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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: JUL 05 2012 OFFICE: MONTERREY, MEXICO

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 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 in accordance with the instructions on 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, 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 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 seeking readmission within 10 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 Field Office Director concluded that the applicant failed to establish extreme hardship to a qualifying relative and that the applicant did not merit a favorable exercise of discretion. *See Decision of Field Office Director* dated July 26, 2010. The waiver application was accordingly denied. *Id.*

On appeal, the applicant's spouse contends she experiences financial, medical, and psychological hardship given the present separation from the applicant. She asserts that she would also experience extreme hardship upon relocation to Mexico because of her ties to the United States, dangerous country conditions, and other difficulties.

The record includes, but is not limited to, statements from the applicant and his spouse, financial, medical, and educational documents, letters of support from family, friends, and employers, a psychological evaluation, evidence of birth, marriage, residence, and citizenship, photographs, and other applications and petitions filed on behalf of the applicant. 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.

(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.

(iii) Exceptions.-

(I) Minors.-No period of time in which an alien is under 18 years of age shall be taken into account in determining the period of unlawful presence in the United States under clause (I).

....

(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 admitted under oath that he entered the United States without inspection in September 1997 and returned to Mexico in April 2009. Inadmissibility is not contested on appeal. Therefore, the AAO finds that the applicant accrued unlawful presence from the date he turned 18 years old, September 2, 2000, until he left the United States in April 2009. The applicant is inadmissible under section 212(a)(9)(B)(i)(II) of the Act, and requires a waiver pursuant to section 212(a)(9)(B)(v) of the Act. The applicant's qualifying relative in this case is his U.S. Citizen spouse.

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 spouse asserts that she experiences financial difficulties without the applicant present. She explains that without his income, she is in danger of losing her apartment, and that she cannot pay her bills without him. Letters from employers are submitted as evidence of her income, and copies of some household bills are also present in the file. The applicant's spouse also submits documentation of a \$2,000 personal loan, as well as a letter from a beauty school. She also contends she experiences medical and psychological hardship without the applicant. A licensed clinical professional counselor opines in an evaluation that she has severe depression and extreme anxiety or panic, also reporting that she takes Celexa for depression and Clonopin for her difficulty sleeping. The applicant's spouse claims she cannot sleep or eat, and that she constantly

worries about the applicant's safety in Guanajuato, Mexico. A portion of the spouse's medical records are also submitted.

The applicant's spouse indicates she would not be able to find comparable employment in Mexico, and that she would not have health insurance there. She adds that she fears living with the applicant given the dangerous country conditions in Mexico. Photographs of the applicant's residence and a beauty salon in Mexico are submitted in support. Letters from family and friends in the United States are also submitted as evidence of the spouse's ties in the United States.

In support of assertions on medical difficulties the spouse submitted copies of her medical records. The records consist of laboratory results and physician's "progress notes" for medical care from 2005 to 2009. 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 evidence on the record is insufficient to establish, however, that the applicant's spouse suffers from such a condition. The record contains copies of medical records, including hand-written progress notes containing medical terminology and abbreviations that are not easily understood, and laboratory results. The documents submitted were prepared for review by medical professionals and are otherwise illegible or indiscernible and do not contain a clear explanation of the current medical condition of the applicant's spouse. Absent an explanation in plain language from the treating physician of the exact nature and severity of any condition and a description of any treatment or family assistance needed, the AAO is not in the position to reach conclusions concerning the severity of a medical condition or the treatment needed.

The applicant's spouse has submitted evidence that her income amounts to less than 125% of the minimum income requirement for a family of 2. *Form I-864P, 2012 HHS Poverty Guidelines for Affidavit of Support*, March 1, 2012. The spouse has also submitted evidence of some household bills. However, although there are assertions that the applicant worked at a Paco's Taco's store, there is no evidence of record to show that the applicant earned sufficient income to alleviate the spouse's financial difficulties, or that he is unable to assist his spouse while in Mexico. Although the 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)).

The record reflects that the applicant's spouse experiences emotional difficulties without the applicant present. While the AAO acknowledges that the applicant's spouse would face difficulties as a result of the applicant's inadmissibility, we do not find evidence of record to demonstrate that her hardship would rise above the distress normally created when families are separated as a result of inadmissibility or removal. In that the record fails to provide sufficient

evidence to establish the financial, medical, emotional or other impacts of separation on the applicant's spouse are cumulatively above and beyond the hardships commonly experienced, the AAO cannot conclude that she would suffer extreme hardship if the waiver application is denied and the applicant remains in Mexico without his spouse.

Furthermore, the applicant's spouse has failed to establish extreme hardship upon relocation to Mexico. The spouse contends she fears for the applicant's safety in Mexico, and would fear for her own safety if she relocated to join the applicant. These concerns are not supported by objective information on country conditions. The record reflects that the applicant resides in Guanajuato, Mexico, an area for which there is no travel advisory in effect. *Travel Warning: Mexico, U.S. Department of State, February 8, 2012.* Moreover, the applicant's spouse admits that although she was born in the United States and has lived here for many years, she has spent some time in Mexico, and even met the applicant in Tarandacua, Mexico. Additionally, the record lacks evidence to demonstrate that she would be unable to find adequate employment in Mexico given her experience at a beauty salon and at [REDACTED] or that she would be unable to access medical care in Guanajuato, Mexico.

The AAO notes that relocation to Mexico would entail separation from family members who live in the United States as well as other difficulties. However, we do not find evidence of record to show that the spouse's difficulties would rise above the hardship commonly created when families relocate as a result of inadmissibility or removal. In that the record lacks sufficient evidence to demonstrate the financial, medical, or other impacts of relocation on the applicant's spouse are in the aggregate above and beyond the hardships normally experienced, the AAO cannot conclude that she would experience extreme hardship if the waiver application is denied and the applicant's spouse relocates to Mexico.

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 a 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.