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

U.S. Citizenship and Immigration Services

H6

[redacted]

Date: FEB 01 2012 Office: MEXICO CITY 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, Mexico City, Mexico. The matter 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 more than one year and again seeking admission within ten years of her last departure from the United States. The applicant is the daughter of a United States citizen and a legal permanent resident. She seeks a waiver of inadmissibility in order to reside in the United States with her parents.

In a decision dated August 19, 2009, the Field Office Director found that the applicant failed to establish that her qualifying relatives would experience extreme hardship as a consequence of her inadmissibility. The application was denied accordingly. *See Decision of the Field Office Director* dated August 19, 2009.

On appeal, the applicant submitted a Notice of Appeal (Form I-290B) that contained a statement from her father, her qualifying parent. The applicant's father indicates that both he and his wife are old and need the applicant's assistance. In a letter, the applicant's father also indicates that he is disabled and that the applicant's mother also has vision problems. Further, he asserts that the applicant is his only single daughter in Mexico, that she is alone and that the situation in Mexico is very bad. In addition to the Form I-290B, the applicant also submitted copies of pages from her father's passport, a copy of her mother's legal permanent resident card, letters from her father and mother and medical documentation regarding her mother on appeal.

The record contains an Application for Waiver of Grounds of Inadmissibility (Form I-601), Form I-290B, a copy of a page from the applicant's father's United States passport, a copy of the applicant's mother's permanent resident card, letters from the applicant's father and mother, medical documentation regarding the applicant's parents and children, letters from the applicant's prior supervisor and employer in the United States, identification documents for the applicant's siblings, a letter from the applicant's church in the United States, United States birth certificates for the applicant's children, a letter from one of the applicant's children's childcare providers, financial documentation regarding the applicant's income and an approved Petition for Alien Relative (Form I-130). Although the applicant provided several reference letters and letters from her siblings written in Spanish, the requisite translations were not provided. 8 C.F.R. § 103.2(b) 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.

As such, these letters without translations cannot be considered in analyzing this case. However, 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.

Section 212(a)(9)(B)(v) of the Act provides for a waiver of section 212(a)(9)(B)(i) inadmissibility as follows:

> The Attorney General [now Secretary of Homeland Security] 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 . . . 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.

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. The applicant's parents are the only qualifying relatives 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 indicates that the applicant entered the United States without inspection in June 2002 and voluntarily departed in July 2008. As such, the applicant accrued unlawful presence from May 9, 2004, the date she turned eighteen years old, until July 2008, a period in excess of one year. In applying for an immigrant visa, the applicant is seeking admission within ten years of her departure from the United States. The applicant has not disputed her inadmissibility. Therefore, as a result of the applicant's unlawful presence, she is inadmissible to the United States under section 212(a)(9)(B)(i)(II) of the Act.

The AAO finds that the applicant has failed to establish that her qualifying parents will suffer extreme hardship as a consequence of being separated from her. In the applicant's father's appeal statement, he indicates that he and his wife would experience medical hardships, as a result of their continued separation from the applicant. The record contains letters from the applicant's father and mother, letters from the applicant's mother's doctors and her medical records, a handwritten note from the applicant's father's doctor and some of his medical records. This evidence demonstrates that the applicant's mother has impaired vision in both eyes, is legally blind in her right eye and suffers from hypertension and headaches. Both letters from the applicant's mother's healthcare providers indicate that the applicant's assistance is needed to help care for her and to drive her to her appointments. The applicant's father, in his letter, also asserts that he is disabled in his left leg. The medical documentation provided regarding the applicant's father indicates that he requires hip surgery and dental work. It is unclear what type of assistance the applicant's father requires of the applicant. Further, the nature and extent of the applicant's father's medical issues were not fully explained through the letters from doctors or medical records that were submitted. Although the qualifying parent asserts that his medical issues pose great hardship to him and he requires the applicant's assistance, there is no evidence confirming such assertions. Assertions are evidence and will be considered. However, 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, the record fails to provide any explanation as to why the applicant's siblings in the United States cannot assist in caring for their parents. As such, the applicant failed to provide sufficient documentation regarding the qualifying parents' health-related hardships to demonstrate their hardships as a consequence of separation.

Likewise, the AAO finds that the applicant has not met her burden of showing that her qualifying parents would suffer extreme hardship if they relocated to Mexico to be with her. In a letter, the applicant's father indicates that the applicant is his only single daughter that he has in Mexico, that she is all alone and that the situation in Mexico is very bad. However, even were the AAO to take notice of general conditions in Mexico, the record lacks evidence demonstrating how the applicant's parents would be affected specifically by any adverse conditions there. Further, while identification documents for the qualifying parent's children that live and have status in the United States were provided, the record does not substantiate whether the qualifying parents have other family or friends in Mexico. The current record does not establish that the applicant's parents would experience extreme hardship upon relocating to Mexico to reside with the applicant.

In this case, the record does not contain sufficient evidence to show that the hardships faced by the qualifying relatives, 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 her qualifying parents as required under section 212(a)(9)(B) 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) of the Act, the burden of proving eligibility remains entirely with the applicant. *See* 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.