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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

[redacted]

H6

DATE: AUG 13 2012 OFFICE: MEXICO CITY 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:

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 AAO inappropriately applied the law in reaching its decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen with the field office or service center that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of $630. The specific requirements for filing such a motion can be found at 8 C.F.R. § 103.5. **Do not file any motion directly with the AAO.** Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires any motion to be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

Ellen C. Johnson

Perry Rhew, Chief
Administrative Appeals Office

DISCUSSION: The waiver application was denied by the District Director, Mexico City, 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 one year or more and seeking readmission within 10 years of departure from the United States. The applicant is the beneficiary of an approved Petition for Alien Relative (Form I-130) filed on his behalf by his U.S. lawful permanent resident father. The applicant seeks a waiver of inadmissibility (Form I-601) under section 212(a)(9)(B)(v) of the Act, 8 U.S.C. § 1182(a)(9)(B)(v) in order to reside in the United States with his U.S. lawful permanent resident father and mother.

In a decision dated February 10, 2010, the District Director concluded that the required standard of proof of extreme hardship to a qualifying relative was not met and the application for a waiver of inadmissibility was denied accordingly.[1]

On appeal, the applicant does not contest his inadmissibility, but states that his U.S. lawful permanent resident father and mother would suffer from extreme hardship.

In support of the waiver application, the record includes, but is not limited to statements by the applicant's father, a letter from the applicant, a letter in Spanish, letters of support from community members, documentation of the applicant's father's expenses, copies of the applicant's father's income tax returns, documentation of the applicant's income prior to departing the United States, and documentation of the applicant's immigration history in the United States.

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.

The applicant is inadmissible under section 212(a)(9)(B)(i)(II) of the Act for having been unlawfully present in the United States for one year or more.

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

(B) ALIENS UNLAWFULLY PRESENT.-

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[1] The AAO notes that the applicant filed a second Form I-601 on March 31, 2011 while the appeal of the denial of his first Form I-601 remained pending. The Field Office Director denied the second Form I-601 on September 2, 2011 and the applicant filed a subsequent appeal to the AAO. The AAO considered the entire record in rendering a decision on both appeals. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). A separate dismissal is concurrently being issued on the appeal filed in regards to the Field Office Director's September 2, 2011 denial of the applicant's second Form I-601.

> (i) In general.- Any alien (other than an alien lawfully admitted for permanent residence) who-
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> ...
>
> (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 applicant reports that he initially entered the United States without inspection in March 2003 and remained in the United States unlawfully through October 2008. The applicant turned 18 years old on November 17, 2004 and began accruing unlawful presence in the United States at that time. He accrued unlawful presence until his departure in October 2008. As the period of unlawful presence accrued is one year or more, the applicant is inadmissible to the United States under section 212(a)(9)(B)(i)(II) of the Act for a period of 10 years from his departure from the United States. The applicant does not contest this finding of inadmissibility on appeal.

The applicant is eligible to apply for a waiver of this ground of inadmissibility under section 212(a)(9)(B)(v) of the Act, as the son of a U.S. lawful permanent resident.[2] In order to qualify for this waiver, however, he must first prove that the refusal of his admission to the United States would result in extreme hardship to a qualifying relative. Hardship to the applicant or to the applicant's U.S. citizen children is only relevant under section 212(a)(9)(B)(v) of the Act to the extent that hardship to them is shown to cause hardship to a qualifying relative. 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

[2] The AAO notes that since the time of the applicant's filing of his appeal, the applicant's mother also became a U.S. lawful permanent resident. There is no documentation in the record; however, of any hardship that the applicant's mother would experience as a result of the applicant's inadmissibility.

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 deportation, 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, 885 (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.

On appeal, the applicant states that his father will suffer extreme hardship if he is not granted a waiver of inadmissibility. As stated above, although the applicant's mother is now also a U.S. lawful permanent resident, no evidence was presented in regards to hardship that she would experience as a result of the applicant's inadmissibility. The applicant's father states that he is suffering from financial hardship as a result of his need to maintain two households, one in Mexico and one in the United States. The record contains copies of utility statements and other bills for the applicant's father, but there is no indication in the record of the applicant's father's his inability to meet his expenses. Additionally, there is no documentation of the applicant's expenses in Mexico or his inability to work to support himself there. The record also fails to illustrate whether the applicant contributed financially to his father prior to his departure from the United States. A letter of support in the record indicates that the applicant was a hard working young man who did "his best to help his mom and dad" prior to his departure. An additional letter in the record indicates that the applicant worked for [redacted] and was a "great worker" and "dependable." Pay stubs in the record from [redacted] indicate that the applicant earned $7.00 per hour and worked full-time, but there is no indication in the record of the applicant's contribution to his father's financial well-being or of any financial hardship the applicant's father is suffering as a result of the loss of the applicant's income. Although the applicant and his father's assertions have been taken into consideration, little weight can be afforded them in the absence of clarification on the exact nature of the claimed hardship and supporting evidence to document that hardship. *See Matter of Kwan*, 14 I&N Dec. 175 (BIA 1972) ("Information in an affidavit should not be disregarded simply because it appears to be hearsay; in administrative proceedings, that fact merely affects the weight to be afforded it."). Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *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 applicant's father also states that he is suffering emotional hardship as a result of his anxiety regarding his son's inadmissibility. The record indicates the applicant's father's concern for his son his son's safety in Mexico. The anxiety reported by the applicant's father in his statement; however, has not been illustrated to affect his day to day functioning. The applicant's father reports also that he is suffering from headaches and insomnia. There is no indication in the record that the applicant's father has sought medical assistance for his condition. The applicant's father also states that the applicant's mother is taking medication for her "nerves;" however, there is no documentation of this in the record. As stated above, going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. at 165. The record makes clear that the applicant's father is concerned about his son in Mexico and wishes for his return to the United States; however, there is no indication in the record that the hardship that he is suffering as a result of separation from his son is beyond what is normally experienced by individuals dealing with removal or inadmissibility. *Matter of O-J-O-*, 21 I&N Dec. at 383.

The AAO also notes that a letter in the record is written in Spanish with no accompanying translation into English. 8 C.F.R. § 103.2(b)(3) states:

> (3) Translations. 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.

Absent a translation into English, we cannot take into consideration the letter submitted.

The applicant's father also states that his "health, employment, economic solvency, and familial ties" prevent him from relocating to Mexico. In particular, the applicant's father is concerned for the safety of his family in Mexico. The AAO takes note of the U.S. Department of State Travel Warning for Mexico, dated February 8, 2012. In regards to the state of Jalisco, where the applicant resides, the travel warning states that "non-essential travel to areas of the state that border the states of Michoacán and Zacatecas" should be deferred and caution should be exercised "when traveling at night outside of cities in the remaining portions of this state." Although the level of crime in Mexico is cause for concern, and the applicant reports gang and drug activity in the area where he lives, there is no indication in the record of the particular risks that the applicant's father would face if he were to relocate to Mexico. The record indicates that the applicant's father has ties to the United States, in that his spouse and other children reside with him there, but there is no documentation to illustrate the level of hardship that he would experience if he were to relocate to Mexico. The applicant's father works as a laborer in the United States, and reported an adjusted gross income of $22,143 on his 2010 Federal Income Tax Returns. The AAO recognizes that the applicant's father's income may not be the same if he were to relocate to Mexico; however, there is no documentation in the record to evidence that he would be unable to support his family there. The applicant's father is a native of Mexico and speaks Spanish. When the evidence is considered in the aggregate, it is not possible to determine that the level of hardship that the applicant's father would face if he were to relocate to Mexico would be extreme.

Although the applicant's father's concern 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. In nearly every qualifying relationship, whether between husband and wife or parent and child, there is a deep level of affection and a certain amount of emotional and social interdependence. While, in common parlance, 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, and thus the familial and emotional bonds, exist. The point made in this and prior decisions on this matter is that the current state of the law, viewed from a legislative, administrative, or judicial point of view, requires that the hardship, which meets the standard in section 212(a)(9)(B)(v), of the Act, be above and beyond the normal, expected hardship involved

in such cases. In this case, when the evidence is considered in the aggregate, the AAO is unable to conclude that either of the applicant's parents would suffer extreme hardship.

The AAO therefore finds that the applicant has failed to establish extreme hardship to a qualifying relative as required under INA § 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 he merits a waiver as a matter of discretion.

In proceedings for an 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.