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



U.S. Citizenship
and Immigration
Services

[REDACTED]

H6

DATE: **MAR 30 2012** Office: MEXICO CITY, MEXICO FILE: [REDACTED]

IN RE: [REDACTED]

APPLICATION: Application for Waiver of Grounds of Inadmissibility under Section 212(a)(9)(B) of the Immigration and Nationality Act (INA), 8 U.S.C. § 1182(a)(9)(B)

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 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,

Handwritten signature of Perry Rhew in black ink.

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 reflects that the applicant is a native and citizen of Mexico, the spouse of a U.S. citizen, and the beneficiary of an approved Petition for Alien Relative (Form I-130). The applicant 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 a period of more than one year, and seeking admission within 10 years of the date of her last departure. The applicant seeks a waiver of inadmissibility under 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 her U.S. citizen spouse and daughter.

The Field Office Director (FOD) denied the Application for Waiver of Grounds of Inadmissibility (Form I-601), concluding that the applicant had failed to establish that the bar to her admission would impose extreme hardship on a qualifying relative. *See Decision of the Field Office Director*, dated August 24, 2009.

On appeal, the applicant's counsel claims that the FOD's denial of the applicant's waiver application is unjust and should be reconsidered. The applicant has submitted additional evidence with the appeal application. *See Form I-290B, Notice of Appeal or Motion*, dated September 17, 2009.

The evidence of record includes, but is not limited to: a statement from counsel; statements from the applicant's spouse; statements from the applicant; family photographs; copies of receipts for money transfers; copies of relationship and identification documents; and documents in Spanish.

8 C.F.R. § 103.2(b) states:

(3) Translations. Any document containing foreign language submitted to USCIS shall be accompanied by a full English language translation which the translator has certified as complete and accurate, and by the translator's certification that he or she is competent to translate from the foreign language into English.

As such, the Spanish-language documents without English translations cannot be considered in analyzing this case. However, the rest of the record was reviewed and all relevant evidence was considered in reaching 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.

The record reflects that the applicant entered the United States without inspection in May 2003 and did not depart until February 2006. Accordingly, the AAO finds that the applicant was unlawfully present in the United States for more than one year and therefore, is inadmissible pursuant to section 212(a)(9)(B)(i)(II) of the Act. Counsel does not contest the applicant's inadmissibility.

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

The Attorney General [now Secretary of Homeland Security] 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.

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 other family members can be considered only insofar as it results in hardship to a qualifying relative. 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-Morales*, 21 I&N Dec. 296, 301 (BIA 1996).

In the present case, the record reflects that the applicant is married to a U.S. citizen. The applicant also claims a U.S. citizen child. The applicant's husband meets the definition of a qualifying relative. The applicant's child is not a qualifying relative for purposes of the waiver sought and, therefore, any hardship she might experience as a result of the applicant's inadmissibility will be considered only to the extent it results in hardship to the applicant's 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, 631-32 (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, "[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., *In re 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 AAO now turns to the question of whether the applicant in the present case has established that a qualifying relative would experience extreme hardship as a result of her inadmissibility.

The applicant has submitted an unsigned statement and a statement from her spouse with the appeal. The file also contains previous statements from the applicant and her spouse; however, because these statements are in Spanish without accompanying English translations, they have not been considered here. In her 2009 statement, the applicant claims that since her relocation to Mexico, she is depressed, unable to sleep, unable to eat, and unable to concentrate on her activities. She also states that she is afraid her "life will come to an end." She raises concerns about her husband's safety as he travels between Mexico and the United States, as well as her and her daughter's safety in Mexico.

In his February 2009 statement, the applicant's spouse expresses his need to have the applicant with him to feel healthy and think clearly. He also states that he is worried about the family's financial status. He indicates that it is difficult for him to support the applicant and his daughter in Mexico while paying for household expenses in the United States. He states that it would be difficult for him to find a job in Mexico that would allow him to provide for the family. He also raises concerns about the poverty and safety of his wife and daughter in Mexico.

The AAO has considered all relevant evidence and concluded that the applicant has failed to demonstrate extreme hardship to her qualifying spouse if he joins her in Mexico. The applicant's spouse is from Mexico and he speaks Spanish, though the extent of his family ties there is unknown. We note that the record also fails to provide documentary evidence that would establish that the applicant's spouse is unable to obtain employment in Mexico. The assertions of the applicant's spouse are relevant evidence and have been considered. However, absent supporting documentation, these assertions are insufficient proof of hardship. *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 generally 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)).

In considering the safety issues raised by the applicant and her spouse, the AAO notes that the U.S. Department of State has issued a travel warning for Mexico, updated on February 8, 2012, reporting an increase in incidents of roadblocks by transnational criminal organizations in various parts of Mexico in which both local and expatriate communities have been victimized.

In addition, local police have been implicated in some of these incidents. The report also indicates that between 2006 and 2010, the number of narcotics-related murders in the state of [REDACTED] where the applicant and her daughter live, increased dramatically. Although this country-conditions evidence is of concern, it does not, in and of itself, establish extreme hardship, and the record contains no other evidence to demonstrate that the applicant and her daughter face danger where they live.

The AAO finds that the applicant has also failed to demonstrate that her spouse would experience extreme hardship upon separation. The applicant and her spouse state that life has been difficult for both of them since the separation. The applicant lists several physical and psychological symptoms that she has been experiencing since the separation. The AAO acknowledges that the applicant and her spouse have a loving relationship, and nothing in this decision should be interpreted as suggesting otherwise. However, the record, in the absence of medical or psychological evaluations or other objective reports, does not demonstrate that the applicant's spouse is experiencing significant emotional hardship as a result of the separation. Further, regarding the applicant's spouse's financial concerns, the record lacks evidence demonstrating his income and financial obligations in the United States. Evidence of money transfers from the applicant's spouse to the applicant demonstrates his financial support for her, but does not demonstrate that the applicant's spouse is having financial difficulties as a result of her inadmissibility. The applicant failed to submit evidence demonstrating her spouse's household expenses and how her absence is negatively impacting the family's financial status. In the absence of supporting evidence, the AAO will not speculate on the state of the applicant's or her spouse's health or on their financial status and therefore concludes that the applicant has failed to establish that her spouse is experiencing extreme hardship due to separation.

In this case, the record does not contain sufficient evidence to show that the hardships faced by the applicant's spouse, when considered in the aggregate, rise beyond the common results of removal or inadmissibility. Accordingly, the applicant has not established eligibility for a waiver of inadmissibility under section 212(a)(9)(B)(v) of the Act. Because the applicant is statutorily ineligible for relief, no purpose would be served in discussing whether she 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 establishing that the application merits approval remains entirely with the applicant. *See* section 291 of the Act, 8 U.S.C. § 1361. Because the applicant has not met this burden, the appeal will be dismissed.

ORDER: The appeal is dismissed.