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



Ht6

DATE: **OCT 19 2011** OFFICE: CIUDAD JUAREZ, MEXICO File: 

IN RE: Applicant: 

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,

A handwritten signature in black ink, appearing to read "Perry Rhew".

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 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 10 years of her last departure from the United States.¹ The applicant seeks a waiver of inadmissibility in order to reside in the United States with her U.S. citizen spouse and children.

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 the Field Office Director*, dated March 10, 2009.

On appeal, the applicant asserts hardship of a medical nature. See *Form I-290B*, Notice of Appeal or Motion, received April 14, 2009. The applicant's husband asserts hardship of an emotional and economic nature as well. See *Hardship Declaration*, undated, and *Hardship Letter*, dated November 6, 2007.

The record contains, but is not limited to: Form I-290B; Form I-601; hardship declaration; hardship letter; medical excuse slip; employment confirmation letter; bank account confirmation letter; marriage certificate; family photographs; insurance company letter; character reference letters; church letter; children's school grade and attendance letters and extra curricular activities certificates; and Form I-130. The entire record was reviewed and considered in rendering a decision on the appeal.²

Section 212(a)(9) of the Act provides:

¹ The AAO notes that the applicant may also be inadmissible pursuant to section 212(a)(6)(C)(i) of the Act, 8 U.S.C. § 1182(a)(6)(C)(i), for seeking to procure a visa, other documentation, or admission into the United States or other benefit provided under the Act by fraud or willful misrepresentation. Indicators in the record suggest that the applicant attempted to enter the U.S. on or about February 27, 1988 with a counterfeit document, and was returned to Mexico. Although the record is insufficient for the AAO to make a finding of inadmissibility under section 212(a)(6)(C)(i), the potential applicability of this ground of inadmissibility is noted and should be considered in the event that future applications/petitions are filed.

² The applicant indicated on the *Form I-290B* that a brief and/or evidence would be submitted to this office within 30 days of filing the appeal. No such brief or evidence appears in the record. A letter was sent to the applicant, in care of her husband, by this office on August 31, 2011 and a copy of the brief and/or additional evidence was requested. The applicant has not responded to this request.

(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.

The record reflects that the applicant entered the United States without inspection in or about 1996 and remained until in or about September 2007, when she voluntarily departed. The applicant accrued unlawful presence from April 1, 1997, the date of enactment of unlawful presence provisions under the Act, until September 2007, 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, 8 USC § 1182(a)(9)(B)(i)(II). The applicant does not contest this finding on appeal.

A waiver of inadmissibility under section 212(9)(B)(v) of the Act is dependent on a showing that the bar to admission would impose 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 the 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.

In this case, the record reflects that the applicant's husband is a 51-year-old native of Mexico and naturalized citizen of the United States. With regard to separation, he states that if the applicant stays in Mexico, his life would be a total shambles. *Hardship Affidavit*, undated. The applicant's spouse states that they have been together for 20 years and that the applicant is gentle, kind, independent, loving, supportive, a caring mother, and an important part of his life. *Id.* He states that his wife "doesn't even sleep taking care of our children she is always at home cooking, cleaning and taking care of my children." *Id.* He states that he is able to work without worrying about his family thanks to his wife, who manages their money and meets all their needs. *Id.* The applicant's spouse states that he is suffering from a great deal of mental anguish because their future is so uncertain, and that he would be emotionally destroyed without his wife. *Id.*

With regard to emotional hardship, the AAO acknowledges that the applicant and her husband have been married since 1987 and that separation in light of such a lengthy marriage is a hardship. The evidence in the record is insufficient, however, to find extreme emotional hardship related to separation. Prior to the present appeal, the applicant's husband stated that his family has been divided - with three of his children living in the U.S. with him and one with his wife in Mexico. *Hardship Letter*, dated November 6, 2007. He stated that his children were fighting with each other, that they go out without him knowing their whereabouts, and that the situation is killing him. *Id.* Congress did not include hardship to the applicant's children as a factor to be considered in assessing extreme hardship under section 212(a)(9)(B)(v) of the Act, except as it may affect the qualifying relative - here the applicant's spouse. The AAO acknowledges difficulties inherent in raising children alone. Here, however, only one of the applicant's children in the U.S. is a minor and there is nothing in the record that shows that the burden on the applicant's husband is extreme. The evidence in the record is insufficient to support a finding of extreme hardship of an emotional nature related to separation from the applicant.

With regard to medical hardship, the applicant's husband states that he has "mellitus diabetes type II hypercholesterolemia that is extremely sensitive to stress." *Id.* An "excuse slip" was submitted on which [REDACTED] asserts: "Per [REDACTED] request he has been diagnosed with diabetes mellitus type II hypercholesterolemia." See *Excuse Slip*, dated August 31, 2007. The slip contains no additional medical information and the record contains no other medical evidence. No evidence has been submitted that describes the applicant's husband's medical condition, whether any restrictions/limitations are caused by the disease, or whether it is sensitive to stress as asserted. Further, no evidence has been submitted that shows the affects diabetes has had on the applicant's husband, whether his condition is mild, moderate, or severe, whether he takes any prescription medication(s), and specifically how separation and/or relocation could affect his condition. The applicant asserts on *Form I-290B* concerning her spouse: "There is further medical evidence from his primary physician about the current, worsening medical impact of our separation which augments the evidence already of record. I am having that new medical opinion and chart notes provided to submit under separate cover." See *Form I-290B*. No such evidence has been submitted. As discussed *supra*, the applicant has not responded to the AAO's request for the separate brief and/or evidence the applicant indicated on the *Form I-290B* would be submitted within 30 days of filing the appeal. The evidence in the record is insufficient to support a finding of extreme hardship of a medical nature.

The AAO acknowledges that separation from the applicant may have caused various difficulties for the applicant's spouse. However, it finds the evidence in the record insufficient to demonstrate that the challenges encountered by the qualifying relative, when considered cumulatively, meet the extreme hardship standard.

With regard to relocation, the applicant's husband states that he has no chance to survive in Mexico, his life would be ruined, his children would suffer terribly, and that as a father that would break his heart. *Hardship Letter*, dated November 6, 2007. More specifically, he states that he cannot find a job in Mexico because of his age. *Id.* No evidence has been submitted that shows that at 51-years-old, the applicant's husband is too old to secure employment in Mexico. Rather, his employer writes that the applicant's spouse has worked for Burdelik Builders as a trim carpenter for five years, averages 56 to 62 hours a week, and has proven himself an exceptional employee with a great work ethic. *Employment Confirmation Letter*, dated November 1, 2007. Without evidence to the contrary, the AAO will not speculate that the applicant's husband would be unable to find work in Mexico. Referring to his diabetes, the applicant's spouse states that he "would not have the money to buy my medicine for every day until I die." *Hardship Letter*, dated November 6, 2007. As discussed *supra*, the record contains no evidence that shows what medication(s) the applicant's spouse takes to treat his diabetes or any other medical condition. Neither has any evidence been submitted that shows the cost of any such medication(s). As the AAO will not speculate that the applicant's spouse will be unable to secure employment in Mexico, neither will the AAO speculate that he will be unable to afford unnamed medication(s) for which no evidence has been submitted.

The applicant's husband states that it would be extremely traumatic for him and his children to be uprooted, that he and his wife want to give their children the best education possible, and that they have already started saving in order to send them to private school. *Hardship Letter*, dated November 6, 2007. He adds that he and the applicant want to buy their second house and work hard to be financially able to pay for it. *Id.* As discussed *supra*, the BIA has held that economic disadvantage, inability to maintain one's present standard of living, cultural readjustment, and inferior economic and educational opportunities in the foreign country are among the common or typical results of removal and inadmissibility, and do not constitute extreme hardship. In the absence of evidence to the contrary, the record is insufficient to show that the difficulties described take the present case to the level of extreme hardship.

The applicant's husband states that his in-laws in Mexico are very poor and live on a ranch in an area with only dirt roads. *Hardship Letter*, dated November 6, 2007. He states that because the roads turn to mud in the rainy season, if he or his children become ill they could die before obtaining medical treatment. *Id.* However, no evidence has been submitted to show that the applicant's children have medical conditions or that any necessary medical care would be unavailable to them in Mexico. The applicant's spouse states that his in-laws' house has no running water, electricity or telephone, drinking water is kept in a tank, cooking is done on a "cook-burning stove," and the women go to a creek a quarter of a mile away to wash clothes. *Hardship Letter*, dated November 6, 2007. Referring again to the rainy season, the applicant's

spouse states that there are many disease-carrying mosquitoes which are especially dangerous for small children born in the U.S. and even for him. *Id.* However, no evidence has been submitted to show that the applicant's children or her spouse would face significant risks as a result of relocation to Mexico. The AAO acknowledges difficulties inherent in relocating to a rural area in another country. Without evidence, however, the AAO will not speculate concerning potential illnesses the applicant's spouse or children could face in the rainy season and/or potential difficulty they could face securing medical attention at that time.

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(i) 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(i)(1) of the Act, the burden of proving eligibility remains entirely with the applicant. *See* Section 291 of the Act, 8 U.S.C. § 1361. Here, the applicant has not met that burden, in that she has not shown that a purpose would be served in adjudicating her waiver under section 212(i) of the Act due to her inadmissibility under section 212(a)(6)(C)(i) of the Act. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.