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



**U.S. Citizenship
and Immigration
Services**

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DATE: **SEP 21 2011** OFFICE: **CIUDAD JUAREZ** FILE:

IN RE:

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:

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 was found to be inadmissible to the United States pursuant to section 212(a)(9)(B)(i)(II) of the Immigration and Nationality Act (INA or 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 the beneficiary of an approved Form I-130, Petition for Alien Relative, filed by his U.S. citizen wife. The applicant seeks a waiver of inadmissibility pursuant to INA § 212(a)(9)(B)(v), 8 U.S.C. § 1182(a)(9)(B)(v), based on extreme hardship to his U.S. citizen wife.

The Field Office Director concluded that the applicant failed to establish that his U.S. citizen wife would suffer extreme hardship if his waiver was not granted and denied the application accordingly. *See Decision of Field Office Director* dated February 25, 2009.

On appeal, the applicant's attorney stated that the Field Office Director misapplied the law and did not consider all of the facts and circumstances of the applicant's case. She also indicated that additional evidence would be submitted within 30 days after the filing of the appeal on March 27, 2009. No additional evidence was submitted. On August 23, 2011, the AAO sent a fax to the applicant's attorney stating that the record did not contain an additional brief or evidence on appeal and granted the applicant five days to re-submit any previously submitted documents to our office. The AAO did not receive any response and will decide the case based on evidence in the record.

The record contains documentation of the applicant's immigration history, including the approved I-130 Petition for Alien Relative filed on his behalf by his U.S. citizen wife, a statement from the applicant's wife, a statement from the applicant in Spanish with no English translation, the applicant's birth certificate in Spanish with no English translation, the applicant's wife's naturalization certificate, the applicant's son's birth certificate, and three financial statements (Macy's, California Healthy Families, and Bank of America).

The AAO conducts appellate review on a *de novo* basis. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). The entire record was reviewed and considered in rendering a decision on the appeal.

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

(B) ALIENS UNLAWFULLY PRESENT.-

(i) In general.- Any alien (other than an alien lawfully admitted for permanent residence) who-

(I) was unlawfully present in the United States for a period of more than 180 days but less than 1 year, voluntarily departed the United States (whether or not pursuant to section 244(e) prior to the commencement of proceedings under section 235(b)(1) or section 240), and again seeks admission within 3 years of the date of such alien's departure or removal, or

(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.

(ii) Construction of unlawful presence.- For purposes of this paragraph, an alien is deemed to be unlawfully present in the United States if the alien is present in the United States after the expiration of the period of stay authorized by the Attorney General or is present in the United States without being admitted or paroled.

(iii) Exceptions.-

(I) Minors.-No period of time in which an alien is under 18 years of age shall be taken into account in determining the period of unlawful presence in the United States under clause (I).

(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 applicant reported on Form I-601 that he was unlawfully present in the United States after April of 1997, but the exact dates of his unlawful presence are not clear from the record. One account indicates that the applicant entered the United States without inspection in 1998 for less than one year and then returned again in 1999, remaining in the United States until September 21, 2007.¹ Another account indicates that the applicant entered the United States without inspection in April 2002 and remained here until September 2007, when he voluntarily returned to Mexico. Irrespective of the exact date on which unlawful presence began, the duration of that unlawful presence was for over one year; as such the applicant requires a waiver of inadmissibility in order

¹ The applicant turned 18 years old on December 1, 2001 and any unlawful presence would not begin to accrue until after that date.

to be admitted to the United States before September 21, 2017, 10 years from the date of his reported last departure. The applicant does not dispute his inadmissibility.

The applicant's qualifying relative in this case is his U.S. citizen wife. 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 INA § 212(a)(9)(B)(v) and hardship to the applicant's child will not be separately considered, except as it may affect the applicant's spouse.

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 had established extreme hardship to a qualifying relative. 22 I&N Dec. 560, 565 (BIA 1999). The factors included 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 needed 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).

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.

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, "[e]conomic disadvantage alone does not constitute "extreme hardship." *Ramirez-Durazo v. INS*, 794 F.2d 491, 497 (9th Cir. 1986) (holding that "lower standard of living in Mexico and the difficulties of readjustment to that culture and environment . . . simply are not sufficient.").

In this case, the main hardship set forth in the applicant's spouse's letter of support is the financial hardship that she will face if she must raise her son alone without her husband. In her statement dated September 14, 2007, she stated that she and her spouse work "together" to pay their bills, food, clothes and a babysitter for their child.² But, no evidence is provided as to the salary of the applicant or his spouse. The applicant notes on an undated Form G-325A that he has worked as a carpenter at [REDACTED] in San Marcos, California, since 2003, but no evidence of that employment, his salary, or how much of his income he contributes to caring for his wife and child is provided. Moreover, the only bills in the record were a Macy's bill for \$81.79 and a Healthy Families bill for \$4.00. It is not reasonable to determine financial hardship based on those two bills. A Bank of America statement provides a snapshot of some of the additional costs accrued by the couple in August 2007, a total of \$1,249, but that amount is meaningless without additional evidence illustrating the incomes of the applicant and his spouse and the other expenses incurred running their household, such as housing and childcare costs. The applicant's spouse stated that

² Although the applicant also provided a statement, that statement was provided in Spanish without an English translation. "Any document containing foreign language submitted to USCIS shall be accompanied by a full English language translation which the translator has certified as complete and accurate, and by the translator's certification that he or she is competent to translate from the foreign language into English." 8 C.F.R. § 103.2(b)(3). As such, the applicant's statement, without the required translation, cannot be considered in analyzing this case.

she and the applicant had filed their income taxes, but they did not provide copies of those tax returns with the waiver application or appeal. It is not possible to find extreme financial hardship based on the documentation provided by the applicant. The burden is on the applicant to provide this evidence. *See* section 291 of the Act, 8 U.S.C. § 1361.

The applicant's spouse also states that she will suffer emotional hardship if the applicant is not granted a waiver of inadmissibility, but she does not provide any explanatory information or evidence to illustrate why the emotional hardship that she would suffer would be extreme. The emotional hardship associated with family separation due to immigration violations can be in and of itself extreme, but the applicant in this case has not provided any evidence to illustrate what type of emotional hardship his spouse would suffer. *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. No medical records, evidence of family ties in the United States, or other documentation was provided.

A review of the documentation in the record, when considered in its totality, reflects that the applicant has failed to establish that his U.S. citizen spouse would suffer extreme hardship if he were not permitted to reside in the United States. Moreover, the applicant has failed to show that his U.S. citizen spouse would suffer extreme hardship were she to relocate to Mexico to reside with the applicant. The applicant's spouse is a native of Mexico and although she states that she has resided in the United States for 17 years, no evidence was provided to illustrate her prolonged residence or the reason why she would face hardship should she chose to reside in Mexico. Even were the AAO to take notice of general conditions in Mexico, the record lacks evidence demonstrating how the applicant's spouse would be affected specifically by any adverse conditions there. Accordingly, the record does not show that relocation to Mexico would cause extreme hardship to the applicant's spouse. *See Matter of Cervantes-Gonzalez*, 22 I&N Dec. at 565-66. The record demonstrates that the applicant's spouse faces no greater hardship than the unfortunate, but expected, disruptions, inconveniences, and difficulties arising whenever a spouse is removed from the United States or refused admission.

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 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.