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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office
20 Massachusetts Avenue, NW, MS 2090
Washington, DC 20529-2090
**U.S. Citizenship
and Immigration
Services**



H6

DATE: **JAN 24 2012** Office: CIUDAD JUAREZ, MEXICO

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:

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 Form I-601, Application for Waiver of Grounds of Inadmissibility 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 U.S. without admission in June 2003. She resided unlawfully in the U.S. until her departure in September 2007. The applicant was found to be inadmissible to the United States under 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 U.S. for more than one year and seeking readmission within 10 years of her departure from the U.S. The applicant is married to a U.S. citizen, and she is the beneficiary of an approved Form I-130, Petition for Alien Relative (Form I-130). She seeks a waiver of inadmissibility pursuant to section 212(a)(9)(B)(v) of the Act, 8 U.S.C. §1182(a)(9)(B)(v) in order to live in the U.S. with her spouse and family.

In a decision dated August 12, 2009, the director concluded the applicant had failed to establish that her husband would experience extreme hardship if she were denied admission into the United States. The waiver application was denied accordingly.

Through an accredited representative, the applicant asserts on appeal that her husband will experience extreme emotional, financial and physical hardship if she is denied admission into the United States. To support these assertions the applicant submits affidavits written by her husband, financial expense evidence, and photos. The entire record was reviewed and considered in rendering a decision on the appeal

Section 212(a)(9)(B) of the Act provides in pertinent part:

(i) [A]ny 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.

(ii) Construction of unlawful presence.- For purposes of this paragraph, an alien is deemed to be unlawfully present in the United States if the alien is present in the United States after the expiration of the period of stay authorized by the Attorney General or is present in the United States without being admitted or paroled.

It is uncontested that the applicant is inadmissible under section 212(a)(9)(B)(i)(II) of the Act. Furthermore, the record supports a finding of inadmissibility under this section of the Act in that the applicant states on her Form I-130, as well as on her Form G-325, Biographic Information

Form, and her Form I-601, waiver application that she entered the U.S. illegally in June 2003, and that she was unlawfully present in the U.S. until her departure in September 2007.

Inadmissibility under section 212(a)(9)(B)(i)(II) of the Act, which is triggered upon departure, remains in force until the alien has been absent from the United States for ten years. In the present matter, the applicant was unlawfully present in the U.S. for over one year between June 2003 and September 2007. She has remained outside of the U.S. for less than ten years. She is therefore inadmissible under section 212(a)(9)(B)(i)(II) of the Act.

Section 212(a)(9)(B)(v) of the Act provides in pertinent part:

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.

The applicant is married to a U.S. citizen. Her spouse is a qualifying relative for section 212(a)(9)(B)(v) of the Act, waiver of inadmissibility purposes.

The record contains references to hardship the applicant's children would experience if the waiver application were denied. It is noted that the record contains no birth certificate evidence to corroborate the assertion that the applicant has children. It is further noted that even if such evidence had been submitted, Congress did not include hardship to an alien's children as a factor to be considered in assessing extreme hardship under section 212(a)(9)(B)(v) of the Act. The applicant's spouse is thus the only qualifying relative for the waiver under section 212(a)(9)(B)(v), and the claim of hardship to the applicant's children will not be considered.

Section 212(a)(9)(B)(v) of the Act provides that a waiver of the bar to admission is dependent first upon a showing that the bar imposes an extreme hardship on a qualifying family member. Once extreme hardship is established, it is but one favorable factor to be considered in the determination of whether the Secretary should exercise discretion. *Matter of Mendez*, 21 I&N Dec. 296 (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*, 22 I&N Dec. 560, 565 (BIA 1999), the Board of Immigration Appeals (BIA) provided a list of factors it deemed relevant in determining whether an alien has established extreme hardship to a qualifying relative. 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 BIA 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 BIA 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).

Though hardships may not be extreme when considered abstractly or individually, the BIA 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.

Through an accredited representative, the applicant asserts on appeal that her husband will experience extreme emotional, physical and financial hardship if she is denied admission into the

United States. In support of these claims the record contains three affidavits written by the applicant's husband, as well financial expense information and photos.

The applicant's husband indicates in his affidavits that he is originally from Mexico and that his parents moved to the U.S. when he was six years old. The applicant's husband states that he was treated for depression as a child, due to his separation from his parents. He states that he presently feels depressed again due to his separation from his wife and children. The applicant's husband states that his job performance has suffered due to his depressed mood, and he states that he takes medication for his depression and to help him sleep. The applicant indicates that he is also suffering financially because he must send money to support his family in Mexico. He states that his family has no medical insurance in Mexico and that they live in the countryside, at least one hour away from medical facilities. The applicant's husband states further that Mexico is dangerous and that he fears for the safety of his family in Mexico.

Financial evidence contained in the record includes home mortgage payment receipts reflecting the applicant's husband co-owns a home with [REDACTED] and that payments of approximately \$1200.00 a month have been made since 2008; money transfer receipts reflecting that since 2008, the applicant's husband has sent approximately \$450.00 - \$600.00 a month to his wife in Mexico; and utility payment information.

Upon review, the AAO finds that the evidence in the record, when considered in the aggregate, fails to establish the applicant's husband would experience hardship that rises beyond the common results of removal or inadmissibility if the applicant were denied admission into the United States, and her husband remained either in the U.S. separated from the applicant, or he joined the applicant in Mexico.

Although no corroborative evidence or information is submitted to clarify where the applicant lives in Mexico, it is noted that the Form I-130 and Form G-325, Biographic Information contained in the record reflect that the applicant is from the state of Guerrero. It is further noted that U.S. Department of State, Travel Warnings indicate that numerous incidents of narcotics-related violence have occurred in the city of Cuernavaca and in and around Acapulco, and that extreme caution should be exercised when traveling in the northwestern part of Guerrero, which has a strong transnational criminal organization presence. Country conditions evidence does not, in and of itself, establish extreme hardship, however, and the record contains no other evidence to demonstrate that the applicant faces danger where she lives.

The record also contains no evidence to corroborate the assertion that there are no medical facilities near the applicant's home, and there is no indication in the record that the applicant or her family suffer from ailments that would require medical care not available in Mexico.

The record also lacks documentary evidence to corroborate the assertions that the applicant's husband has suffered from, or been treated for, depression in the past or that he is currently suffering from depression. Likewise, there is no corroborative evidence in the record to

demonstrate that the applicant's husband is on medication for depression or for an inability to sleep, or to establish that his performance at work has diminished due to his mental state.

In addition, the record contains no evidence to corroborate the assertion that the applicant is experiencing financial hardship beyond that normally associated with removal or inadmissibility. The mortgage payment information reflects that the applicant's husband co-owns a home with another individual, and the receipts provided fail to demonstrate how much of the mortgage payment is made by the applicant's husband versus by the other owner of the home. The record also lacks evidence to establish the employment status or income of the applicant's husband. The amount of the applicant's husband's expenses relative to his monthly income can therefore not be determined.

The photo evidence contained in the record is not explained and fails to demonstrate that the applicant's husband would experience any particular hardship if the applicant is denied admission into the U.S. The AAO notes further that the record lacks evidence establishing that the applicant is unable to find work to help support her family in Mexico. In addition, it is noted that the applicant's husband is originally from Mexico and is thus familiar with the language and culture of the country. The record lacks evidence to demonstrate that he would be unable to find work in Mexico, or that he would experience emotional, physical or financial hardship beyond that normally experienced upon removal or inadmissibility if he moved to Mexico to be with his wife.

Although the applicant'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. *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 AAO does not doubt nor minimize the depth of concern and anxiety over the applicant's immigration status. The fact remains, however, 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 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 the present matter, the applicant has failed to establish that her husband would experience hardship beyond the type of emotional, physical and financial hardship commonly

associated with removal or inadmissibility, if she is denied admission and her husband either remains in the United States or joins her in Mexico.

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 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. *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.