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

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PUBLIC COPY

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JUN 14 2012

DATE: Office: MEXICO CITY (CIUDAD JUAREZ) FILE: [redacted]

IN RE: Applicant: [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:

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,

for

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Field Office Director, Mexico City, Mexico, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The record establishes that the applicant, a native and citizen of Mexico, entered the United States without authorization in May 2002 and lived here until December 2008, when she voluntarily departed. The applicant accrued unlawful presence during the entire period. As a result, she 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. The applicant does not contest this finding of inadmissibility, but rather, is seeking a waiver of inadmissibility in order to reside in the United States with her U.S. citizen spouse.

The field office director concluded the applicant had failed to establish that extreme hardship would be imposed on a qualifying relative and, accordingly, denied the Application for Waiver of Ground of Inadmissibility (Form I-601). *Decision of the Field Office Director,* March 31, 2010.

On appeal, the applicant augments the record with new factual evidence. In support of the appeal, the qualifying relative resubmits many documents and also provides new documentation, including, but not limited to: an updated hardship statement; medical records; photographs; and financial information, including money transfer receipts, bank records, and expense information. The record also contains support letters, a psychological evaluation, and a Travel Alert. The entire record was reviewed and considered in rendering this decision.

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

> (i) In general. - Any alien (other than an alien lawfully admitted for permanent residence) who-
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> > (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.
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> . . . .
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> (v) Waiver. – The Attorney General [now the Secretary of Homeland Security (Secretary)] 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 (Secretary) 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) 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. Hardship to the applicant can be considered only insofar as it results in hardship to a qualifying relative. The applicant's U.S. citizen spouse is the only qualifying relative 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 applicant has established extreme hardship to a qualifying relative. 22 I&N Dec. 560, 565 (BIA 1999). 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; the Board added that not all of these factors need be analyzed in any given case and emphasized that the list is 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, while 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, or cultural readjustment 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, although 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)); conversely, *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 case-by-case whether denial of admission would result in extreme hardship to a qualifying relative.

The applicant's husband contends he will suffer physical, emotional, and financial hardship if the applicant is unable to reside in the United States. He claims to have high cholesterol and severe depression. The record contains blood test data, including cholesterol levels, but fails to contain any treatment provider's explanation of the significance of these numbers. The applicant's husband contends that his wife maintains him on a special diet and ensures that he takes his medication, but there is no indication that he has been recommended particular foods or that he takes prescription medicine for this condition. 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 record also contains a 2009 psychological evaluation finding the qualifying relative to have severe depression based on his reported symptoms, including insomnia, decreased appetite, lack of motivation, and crying spells. Although the report indicates the doctor is considering starting him on medication, as well as considering providing psychotherapy, the record contains no evidence that the applicant's husband was taking medication, attending follow-up visits, or receiving psychotherapy.

Regarding the financial hardship caused by the separation, the applicant's husband contends that maintaining two households is more than he can afford. In support of this claim, he provides copies of wire transfers to his wife, statements showing a diminishing bank account, a lender's letter stating that mortgage payments had been late, and another lender statement tightening the credit extended to his business. We observe that many transfers show only the amounts received in local currency, while the record contains no evidence regarding the applicant's rent and other expenses in Mexico or her husband's income, assets, or expenses in the United States. There is no indication what job prospects or economic resources are available to the applicant in Mexico or what financial contribution she made to the household prior to leaving the United States. The applicant's husband indicates having visited his wife several times in Querétaro, where both were born, but states that his business suffers when he is away. The record does not reflect any details regarding his work and earnings, why he cannot make alternate arrangements for the business to continue during his absence, or the amount of economic detriment claimed. Therefore, while the AAO recognizes that separation entails a financial burden, the evidence falls short of establishing particularly harsh consequences beyond those commonly or typically associated with separation of husband and wife.

For all these reasons, the cumulative effect of the physical, emotional, and financial hardships the applicant's husband is experiencing due to his wife's inadmissibility does not rise to the level of extreme. The AAO concludes based on the evidence provided that, were her husband to remain in the United States without the applicant due to her inadmissibility, he would not suffer extreme hardship beyond those problems normally associated with family separation.

The qualifying relative contends that he would experience hardship if he relocated abroad to reside with the applicant. Regarding ties to the United States, the record shows the applicant's husband naturalized in 2007, claims to have lived here for over 25 years, and has four children born here, two with his previous wife and two with the applicant. Support letters establish that he has many community connections. Conversely, there is no information on record regarding his remaining ties to Querétaro, but he states that his son would be devastated by such a move and, in addition, expresses concern about the educational opportunities, personal safety, and health of his children.

The record suggests that the qualifying relative and his wife addressed their daughters' educational and medical issues in Mexico by enrolling the elder in school through the Mexican Consulate here and by obtaining pediatric treatment for the younger at the local university. Although the parents chose to have their children live with their mother in Mexico rather than remain with their father in the United States, we note that this arrangement does not signify the applicant's husband was not worried about their situation there. Likewise, regarding the safety concern raised in the original waiver request and supported by a U.S. Department of State *Travel Alert*, while noting there is currently no advisory in effect for Querétaro state,[1] we observe that upgrading the advisory from an "alert" to a "warning" reflects that "crime and violence are serious problems throughout the country and can occur anywhere" and "[w]hile most of those killed in narcotics-related violence have been members of TCOs [transnational criminal organizations], innocent persons have also been killed."

Therefore, regarding the impact on a qualifying relative of relocating abroad, the evidence establishes significant adverse consequences to the applicant's husband of returning to the land of his birth. Based on a totality of the circumstances, the AAO concludes the applicant has shown that her husband would suffer extreme hardship were he to relocate to reside with the applicant.

We can find extreme hardship warranting a waiver of inadmissibility only where an applicant has demonstrated extreme hardship to a qualifying relative in the scenario of separation *and* the scenario of relocation. A claim that a qualifying relative will relocate and thereby suffer extreme hardship can easily be made for purposes of the waiver even where there is no actual intention to relocate. *Cf. Matter of Ige*, 20 I&N Dec. 880, 886 (BIA 1994). Furthermore, to relocate and suffer extreme hardship, where remaining in the United States and being separated from the applicant would not result in extreme hardship, is a matter of choice and not the result of inadmissibility. *Id., also cf. Matter of Pilch*, 21 I&N Dec. 627, 632-33 (BIA 1996). As the applicant has not demonstrated extreme hardship from separation, we cannot find that refusal of admission would result in extreme hardship to the qualifying relative in this case.

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[1] *See Travel Warning—Mexico,* U.S. Department of State, February 8, 2012.

In proceedings for application for waiver of grounds of inadmissibility, the burden of establishing that the application merits approval remains entirely with the applicant. Section 291 of the Act, 8 U.S.C. § 1361. The applicant has not met that burden. Accordingly, this appeal will be dismissed.

ORDER: The appeal is dismissed. The waiver application is denied.