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

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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,

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Field Office Director in Ciudad Juarez, 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 March 1997 and departed the United States in 2007. Accordingly, the applicant accrued unlawful presence in the United States from April 1, 1997, the date of enactment of the unlawful presence provisions, until her departure in 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 her 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 lawful permanent resident husband.

The Field Office Director in Ciudad Juarez 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 January 20, 2009.

On appeal, counsel for the applicant asserts that the applicant erroneously stated that she unlawfully resided in the United States from March 1997, when she entered without admission or parole, until December 2000. Instead, counsel claims that the applicant entered the United States from March 2002 until January 2003, so that the applicant was unlawfully present in the United States for less than a year.

In support of the waiver application and appeal, the applicant submitted copies of portions of her passports, criminal history check, letters from relatives and acquaintances, identity documents, and family photographs. 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 her lawful permanent resident spouse. The record contains references to hardship the applicant's children or grandchildren would experience if the waiver application were denied. It is noted that Congress did not include hardship to an alien's children or grandchildren 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(i) of the Act, and hardship to the applicant's children or grandchildren 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 sixty-three year-old native and citizen of Mexico who resided in the United States from March 1997, after entering without admission or parole, to sometime in 2007, when she returned to Mexico. The applicant's husband is a sixty year-old native of Mexico and lawful permanent resident of the United States. The applicant is currently residing in Mexico and the applicant's husband is currently residing in Suwanee, Georgia.

On November 26, 2007, the applicant, under oath, stated to a consular officer that she entered the United States in 1997, after entry without admission or parole, and that she remained in the United States until sometime in 2000. The applicant, then, indicated in her I-601 application that she had resided in the United States from March 1997 to December 2000. *See Form I-601 Application, received December 17, 2007.* In the applicant's I-601 decision, the Field Office Director determined that the applicant had entered the United States in March 1997 and voluntarily departed in 2007, based on evidence filed in support of her I-601 application. *See Decision of the Field Office Director, dated January 20, 2009.* Specifically, the applicant's spouse submitted an affidavit written on January 10, 2008, stating that he wrote the affidavit based on the distance, pain, suffering, and loneliness that he and their children had suffered in the past months. *See Affidavit from* [redacted] *dated January 10, 2008.* In addition, the applicant's daughter states that her children, then five and six years old, are always asking for their grandmother, who

had claimed departure from the United States in 2000. *See Letter from* [redacted] *dated January 5, 2008.*

Counsel for the applicant now asserts that the applicant had erroneously stated that she unlawfully resided in the United States from March 1997 to December 2000. Instead, counsel claims that the applicant was unlawfully present in the United States from March 2002 until January 2003, a period of less than one year. In support of this assertion, counsel submitted copies of portions of the applicant's passports, a letter from her son-in-law, and photographs of the applicant's grandchildren that were purportedly taken in Mexico. Counsel submitted one page of three of the applicant's passports: the first passport is issued by [redacted] authority on January 19, 1998, the second is issued by the Atlanta Consulate authority on September 3, 2002, and the last is issued by [redacted] authority on May 28, 2007. However, absent further evidence, counsel has failed to establish that the applicant was present at the time of issuance of these passports.

Also, counsel claims that the applicant's grandchildren miss her because they know her from their visits to Mexico. In support of this assertion, counsel submitted a letter from the applicant's son-in-law, stating that he gave his wife permission to take their daughter on a trip to Mexico to visit her family. *Letter from* [redacted] *dated May 19, 2005.* In addition, counsel submitted a copy of several pages of his wife's passport, evidencing her admission to the United States. *See Passport of* [redacted] However, the letter from the applicant's son-in-law serves as evidence that he permitted his daughter to leave the country, but is not evidence of his daughters' departure from the United States. In addition, his wife's passport evidences her admission to the United States, but does not verify her children's travel to Mexico. Finally, it is not clear that the family photographs submitted by the applicant were taken in Mexico and the date of the photographs has not been established. As such, the record is insufficient to find that the applicant was unlawfully present in the United States during only the period of March 2002 to January 2003.

Counsel for the applicant asserts that the applicant's spouse has been exhibiting signs of depression since the separation of his family. The record contains a psychosocial evaluation finding that the applicant's spouse is exhibiting symptoms of depressive disorder. *See Letter from* [redacted]. The evaluation notes that the applicant's spouse reported sleep disturbances that affect his functioning at work, loss of appetite, and depression. *Id.* It is noted that the record does not contain supporting evidence indicating that the applicant's spouse's work has been adversely affected by his wife's departure. Specifically, there are no submissions of letters or affidavits from the applicant's spouse's employer. In fact, the evaluation also notes that the applicant's spouse is working long hours to support himself and his wife in Mexico, and that he is not interested in anything but work. *Id.*

The applicant's daughter and granddaughter state that they also miss the applicant and are sad because of her absence. *See Letter from* [redacted] *dated January 5, 2008; Letter from* [redacted] It is noted that the applicant's daughter and granddaughter are not qualifying relatives in the context of this application and that any hardship they suffer will be considered only insofar as it affects the applicant's spouse. There is no indication that the applicant's spouse's

emotional hardship is curtailing his ability to support himself and function in his daily activities. It is acknowledged that separation from a spouse or parent 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 of removal.

There is insufficient evidence in the record to find that the applicant's spouse would suffer extreme hardship if he relocated to Mexico to live with his spouse. It is noted that the applicant's spouse is a native of Mexico and he and the applicant have seven children, all born in Mexico. *See Form I-130, signed April 16, 2001.* One of the applicant's children, a lawful permanent resident, submitted a letter on her behalf. *See Letter from* [redacted] *dated January 5, 2008.* However, the record is unclear concerning the country of residence of the applicant's other six children. Further, there is no evidence concerning the existence of other relatives who remain in Mexico and the nature of the applicant's spouse's relationship with any such relatives. There also has been no documentation submitted concerning country conditions in Mexico, including the area where the applicant currently resides. There is further no indication as to whether the applicant has sought employment in Mexico and whether any of her children are providing financial support. 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 does not contain sufficient evidence to find that the applicant's spouse would suffer hardship beyond the common consequences of inadmissibility or removal if he 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 her 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.