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

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U.S. Citizenship and Immigration Services

[redacted]

H6

DATE: SEP 09 2011 OFFICE: INDIANAPOLIS, INDIANA FILE: [redacted]

IN RE: Applicant: [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:

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,

Perry Rhew, Chief
Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Field Office Director, Indianapolis, Indiana, 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) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(9)(B). The AAO notes that in his decision, the Field Office Director did not specify under which particular provision of section 212(a)(9)(B) of the Act the applicant was found to be inadmissible. *See Field Office Director's Decision,* dated March 12, 2009. Given that the record indicates that the applicant has been unlawfully present for more than one year and is seeking readmission within 10 years of his last departure from the United States, the AAO notes that the applicant is inadmissible pursuant to section 212(a)(9)(B)(i)(II) of the Act. The applicant does not contest this finding of inadmissibility. Rather, he seeks a waiver of inadmissibility in order to reside in the United States with his U.S. citizen spouse and their daughter.

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. *Id.*

On appeal, the applicant and his family assert that they will experience financial, emotional, and medical hardship if the waiver is not granted.

The record includes, but is not limited to: Notice of Appeal or Motion (Form I-290B); a medical letter; a letter of support from the applicant and his family; a letter of support from the applicant's daughter; several letters of support from the applicant's family members and community members; copy of a mortgage statement; copies of utilities and other bills; an employment letter; copies of pay stubs; the applicant's criminal record; Application for Waiver of Grounds of Inadmissibility (Form I-601); Application to Register Permanent Residence or Adjust Status (Form I-485) and Supplement A; and Petition for Alien Relative (Form I-130). 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:

> (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 initially entered the United States without inspection in or around November 1998 and remained until on or about November 4, 2008, when he voluntarily departed. The record also establishes that the applicant was inspected and paroled into the United States on November 4, 2008, by immigration officials in Laredo, Texas. The applicant's parole was valid until June 12, 2009. The record indicates that the applicant has not departed from the United States since November 4, 2008. The applicant accrued unlawful presence from November 1998 until November 4, 2008. The applicant then accrued unlawful presence from November 4, 2008 to the present, a period in excess of one year. As the applicant is seeking admission within 10 years of departure, he 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 his children can be considered only insofar as it results in hardship to a qualifying relative. The applicant's wife 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-Moralez,* 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.

The record contains references to hardship the applicant's daughter 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 child will not be separately considered, except as it may affect the applicant's spouse.

The applicant's spouse indicates that she would suffer extreme financial hardship if the applicant were to return to Mexico without her because the applicant is the only provider for their family. *See Letter of Support from the Estrada Family*, dated March 28, 2009. The applicant pays the mortgage and the bills given that the applicant's spouse has been unemployed since December of 2008 due to her high-risk pregnancy as a result of diabetes. *Id.* In support of her assertion, the applicant's spouse has submitted a residential mortgage statement; utility bills; a telephone bill; credit card bills; an orthodontic bill. *See Huntington Mortgage Statement*, with a due date of April 1, 2009, indicating a minimum amount due for $969.16; *see also DISH Network Statement*, for services rendered from April 2, 2009 through May 1, 2009, indicating an amount due for $21.39; *NIPSCO Gas & Electric Bill*, with a due date of March 27, 2009, indicating an amount due for $166.98; *Goshen Water & Sewer Statement*, with a due date of April 1, 2009, indicating an amount due for approximately $35.00; *Verizon Wireless Statement*, with a due date of April 4, 2009, indicating an amount due for $100.03; *Menards Statement*, with a due date of January 9, 2009, indicating a minimum amount due for $10.00; *JCPenney Credit Card Statement*, with a due date of April 2, 2009, indicating a minimum amount due for $15.00; *Visa Credit Card Statement*, with a due date of April 13, 2009, indicating a minimum amount due for $48.00; *Orthodontic Payment Plan, Shawn R. Long, D.D.S., P.C.*, with a due date of May 15, 2009, indicating an amount due for $78.00.

The applicant's spouse also indicates that she would suffer extreme emotional hardship if the applicant were to return to Mexico because she would be losing everything; her house and the American dream. *See Letter of Support from the* [redacted] If this were to happen, this would be devastating to her and her daughter. *Id.* In support of her assertion, the applicant's spouse has provided statements from her parents, daughter, and sister, indicating that the applicant has provided for the physical and emotional needs of the family as the sole economic provider. *Letter of Support from* [redacted] dated March 29, 2009; *Letter of Support from* [redacted] dated March 18, 2009; *Letter of Support from* [redacted] undated.

Additionally, the applicants' spouse indicates that she would suffer extreme medical hardship if the applicant were to return to Mexico. *See Letter of Support from the* [redacted] In support of her assertion, the applicant's spouse has submitted a statement from her attending physician, indicating that she has a high-risk pregnancy and the impact that the applicant's absence from the United States will have on her health: " ... [The applicant's spouse] has diabetes that was diagnosed a year ago, and she had been controlled [sic] with medication until she was recently diagnosed as being pregnant ... Without appropriate treatment, there is an increased risk of death for both her and her baby. The prospect of her husband having to leave the country has put a great deal of stress on [the applicant's spouse]. It has caused her to become very anxious and she now suffers from insomnia ..." *Letter of Support from* [redacted] dated March 26, 2009.

The record is sufficient to establish that the applicant's spouse has had a high-risk pregnancy because of diabetes. And, because of this high-risk pregnancy, the applicant's spouse has experienced financial hardship. Specifically, the applicant's spouse has not worked since December 4, 2008, and therefore has been unable to contribute along with the applicant to the

economic well-being of their family. *See Employment Letter from* [redacted] *Secretary-Treasurer*, dated December 9, 2008; *see also, Letter of Support from* [redacted] dated March 20, 2009. However, the record does not establish that the financial hardship that the applicant's spouse has experienced would result in extreme hardship given that the applicant's spouse's inability to work due to her high-risk pregnancy appears to be of a short duration. The applicant's spouse is expected to begin working again on or about January 5, 2009. *Employment Letter*, *supra*. Based on the record, the AAO cannot conclude that the separation from the applicant would result in extreme financial hardship to the applicant's spouse due to her medical condition.

Nor does the record contain sufficient evidence of the applicant's spouse's emotional hardship. As noted above, the record contains general statements that the applicant's spouse has "become very anxious and [] now suffers from insomnia". *Letter of Support from* [redacted] *supra*. However, there is nothing in the record to indicate that the level of emotional hardship experienced by the applicant's spouse goes beyond that normally experienced by relatives of inadmissible family members.

Additionally, the record does not contain sufficient evidence of the applicant's spouse's medical hardship. As noted above, the record is sufficient to establish that the applicant's spouse has had a high-risk pregnancy because of diabetes. However, the record does not establish what impact this has had on the applicant's spouse's medical care and that such care would be unavailable in the applicant's absence. Based on the record, the AAO cannot conclude that the separation from the applicant would result in extreme hardship to the applicant's spouse due to her medical condition.

Further, the applicant's spouse indicates that she would suffer extreme hardship if she were to relocate to Mexico because it is hard to live there and to support a family; there are no factories or any means of making a living. *See Letter of Support from the* [redacted] However, the record does not contain any evidence to support the applicant's spouse's assertions. 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 and maintains close family ties there, "First thing[,] I would like you to know about me how my life was at Mexico [sic] ... because my brother was deported to Mexico seven years ago ... My brother who lives in Mexico has a job ..." *Id.* 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, her situation if she 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 his 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.