U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals
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Washington, DC 20529-2090

identifying data deleted to prevent clearly unwarranted invasion of personal privacy

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U.S. Citizenship and Immigration Services

H6

[redacted]

DATE: OCT 17 2011 OFFICE: CIUDAD JUAREZ FILE: [redacted]

IN RE: [redacted]

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:

[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, 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 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 who seeks a waiver of inadmissibility in order to reside in the United States with her husband and children.

The Field Office Director concluded that the record failed to establish the existence of extreme hardship for the applicant's spouse and denied the application accordingly. *See Decision of the Field Office Director*, dated April 3, 2009.

On appeal, counsel for the applicant asserts that the applicant's spouse is suffering from depression due to separation from his wife. In addition, counsel claims that the applicant's spouse will suffer financial and physical hardship if his wife is not admitted to the United States.

In support of the waiver application and appeal, the applicant submitted a psychological report, an affidavit and letter from the applicant's spouse, a letter from the applicant's spouse's employer, and paperwork concerning the purchase of a home. 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-
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> . . . .
>
> (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 children would experience if the waiver application were denied. It is noted that Congress did not include hardship to an alien's children 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 children 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-three year-old native and citizen of Mexico who resided in the United States from September 1999, after entering without admission or parole, to August 2007, when she returned to Mexico. The applicant's husband is a forty-two year-old native of Mexico and citizen of the United States. The applicant is currently residing in Mexico with their two children[1] and the applicant's husband is currently residing in [redacted]

The applicant's spouse claims that he became depressed upon separation from his wife, and has since lost his joy for life. *See Affidavit from* [redacted]*, dated March 27, 2008.* He further states that he is not capable of taking over his wife's prior responsibilities, such as cooking and taking care of the home. *Id.* In support of his assertions, the applicant submitted letters from a clinical psychologist and his employer. After a psychological evaluation, the applicant was found to be suffering from adjustment disorder with depression and anxiety. *See Psychological Report from* [redacted] *dated April 28, 2009.* The applicant's spouse's employer claims that the applicant's spouse does not have the same passion for life that he possessed prior to the applicant's departure. *See Affidavit from* [redacted] *dated March 28, 2008.*

[1] The applicant and her husband have a child in common, a daughter born on February 25, 2003. The applicant also has a daughter from a previous relationship, born on April 29, 1997.

The applicant's spouse further claims that if his stepchild continues to remain in Mexico with his spouse, it will contribute to his emotional hardship. The applicant's spouse does not mention the emotional hardship of separation from his biological daughter, though his psychological report indicates that both of the applicant's children reside with her in Mexico. *See Psychological Report from* [redacted] *dated April 28, 2009.* Rather, the applicant's spouse contemplates that his biological daughter will reside with him in the United States in stating that he will have to raise his daughter and work fewer hours outside the home if his wife is not granted admission to the United States. *See Affidavit from* [redacted], *dated March 27, 2008.*

The applicant's spouse's employer notes that the applicant's spouse is currently working fewer hours because his home life requires more of his attention. *See Affidavit from* [redacted] *dated March 28, 2008.* However, there is no indication that the applicant's spouse's emotional hardship has affected his ability to work and take care of his responsibilities at home. In fact, the applicant's spouse's employer characterizes him as conscientious and dependable; there is no indication that the quality of the applicant's spouse's work has decreased since the departure of his wife and children. It is acknowledged that separation from a spouse or child nearly always creates a level of hardship for both parties, but there is insufficient evidence to find that the applicant's spouse is suffering a level of emotional hardship beyond the common results of inadmissibility or removal.

The applicant's spouse asserts that he cannot relocate to Mexico to live with his wife and children because he would have to start his life over again. *See Affidavit from* [redacted] *dated March 27, 2008.* The applicant's spouse further states that if he moved to Mexico, he would leave behind his home, friends, and employment as a restaurant manager. *Id.* It is noted that the applicant's spouse is a native of Mexico who lived in Mexico until the age of twenty. *Id.* Though the applicant's spouse notes his friendships in the United States, there is no indication as to whether he has any family members residing in the United States. Further, there is no indication as to whether the applicant's family members remain in Mexico and the nature of his relationships with any such individuals.

The applicant's spouse states that he and his children will not have the same employment and educational opportunities in Mexico that they would have in the United States. *See Affidavit from* [redacted] *dated March 27, 2008.* The applicant's children are not qualifying relatives in the context of this application. As such, any hardship they would suffer will only be considered insofar as it affects the applicant's spouse. It is noted that the applicant has not submitted any documentation concerning country conditions in Mexico. There is no indication as to whether the applicant is gainfully employed in Mexico or where and with whom the applicant and her children currently reside. There is further no indication as to why the applicant's spouse would be unable to secure employment in Mexico. 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)). 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).

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 exist. 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 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.

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.