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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

**PUBLIC COPY**



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DATE: **JAN 09 2012** 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:

SELF-REPRESENTED<sup>1</sup>

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

<sup>1</sup> The applicant appears to be represented; however the record does not contain Form G-28, Notice of Entry of Appearance as Attorney or Representative. All representations will be considered but the decision will be furnished only to the applicant.

**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 entered the United States without admission or parole in 1996 and departed in February 2008. The applicant was unlawfully present in the United States from April 1, 1997, the date of application of the unlawful presence provisions under the Immigration and Nationality Act (the Act), until his 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 his last departure from the United States. The applicant is a beneficiary of an approved Petition for Alien Relative. The applicant seeks a waiver of inadmissibility in order to reside in the United States with her U.S. citizen spouse and children.

The Field Office Director concluded that the record failed to establish the existence of extreme hardship to the applicant's spouse and denied the application accordingly. *See Decision of the Field Office Director*, dated March 31, 2009.

On appeal, the applicant contends that the applicant's spouse is suffering from depression and their son is having problems in school due to the absence of the applicant. The applicant's spouse asserts that he is experiencing financial hardship and having problems with his employment because of his responsibilities as a father. The applicant's spouse states that he cannot relocate to Mexico because there are no opportunities there due to unemployment, poverty, violence, and education levels.

In support of the waiver application and appeal, the applicant submitted medical documents for the applicant's spouse, photographs of the applicant's spouse, background information concerning family separation, medical documents concerning the applicant's son, a letter from the applicant's son's school, a letter from the applicant's spouse's employer, identity documents, a letter from the applicant's spouse, and a letter in Spanish from the applicant's spouse's mother with no accompanying translation. 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.

The applicant’s qualifying relative in this case is her U.S. citizen spouse. 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 an applicant’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 section 212(a)(9)(B)(v) of the Act, and hardship to the applicant’s children will not be separately considered, except as it may affect the applicant’s spouse.

In the present case, the record reflects that the applicant is a thirty-eight year-old native and citizen of Mexico who resided in the United States from 1996, after entering without admission or parole, to February 2008, when she returned to Mexico. The applicant’s spouse is a forty-three year-old native of Mexico and citizen of the United States. The applicant is currently residing in Mexico with their daughter and the applicant’s spouse is residing in Orange, California, with their son.

The applicant asserts that her spouse is suffering from depression in the absence of the applicant. The applicant’s spouse further states that their son is affected by the separation because his wife was the caretaker for their children. *See Letter from* [REDACTED] dated February 27, 2008. In support of his assertions, the applicant’s spouse submitted a letter from a social worker stating that he was treated for generalized anxiety on several dates. *See Letter from* [REDACTED] dated March 27, 2010. It is noted that the social worker also states that the applicant’s spouse’s treatment has been completed. *Id.* The applicant’s spouse also submitted further letters stating that he is being treated for anxiety and depression due to separation from the

applicant and their daughter. *See Letter from* [REDACTED] dated March 8, 2010; *Letter from* [REDACTED] dated March 11, 2008; *Letter from* [REDACTED] dated March 20, 2008. The applicant's spouse also submitted pictures of an individual lying down in a bed and the applicant's spouse's prescriptions for Azithromycin and Oxycodone. There is no accompanying medical documentation or report in the record detailing the exact nature and severity of any physical conditions suffered by the applicant's spouse and a description of any treatment or family assistance required.

The applicant's spouse submitted a letter from their son's teacher stating that his schoolwork and behavior suffered after the departure of the applicant. *See Letter from* [REDACTED] dated March 12, 2008. Initially, it is noted that the applicant's son is not a qualifying relative in the context of this application and his hardship will only be considered insofar as it affects the applicant's spouse. The applicant's spouse's mother is the caretaker for her grandson while the applicant's spouse is at work. *See Letter from* [REDACTED] dated March 20, 2008. The applicant's spouse has two employers, one full-time and the other part-time, and the applicant's spouse took two weeks off from his part-time employment to spend time with his son and help him with his schoolwork. *Id*; *See Letter from* [REDACTED], dated March 12, 2008. It is noted that the record does not contain any updated documentation concerning the applicant's son's behavior or performance at school. It is acknowledged that separation from a spouse or parent nearly always creates a level of hardship for both parties, but there is no indication that the emotional hardship suffered by the applicant's spouse or their son has impacted his ability to function 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.

The applicant's spouse asserts that in the absence of his wife, he would have to quit one of his jobs to take care of his children, which would cause him extreme financial hardship. *See Letter from* [REDACTED], dated February 27, 2008. First, the record indicates that only the applicant's spouse's son lives in the United States, and his daughter lives in Mexico. *See Letter from* [REDACTED] dated March 8, 2010. The record also indicates that the applicant's spouse's mother is the caretaker for his son while the applicant's spouse is at work. *See Letter from* [REDACTED] dated March 20, 2008. Further, there is no indication that the applicant's spouse is not continuing to work at both his full-time and part-time places of employment. It is noted that the record contains a letter from the applicant's spouse's part-time place of employment, stating that the applicant's spouse had attendance and productivity issues in the months of February and March 2008. *See Letter from* [REDACTED], dated March 21, 2008. It is noted that the applicant departed from the United States in February 2008 and the record does not contain any updated information concerning the applicant's spouse's employment. The record does not contain any indication that the applicant's spouse is unable to maintain his financial obligations in the absence of his wife. Further, the 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 applicant's spouse contends that he cannot relocate to Mexico because of the availability of better opportunities in the United States and because they could not afford to live in Mexico due to economic conditions there. *See Letter from [REDACTED]* dated February 27, 2008. The applicant's spouse states that in Mexico, there is a high rate of unemployment, poverty, and violence. *Id.* It is noted that the record does not contain evidence concerning country conditions in Mexico, including the area where the applicant and their daughter currently live. There is no indication as to whether the applicant is currently employed in Mexico, with whom the applicant and their daughter live, and the extent of their financial obligations in Mexico. It is further noted that the applicant's spouse is a native of Mexico and there is no evidence concerning whether the applicant's spouse's has relatives living in Mexico and the nature of his relationship with any such individuals. 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)). 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).

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 United States 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.



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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.