobile insurance policy; copy of an automobile lien; copy of a divorce decree and child support and care computation; copies of remittances; photographs; and copies of illegible letters of support. The entire record was reviewed and considered in rendering a decision on the appeal.

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

¹ The AAO notes that the Decision of the District Director erroneously references File Number [REDACTED] and not the correct File Number, [REDACTED]. The Decision of the District Director's erroneous reference is harmless error given that the Decision of the District Director also correctly identifies the applicant, the applicant's spouse, and the specific procedural history and facts that relate to the applicant's case.

(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 [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. No court shall have jurisdiction to review a decision or action by the Attorney General [Secretary] regarding a waiver under this clause.

The record establishes that the applicant entered the United States without inspection in or around January 1995 and remained until in or around January 2008, when she voluntarily departed to Mexico. The applicant accrued unlawful presence from April 1, 1997, the effective date of the unlawful presence provisions in the Act, until in or around January 2008, a period in excess of one year. As the applicant is seeking admission within 10 years of departure, she is inadmissible pursuant to section 212(a)(9)(B)(i)(II) of the Act.

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 or her children can be considered only insofar as it results in hardship to a qualifying relative. The applicant's husband 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.

Counsel contends that the applicant's spouse has been suffering extreme hardship since the applicant's absence from the United States. *See I-290B Brief in Support of Appeal*, dated May 25, 2009. Specifically, the applicant's spouse "is having significant health, emotional and financial problems due to [the applicant's] absence from the home." *Id.* In support of the health problems that he has been experiencing, the applicant's spouse states: "When [the applicant] was here[,] she fixed all of my meals including preparing a lunch for me to take to work, made sure that I stayed on my diet, gave me my insulin shots and made sure I took all of my other medication, and provided me with love and support." *Letter of Support from* [REDACTED] dated May 26, 2009. Counsel contends that the applicant's presence in the United States is necessary because the applicant assures her spouse's well-being: assists with the management of his medical care (diabetes, high blood pressure, and high cholesterol), ensures that he follows his diet, ensures that he takes his medications, and administers his insulin. *I-290B Brief in Support of Appeal, supra.* Counsel further contends that without the applicant, the spouse is careless about his diet and his medication. *Id.* In support of her contention, counsel has submitted a statement from the spouse's attending physician, indicating that the spouse has been diagnosed with uncontrolled type 2 diabetes, and that the applicant's presence is necessary to help with the spouse's medical care. *See Letters of Support from Osteopathic Physician* [REDACTED] *D.O., FACP, FACSM*, dated March 3, 2008 and March 30, 2009. Otherwise, the applicant's spouse is at significant risk of complications including death. *Letter of Support from Osteopathic Physician* [REDACTED] *D.O., FACP, FACSM*, dated March 30, 2009; *see MayoClinic.com Type 2 diabetes*, [REDACTED] reprints (October 24, 2007), available at [REDACTED]. Also, counsel submitted a medical report from the spouse's attending physician, indicating that the spouse has been diagnosed with high cholesterol. *See Medical Report from Osteopathic Physician* [REDACTED] *D.O., FACP, FACSM*, dated March 31, 2009.

In support of the emotional problems that he has been experiencing, the applicant's spouse states: "Since [the applicant] left, I have been very depressed. I am very sad, cannot sleep, do not eat right and sometimes forget to take my medication." *Letter of Support from* [REDACTED] *supra.* Counsel contends that the applicant's presence in the United States is necessary because the applicant's spouse is suffering from depression and having significant problems coping with his wife's absence. *I-290B Brief in Support of Appeal, supra.* Specifically, counsel contends that because of the applicant's spouse's work, depression, and living alone, the applicant's spouse does not have the time or the energy to prepare nutritious meals for himself, resulting in aggravating stress factors for his uncontrolled type 2 diabetes. *Id.* And, counsel contends that if the applicant were present, she would be able to provide the love and support necessary to help the spouse. *Id.* In support of her contention, counsel has submitted a statement from the spouse's therapist, indicating that the spouse has been diagnosed with "Adjustment Disorder with depressed mood" and that the spouse believes that his health and mood would improve significantly if the applicant were to return to the United States. *Letter of Support from Therapist* [REDACTED] *MS, LMFT-C*, dated May 23, 2009.

In support of the financial problems that he has been experiencing, the applicant's spouse states: "I was recently laid off of my job for 2 months, but have since returned to work. My work hours have been cut from 40 to 32 hours per week, and I have been informed to expect another 1 month layoff soon ... I have many bills and am finding it very hard to make ends meet – to pay my all [sic] of my bills, to get to the doctor, to buy my medication and to send money to [the applicant]. Sometimes I do not buy the medication I need because I need to pay my rent or send money to my wife." *Letter of Support from [REDACTED] supra.* Counsel contends that in the applicant's absence, the applicant's spouse has trouble managing financial affairs and supporting two households. *I-290B Brief in Support of Appeal, supra.* Specifically, counsel contends that the spouse has to manage mounting medical bills and deal with unexpected layoffs given his profession as a forklift operator. *Id.* In support of her contention, counsel has submitted copies of receipts for medical prescriptions with costs per prescription ranging from \$5.00 – \$59.98; copies of medical bills with past due amounts ranging from approximately \$520 - \$1120; a copy of a cable bill with a past due amount of approximately \$190; copies of mobile telephone bills with past due amounts of \$15; a copy of an automobile insurance bill; copies of money order receipts for residential rent; and copies of remittances, totaling \$4,155 from February 2008 – April 2009. *See Walgreens Receipts; see also Regional Medical Laboratory Statement, dated March 19, 2009; Tulsa Adjustment Bureau Debt Collector Statement, dated April 20, 2009; Cox Communications Statement, dated March 17, 2009; [REDACTED], dated April 20, 2009; QuickTrip Money Orders Made Payable to [REDACTED] Apartments; [REDACTED] Statement.*

The record is sufficient to establish that the applicant's spouse has been diagnosed with uncontrolled type 2 diabetes and high cholesterol. And, because of his medical situation and separation from the applicant, the spouse has experienced some medical hardship. However, the record does not establish that the spouse currently is experiencing any additional health ailments such as high blood pressure as counsel contends. Specifically, medical reports submitted by counsel state, " ... Patient has not been following blood pressure outside the office ... Patient[']s BP [blood pressure] has been ." *Medical Reports from Osteopathic Physician [REDACTED] D.O., FACP, FACSM, dated November 21, 2008 and March 30, 2009.* And, the medical reports only specifically state, "HYPERTENSION: 401.9." *Id.* The medical reports appear to be incomplete without any further analysis, discussion, or explanation of the spouse's blood pressure or what is meant by "HYPERTENSION: 401.9", and therefore, the record is insufficient to support a conclusion and medical diagnosis that the spouse is suffering from hypertension. Absent an explanation in plain language from the spouse's attending physician of the exact nature and severity of any condition, the AAO is not in the position to reach conclusions concerning the severity of a medical condition or the treatment needed.

Additionally, the record is sufficient to establish that the applicant's spouse has been diagnosed with Adjustment Disorder with a depressed mood, and therefore, has experienced some emotional hardship in the applicant's absence. However, the record does not establish that the depressed mood that the spouse has been experiencing goes beyond what is commonly experienced by relatives of inadmissible family members. Based on the record, the AAO cannot conclude that

continued separation from the applicant would result in extreme hardship to the applicant's spouse due to the spouse's emotional state.

Further, the record is sufficient to establish that the applicant's spouse has had the responsibility of financially supporting two households since the applicant's absence, and therefore, has experienced some financial hardship. However, the record does not include any evidence concerning the applicant's inability to provide financial support to her and her spouses' households. The record indicates that the applicant sustained physical injuries from an automobile accident that occurred on or about February 3, 2007, and required operative repair and follow-up medical treatment. *Letter of Support from Dr. [REDACTED] M.D.*, dated March 17, 2008. Yet, the record indicates that the applicant healed properly and in a timely manner, and therefore, does not appear to be physically hindered from financially contributing to her and her spouses' households. *Id.* Moreover, the record does not include any evidence of conditions in Mexico that preclude the applicant from obtaining gainful employment there so that she can contribute to the necessary financial expenditures to maintain her and her spouses' households. Accordingly, the record does not establish that the financial hardship goes beyond what is commonly experienced by relatives of inadmissible family members. Based on the record, the AAO cannot conclude that continued separation from the applicant would result in extreme hardship to the applicant's spouse due to financial hardship.

The AAO recognizes that the applicant's spouse may experience some hardships as a result of separation from the applicant. However, the AAO finds that even when these hardships are considered in the aggregate, the record fails to establish that the applicant's spouse will suffer extreme hardship as a result of separation from the applicant.

Also, counsel contends that the applicant's spouse would endure extreme hardship if he were to relocate to Mexico to be with the applicant. *See I-290B Brief in Support of Appeal, supra.* Specifically, counsel contends the applicant's spouse "is not able to move to Mexico to be with [the applicant] as he would be unable to support either himself or his wife in Mexico." *Id.* In support of the extreme hardship that he would endure upon relocating to Mexico, the applicant's spouse states: "I cannot go to Mexico to live because I have to support myself and my wife and there are no jobs in Mexico for me." *Letter of Support from [REDACTED] supra.* However, the record does not contain any evidence to support the applicant's spouse's assertion. Specifically, the record does not contain any country conditions information concerning economic and social conditions as well as employment opportunities in Mexico. Nor has it been established that the applicant's spouse would be unable to travel to Mexico on a regular basis to visit the applicant. Moreover, the record indicates that the applicant's spouse is originally from Mexico. *See U.S. Certificate of Naturalization for [REDACTED]; see also Petition for Alien Relative (Form I-130)*, approved December 5, 2006. Yet, the record does not contain any information concerning whether the applicant's spouse maintains any family or social ties as well as property there. Based on the record, the AAO cannot conclude that the applicant's spouse's relocation to Mexico would result in extreme hardship to the applicant's spouse.

The AAO recognizes that the applicant's spouse will endure hardship as a result of separation from the applicant. However, his situation if he 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. In regards to establishing extreme hardship in the event the qualifying relative relocates abroad based on the denial of the applicant's waiver request, the AAO notes that this criterion has not been established.

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 her United States 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.

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.