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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

H6

DATE: AUG 30 2012 OFFICE: MONTERREY FILE: [redacted]

IN RE: [redacted]

APPLICATION: Application for Waiver of Grounds of Inadmissibility pursuant to 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,

Perry Rhew, Chief
Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Field Office Director, Monterrey, Mexico. The application 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. citizen spouse. The applicant seeks a waiver of inadmissibility under section 212(a)(9)(B)(v) of the Act, 8 U.S.C. § 1182(a)(9)(B)(v).

In a decision dated October 21, 2010, the Field Office Director concluded that the applicant did not establish that his qualifying relative would suffer extreme hardship and the application for a waiver of inadmissibility was denied accordingly. The Field Office Director also noted that the application would also be denied as a matter of discretion.

On appeal, the applicant does not contest his inadmissibility, but states that his spouse will in fact suffer from extreme hardship as a result of his inadmissibility.

In support of the waiver application, the record includes, but is not limited to letters from the applicant's spouse, medical records for the applicant's spouse, limited financial documentation for the applicant's spouse, biographical information for the applicant, his spouse, and their son, letters regarding the applicant's spouse's mental health, letters of support from family members and community members, documentation concerning the applicant's spouse's employment, and documentation of the applicant's immigration history.

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.-
> (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 applicant states that he entered the United States without inspection in January 2001 and remained in the United States unlawfully until his departure in January 2010. The applicant began to accrue unlawful presence on his 18th birthday, May 30, 2001 until his departure from the United States. 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. He does not contest this ground of inadmissibility on appeal.

The AAO notes that the record also indicates that on October 29, 2005, the applicant was arrested for Driving Under the Influence in Arizona. The record also indicates that he was convicted of the offense on January 23, 2006; however, the final disposition is not in the record. In *Matter of Torres-Varela*, 23 I&N Dec. 78 (BIA 2001), the Board of Immigration Appeals (BIA) held that a simple DUI conviction is not a crime involving moral turpitude unless the alien is convicted under a state statute that requires a culpable mental state. But, in *Matter of Lopez-Meza*, 22 I.&N. Dec. 1188, 1196 (BIA 1999), the Board held that moral turpitude inhered in the offense of aggravated driving under the influence, which involved the combination of driving under the influence of intoxicating liquor or drugs and knowingly driving on a suspended, canceled, revoked, or refused license. The applicant has not submitted a full record of conviction for his arrest. This documentation should be submitted in any future proceedings, so that a determination can be made concerning his admissibility in regards to section 212(a)(2)(A)(i)(I) of the Act, 8 U.S.C. § 1182(a)(2)(A)(i)(I). The AAO does not need to make a determination on that matter at this time, as the applicant is separately inadmissible under section 212(a)(9)(B)(i)(II) of the Act.

The applicant is eligible to apply for a waiver of his inadmissibility under 212(a)(9)(B)(i)(II) of the Act pursuant to section 212(a)(9)(B)(v) of the Act, as the spouse of a U.S. citizen. 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 his qualifying relative. Hardship to the applicant, the applicant's U.S. citizen child or parents-in-law, will not be separately considered, except as it is shown to affect the applicant's spouse. 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).

The applicant is eligible to apply for a waiver of his section 212(a)(9)(B)(i)(II) inadmissibility under section 212(a)(9)(B)(v) of the Act, as the spouse of a U.S. lawful permanent resident. 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 his qualifying relative. Hardship to the applicant or his children is not considered 212(a)(9)(B)(v) waiver proceedings unless it is shown to cause hardship to a qualifying relative, in this case the applicant's spouse. 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 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.

The applicant's spouse states that she suffering from and will continue to suffer from emotional and financial hardship as a result of separation from the applicant. In regards to the emotional hardship, the record contains documentation that the applicant's spouse suffers from depression and has been prescribed fluoxetine for her condition. The record also demonstrates that family, employers, and community members have noticed a change in demeanor in the applicant's spouse, as a result of her depression in the applicant's absence. The applicant's spouse's employer notes that the applicant's spouse "has had to miss work because there are days she can't cope." The applicant's spouse's father's employer notes that the applicant's spouse is under great distress as she is only able to see her child on weekends, due to the fact that her mother cares for him during the week. In regards to financial hardship, the record does not contain any evidence of the applicant's spouse's current income. The applicant's spouse states that she earns minimum wage, and there is a letter from her employer in the file, but there is no documentation in the record of the applicant's spouse's income. Additionally, there is no documentation in the record to show the applicant's financial contribution to the family prior to his departure. The applicant's spouse states that the applicant would provide care for their child while she worked, but the record also indicates that the applicant worked as a carpenter in the United States. No documentation of the applicant's income was provided. Additionally, the applicant's spouse states that her parents are suffering financial hardship as a result of the applicant's absence, as she is no longer able to pay rent to them. The applicant's spouse states that she resides in a home owned by her parents. As noted above; however, Congress did not provide for hardship to the applicant's parents-in-law to be taken into consideration; except for as it is shown to cause hardship to the qualifying relative. Financial hardship to the applicant's spouse's parents is not directly relevant to the hardship determination. The record does not illustrate that the applicant's spouse is suffering from any financial hardship. Although the applicant's spouse's assertions are relevant and have been taken into consideration, little weight can be afforded them in the absence of supporting evidence. *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)). To the extent that financial hardship to the applicant's spouse's parents is causing her emotional distress, the AAO notes the applicant's spouse's emotional distress. While the AAO acknowledges that the applicant's spouse's emotional hardship, the evidence of record does not demonstrate that her hardship rises above the emotional distress normally created when families are separated as a result of inadmissibility or removal. The AAO recognizes the impact of separation on families, but the evidence in the record, when considered in the aggregate, does not indicate that the hardship in this case is extreme. *Matter of O-J-O-*, 21 I&N Dec. at 383.

The applicant's spouse states in her letter that moving to Mexico is not a viable option for her because of the crime there, as well as her belief that she would not be able to obtain treatment for her depression there. Significant conditions of health, particularly when tied to an unavailability of suitable medical care in the country to which the qualifying relative would relocate, are relevant factors in establishing extreme hardship. The documents submitted; however, do not illustrate that the applicant's spouse would be unable to treat her depression in Mexico. The record indicates that the applicant's spouse has been prescribed an anti-depressant and attends counseling sessions one time per month. She has not submitted evidence that this course of treatment would be unavailable to her in Mexico. Again, 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 at 165. The applicant's spouse also expresses safety concerns in regards to relocation to Mexico. The AAO takes note of the U.S. Department of State Travel Warning for Mexico, dated February 8, 2012. Although the level of crime in Mexico is cause for concern, there is no indication in the record of the particular risks that the applicant's spouse would face if she were to relocate to Mexico. In fact, the record does not state where the applicant presently resides or why the applicant and his spouse could not reside in area of Mexico less affected by the violence in that country. Based on the information provided, considered in the aggregate, the evidence does not illustrate that the hardship suffered in this case, should the applicant's spouse relocate to Mexico, would be beyond what is normally experienced by families dealing with removal or inadmissibility. *Matter of O-J-O-*, 21 I&N Dec. at 383.

Although the applicant's spouse'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, 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 qualifying relative 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 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.