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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

[redacted]

DATE: JAN 17 2012 OFFICE: MEXICO CITY FILE: [redacted]

IN RE: [redacted]

APPLICATION: Application for Waiver of Grounds of Inadmissibility 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 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,

Marin Tolin

for

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the District 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 1993. The applicant remained in the United States until his departure in August 2007. The applicant accrued unlawful presence in the United States from April 1, 1997, the effective date of the unlawful presence provisions in the Immigration and Nationality Act (the Act), until August 2007. The District Director found the applicant to be inadmissible to the United States under 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 seeks a waiver of inadmissibility in order to reside in the United States with his U.S. citizen spouse.

The District 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 District Director*, dated September 17, 2009.

On appeal, the applicant's spouse asserts that she would have to leave her family and job behind if she relocated to Mexico to live with the applicant. The applicant's spouse also states that the applicant is unable to work in Mexico due to a lack of education.

In support of the waiver application and appeal, the applicant submitted letters from his spouse, identity documents, letters from relatives, financial documents and bills, and letters from employers. 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 his U.S. citizen spouse. The record contains references to hardship the applicant would experience if the waiver application were denied. It is noted that Congress did not include hardship to an applicant as a factor to be considered in assessing extreme hardship. In the present case, the applicant's spouse is the only qualifying relatives for the waiver under section 212(a)(9)(B)(v) of the Act, and hardship to the applicant will not be separately considered, except as it may affect the applicant's spouse.

The record reflects that the applicant is a forty-nine year-old native and citizen of Mexico. The applicant's spouse is a fifty-two year-old native and citizen of the United States. The applicant's spouse is currently residing in Bucyrus, Ohio, and the applicant is currently residing in Zimapan, Mexico.

The applicant's spouse asserts that she is sad in the absence of her husband and that her work performance has suffered as a result. *See Letter from* , dated March 11, 2008. The applicant's spouse further asserts that she has visited the doctor and is on medication due to her feelings of defeat and despair. *Id.* The applicant's spouse's family members and friends have submitted letters stating that she is overwhelmed and sad without the applicant, so that she has to take medication for her nerves. *See Letter from* , *See Letter from* , dated March 13, 2008; *See Letter from* It is noted that the record does not contain any evidence of the applicant's visits to a medical professional, reports of her psychological condition, or prescriptions for medication.

The applicant's spouse stated that because of her defeated attitude at work, she constantly worries that she will be fired. *See Letter from* dated March 11, 2008. In support of her assertions, the applicant's spouse submitted a letter from her area coach stating that her focus at work declined in the absence of her husband. *See Letter from* . It is noted that the applicant's subsequent appeal and the applicant's spouse's accompanying letter do not indicate a loss of employment or any further difficulties at the applicant's spouse's place of employment. *See Form I-290B*; *See Letter from* , dated October 12, 2009. It is acknowledged that separation from a spouse 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 is unduly impacting her ability to perform in her 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 without her husband's additional income, it is harder for her to meet all the household obligations and payments. *See Letter from* , dated July 27, 2007. The applicant's spouse states that living on one income is a hardship and that she has had to consider selling or renting out their home. *See Letter from* dated March 11, 2008. The applicant submitted several household bills from his time of residence in the United States, but there is no evidence in the record concerning the applicant's spouse's income or the extent of her current financial obligations. Further, there is no indication that the applicant's spouse is past due in any of her payments or otherwise unable to meet her financial obligations. *Id.* 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 asserts that if she relocated to Mexico, she would be leaving behind her family members and her employment. *See Letter from* dated October 12, 2009. The applicant submitted letters written on his behalf from relatives and friends, but those letters do not reference any hardship the applicant's spouse would suffer if she relocated to Mexico. It is noted that the applicant's spouse indicates that she enjoyed visiting her husband in Mexico for a two-week trip. *See Letter from* dated March 11, 2008.

The applicant's spouse further states that her husband has been unable to find employment in Mexico because he does not have education beyond the sixth grade. *See Letter from* dated October 12, 2009. The record does not contain any information concerning country conditions in Mexico, including the area where the applicant resides. There is no indication as to whether the applicant's spouse would be able to find employment if she relocated to Mexico. It is noted that there is no evidence in the record concerning with whom the applicant resides and the extent of his financial obligations in Mexico, especially in light of his unemployment in Mexico. There is further no evidence concerning the existence of the applicant's family members in Mexico and the extent of assistance they could provide to the applicant and his spouse. 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 she 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 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.