U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals
20 Massachusetts Ave. N.W. MS 2090
Washington, D.C. 20529-2090

U.S. Citizenship and Immigration Services

PUBLIC COPY

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DATE: JUN 2 7 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:

[redacted]

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, Ciudad Juarez, Mexico, 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 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 one year or more, and seeking admission within 10 years of her last departure from the United States. The applicant is the spouse of a U.S. citizen and is the beneficiary of an approved Petition for Alien Relative (Form I-130). The applicant, through her accredited representative, does not contest the finding of inadmissibility. Rather, she seeks a waiver of inadmissibility in order to reside in the United States with her husband and child.

The Field Office Director concluded that the applicant failed to establish that extreme hardship would be imposed on a qualifying relative and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) accordingly. *See Field Office Director's Decision,* dated March 26, 2009.

On appeal, the applicant's spouse asserts that a *notario* submitted an incomplete Form I-601 on behalf of the applicant, and thereby, the appeal includes additional evidence warranting a favorable adjudication of the applicant's waiver application. *See* Notice of Appeal or Motion (Form I-290B), dated April 14, 2009.

The record includes, but is not limited to: a statement from the accredited representative; letters of support from the applicant's spouse and other family members; and identity, mental health, financial, and employment documents. 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.-
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> (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.
>
> ...

> (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. No court shall have jurisdiction to review a decision or action by the Attorney General [Secretary] regarding a waiver under this clause.

The record establishes that the applicant entered the United States without inspection by U.S. immigration officials in or around September 2000, and remained until around July 2007, when she voluntarily departed to Mexico. The applicant accrued unlawful presence from September 2000 until July 2007, a period in excess of one year. As the applicant is seeking admission within 10 years of departure, she is inadmissible pursuant to section 212(a)(9)(B)(i)(II) of the Act.

A waiver of inadmissibility under section 212(a)(9)(B)(v) of the Act 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 or the applicant's daughter can be considered only insofar as it results in hardship to a qualifying relative. The applicant's U.S. citizen husband 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 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 accredited representative contends that the applicant's spouse has been suffering extreme emotional and financial hardship in the applicant's absence as he longs for the embrace of his daughter and struggles to maintain two households. The spouse also indicates that the separation from the applicant and their child has been devastating to him as he and the applicant would make all decisions together; he has been unable to sleep and to stop thinking about them; he has to return from work to a house where nobody is waiting for him; he has missed momentous events in his daughter's life; he is the family's main provider and has to work extra hours to continue supporting their households; he was able to provide for their health insurance and a better standard of life when they were together in the United States; and the applicant has an employment opportunity upon her return to the United States. The spouse further indicates that his daughter has been suffering from the separation as she is depressed; she needs his and the applicant's guidance and care; he would be unable to care for her without the applicant; she is being raised in

a country and climate that are not her own; and has been sick as she is unaccustomed to the food. Additionally, he indicates that the applicant has been depressed and nervous because of the uncertainty of her immigration status as well as the physical and emotional state of their daughter and the inability to convey to the daughter the reasons why the family is separated.

The evidence on the record is sufficient to establish that the applicant's spouse has been experiencing depression, anxiety, and a loss of appetite and sleep, and because of these conditions, may experience some hardship in the applicant's absence from the United States. However, the AAO finds that the record does not establish that the hardship goes beyond what is normally experienced by qualifying relatives of inadmissible individuals. The mental health documentation provided does not include any discussion concerning the specific treatment that the spouse is undergoing or any indication of the necessity of the applicant's participation in that treatment. 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 mental health condition or the treatment needed. Also, the mental health documentation makes a general statement that the spouse is "facing problems at work due to his lack of concentration." *Letter of Support Issued by* [redacted] dated February 14, 2008. However, the record does not include any evidence from the spouse's employer, indicating any work-related concerns. And, the record does not include any evidence of the applicant's or the daughter's current mental health or that the daughter is experiencing significant health issues in Mexico which are contributing to the spouse's hardship.

Additionally, the AAO notes that the applicant's spouse is the primary breadwinner for the family. However, there is no specific evidence in the record of the spouse's income or that he would be unable to support himself in the applicant's absence. Moreover, there is no evidence in the record concerning employment or labor conditions in Mexico and the applicant's inability to contribute to her and the spouse's households. Accordingly, the AAO cannot conclude that the record establishes that the spouse's emotional and financial hardship would go beyond the normal consequences of inadmissibility.

The AAO notes the concerns regarding the applicant's spouse's emotional and financial hardship that he has experienced in the applicant's absence, but finds that even when this hardship is considered in the aggregate, the record fails to establish that the applicant's spouse will suffer extreme hardship as a result of separation from the applicant.

Further, the accredited representative does not address whether the applicant's spouse would experience extreme hardship if he were to relocate to Mexico to be with the applicant. The AAO notes that the record does not include any evidence of social, political, or economic conditions in Mexico and how they would impact the spouse. As extreme hardship upon relocation has not been addressed, the AAO concludes that the record fails to establish that the applicant's spouse will suffer extreme hardship as a result of relocation.

In this case, the record does not contain sufficient evidence to show that the hardship faced by the qualifying relative, considered in the aggregate, rises 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 her 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.