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U.S. Department of Homeland Security  
U.S. Citizenship and Immigration Services  
Administrative Appeals Office (AAO)  
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**U.S. Citizenship  
and Immigration  
Services**

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Date: **MAR 08 2012** Office: CIUDAD JUAREZ, MEXICO FILE:

IN RE: Applicant:

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,

Perry Rfnew  
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 more than one year and seeking readmission within ten years of his last departure from the United States. The applicant is the child of a lawful permanent resident of the United States and the father of a United States citizen child. He is the beneficiary of an approved Petition for Alien Relative (Form I-130). The applicant 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 reside in the United States with his father and son.

The Field Office Director found that the applicant had failed to establish that extreme hardship would be imposed on the applicant's qualifying relative and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) accordingly. *Decision of the Field Office Director*, dated September 11, 2009.

The applicant's father states he is suffering extreme hardship since his son returned to Mexico. *See statement from the applicant's father, attached to Form I-290B*, dated September 25, 2009.

The record includes, but is not limited to, statements from the applicant's father in English and Spanish,<sup>1</sup> letters of support in English and Spanish, and medical and mental health documents for the applicant's father. The entire record was reviewed and considered, with the exception of the Spanish language statements, in arriving at a decision on the appeal.

Section 212(a)(9)(B) 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.

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<sup>1</sup> Pursuant to the regulation at 8 C.F.R. § 103.2(b)(3), an applicant who submits a document in a foreign language must provide a certified English-language translation of that document. As some letters of support and a statement from the applicant's father are in Spanish and are not accompanied by English-language translations, the AAO will not consider them in this proceeding.

.....  
(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 [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 [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.

In this case, the record reflects that the applicant entered the United States in May 2002 without inspection. In June 2008, the applicant departed the United States.

The applicant accrued unlawful presence from November 15, 2006, the date he turned eighteen (18) years old, until June 2008, when he departed the United States. The applicant's departure from the United States following this period of unlawful presence triggered the applicant's inadmissibility under section 212(a)(9)(B)(i)(II) of the Act. The applicant is seeking admission into the United States within ten years of his June 2008 departure. The applicant is, therefore, inadmissible to the United States under section 212(a)(9)(B)(i)(II) of the Act for being unlawfully present in the United States for a period of more than one year and seeking admission within 10 years of his departure.

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 his son can be considered only insofar as it results in hardship to a qualifying relative. The applicant's father 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 United States Citizenship and Immigration Services (USCIS) then assesses whether a favorable exercise of discretion is warranted. *See Matter of Mendez-Morales*, 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 of Immigration Appeals (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 father states he could not obtain employment in Mexico to support his family. In a mental health report dated September 26, 2009, counselor [REDACTED] states the applicant's father is depressed and anxious. The AAO notes that Ms. [REDACTED] did not indicate that the applicant's father

cannot receive treatment for his mental health condition in Mexico, that he has to remain in the United States to receive treatment, or that his mental health condition would affect his ability to relocate.

The AAO acknowledges that the applicant's father has resided in the United States for many years and that relocation to Mexico would involve some hardship. However, the AAO notes that the applicant's father is a citizen of Mexico, and it is presumed that he would be able to adapt to the culture and language of Mexico. Additionally, it appears that all of the applicant's father's immediate family is in Mexico. The AAO recognizes that were he to relocate, the applicant's father may be required to give up his employment. However, the record does not contain documentary evidence that demonstrates that the applicant's father would be unable to obtain employment upon relocation that would allow him to use the skills he has acquired in the United States. Additionally, as noted above, there is no evidence in the record to establish that the applicant's father would be unable to receive treatment for his mental health condition in Mexico, nor is there evidence of other hardships the applicant's father may experience as a result of relocation to Mexico. Therefore, based on the record before it, the AAO finds that, considering the potential hardships in the aggregate, the applicant has failed to establish that his father would suffer extreme hardship if he relocated to Mexico.

In addition, though the AAO notes the emotional and financial concerns of the applicant's father, the record fails to establish extreme hardship to the applicant's father if he remains in the United States. The applicant's father states that when the applicant was in the United States, he worked and helped with the household bills. He states he misses the financial help the applicant provided. [REDACTED] reports that the applicant's father's income cannot cover all the expenses of his family, including his grandson's child support. Additionally, [REDACTED] states the applicant's father is supporting two households, one in Mexico and another in the United States.

The applicant's father states he misses the applicant and he is worried about his family. [REDACTED] reports that the applicant's father is worried about the applicant's "safety in Mexico because of his age" and because "[i]t is a dangerous place for a young man to be alone, without [his] father's guidance." The record establishes that the applicant resides in Michoacán, Mexico. On February 8, 2012, the Department of State issued a travel warning to United States citizens about the security situation in Mexico. The warning states that "the Mexican government has been engaged in an extensive effort to counter [Transnational Criminal Organizations] which engage in narcotics trafficking and other unlawful activities throughout Mexico.... As a result, crime and violence are serious problems throughout the country and can occur anywhere." The warning states United States citizens have been the victims of "homicide, gun battles, kidnapping, carjacking and highway robbery." The warning also states that the rise in "kidnappings and disappearances throughout Mexico is of particular concern." Furthermore, the warning states that "[a]ttacks on Mexican government officials, law enforcement and military personnel, and other incidents of TCO-related violence, have occurred throughout Michoacán." In a letter dated September 24, 2009, [REDACTED] the applicant's father's employer, states the applicant's father's "production at work has gone down" and he seems "distracted and preoccupied" since his separation from his family. In a mental health report dated July 31, 2008, [REDACTED] reports that the applicant's father is close with his grandson, the applicant's son, and since the applicant returned to Mexico, the applicant's father has not visited with his grandson. The applicant's father states he has no

interest in doing anything. He states he feels sad and that sometimes he drinks too much. As noted above, [REDACTED] states the applicant's father is depressed and anxious. The AAO notes that the record establishes that the applicant's father has been prescribed an antidepressant. [REDACTED] also states that the applicant's father is at risk of having a nervous breakdown.

The AAO notes that while the separation of loved ones often results in significant psychological challenges, the applicant has not distinguished his father's emotional hardship upon separation from that which is typically faced by the loved ones of those deemed inadmissible. The AAO notes that no documentary evidence has been submitted establishing that the applicant's father is unable to support himself in the applicant's absence. Additionally, the applicant has not distinguished his father's financial challenges from those commonly experienced when a family member remains in the United States alone. Further, the AAO notes that the applicant has not established that he is unable to obtain employment in Mexico and, thereby, financially assist his father from outside the United States. The AAO also notes the security concerns in Mexico; however, without more documentary evidence, the applicant has not established that his father will suffer extreme hardship on relocation or separation. Based on the record before it, the AAO finds that the applicant has failed to establish that his father would suffer extreme hardship if his waiver application is denied and he remains in the United States.

A review of the documentation in the record fails to establish the existence of extreme hardship to the applicant's father caused by the applicant's inadmissibility to the United States. Having found the applicant statutorily ineligible for relief, the AAO finds no purpose would be served in discussing whether he 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. *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.