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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals
20 Massachusetts Avenue, N.W., MS 2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services

H6

DATE: APR 20 2012

OFFICE: MEXICO CITY (CD. JUAREZ) FILE: [REDACTED]

IN RE: [REDACTED]

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,

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Field Office Director, Mexico City, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The record reflects that the applicant is a native and citizen of Mexico who entered the United States without admission or parole in January 1996 and departed the United States in February 2008. The applicant accumulated unlawful presence in the United States from April 1, 1997, the effective date of the unlawful presence provisions of the Immigration and Nationality Act ("the Act"), until her departure in February 2008. The applicant was found to be inadmissible to the United States pursuant to section 212(a)(9)(B)(i)(II) of 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 seeks a waiver of inadmissibility in order to reside in the United States with her U.S. citizen spouse and child.

The Field Office Director concluded that the record failed to establish the existence of extreme hardship for a qualifying relative and denied the application accordingly. *See Decision of the Field Office Director*, dated June 16, 2009.

On appeal, counsel for the applicant asserts that the separation of the applicant and child from the applicant's spouse constitutes extreme hardship, especially in considering the Defense of Marriage Act and Contracts Clause. In support of the waiver application and appeal, the applicant submitted a letter, a letter from her spouse, medical documents concerning her son, a letter from her spouse's employer, family photographs, identity documents, a medical letter concerning her spouse, letters of support, an evaluation of the applicant and her spouse, and a letter from a potential employer. 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.

In the present case, the record reflects that the applicant is a thirty-three year-old native and citizen of Mexico. The applicant's spouse is a thirty-two year-old native of Mexico and citizen of the United States. The applicant's spouse is currently residing in Waco, Texas, and the applicant is residing in Mexico with their child.

The applicant's qualifying relative in this case is her U.S. citizen spouse. The record contains references to hardship the applicant's child would experience if the waiver application were denied. It is noted that Congress did not include hardship to an applicant's child 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 any other individual will not be separately considered, except as it may affect the applicant's spouse.

The applicant's spouse asserts that he is worried about the health of his son in Mexico. Specifically, the applicant's spouse states that his son suffers from asthma and needs treatment throughout the day, which is why he is residing with the applicant in Mexico. The applicant contends that she has to give her son breathing treatments if his asthma flares up and that the conditions in Mexico contribute to his asthma attacks. It is initially noted that the applicant's son is not a qualifying relative in the context of this application so that any hardship he would suffer is considered only insofar as it affects the applicant's spouse. It is also noted that the record contains medical documents concerning the applicant's son, which indicate only that their son was evaluated for asthma. The medical documents consist largely of medical notes and prescriptions and do not contain a clear explanation of the current medical condition of the applicant's son. Absent an explanation in plain language from the treating physician of the exact nature and severity of any condition and a description of any treatment or family assistance needed, the AAO is not in the position to reach conclusions concerning the severity of a medical condition or the treatment needed.

The applicant's spouse asserts that he is worried about the safety of his wife and son because of the crime in Mexico. The applicant's spouse states that his uncle received a phone call threatening the applicant's cousin with violence if he did not pay a certain sum. The applicant's spouse contends that he is worried about the threat because his wife and son associate with his cousin in Mexico. The record does not contain supporting evidence of these threats. Further, although the

record does not specify where in Mexico the applicant resides, the applicant indicates that she is residing with her parents and her Form G-325A indicates that her parents reside in Hidalgo, Mexico. The U.S. Department of State's travel warning concerning Mexico, dated February 8, 2012, does not contain travel warnings for the state of Hidalgo.

The applicant's spouse states that he is emotionally suffering because he needs to be living with his wife and child. The record contains a letter from a physician stating that the applicant's spouse became depressed as a result of separation from his wife and child. The record also contains an evaluation stating that the applicant's spouse is fearful and worried concerning his wife's immigration status. It is acknowledged that separation from a spouse nearly always creates a level of hardship for both parties and the evidence indicates that the applicant's spouse is suffering from some emotional hardship due to separation from the applicant. However, there is no indication that the emotional hardship suffered by the applicant's spouse is so serious that he has been unable to continue to support himself and perform in his daily life. There is insufficient evidence in the record to find that the applicant's spouse is suffering a level of emotional hardship beyond the common results of inadmissibility or removal upon separation from the applicant.

The applicant's spouse asserts that he could not relocate to Mexico because he doesn't know what kind of work he could do there. The applicant's spouse also asserts that his son will be at a disadvantage for opportunities if he is raised in Mexico. Finally, the applicant's spouse contends that his wife's family and his family all live in the United States so that they would have no support if they resettled in Mexico. Initially, as stated above, the applicant's son is not a qualifying relative in the context of this application so that any hardship he would suffer is considered only insofar as it affects the applicant's spouse. It is noted that the applicant's spouse is a native of Mexico so that he does have familiarity with the language and customs of Mexico. It is also noted that despite the applicant's spouse's claims, the record indicates that the applicant's parents reside in Mexico. In fact, the applicant's spouse asserts that the open field ranch setting of her parents' residence in Mexico affects her son's asthma. Also, the applicant's spouse states that his wife and son associate with his cousin's family in Mexico. As such, the record indicates that the applicant and his spouse both have relative residing in Mexico and there is no information concerning the extent to which these family members could assist in the applicant's spouse's relocation. 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, 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). The record contains insufficient 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).

Counsel for the applicant asserts that the Defense of Marriage Act and the Contracts Clause of the Constitution both argue against a decision that would result in the continued separation of the applicant and her spouse. It is initially noted that the Contracts Clause of the Constitution is only enforceable against state action and does not apply to the Immigration and Nationality Act, which is contained in the U.S. Code. It is also noted that the Defense of Marriage Act (DOMA) concerns the recognition of a same-sex marriage for federal purposes and counsel asserts only that the DOMA establishes the government’s interest in the institution of marriage. No provision of the Defense of Marriage Act precludes denial of a waiver under section 212(a)(9)(B)(v) of the Act, which, as noted above, does not provide that a waiver be granted in every case where a qualifying relationship exists.

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 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.