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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:

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 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.

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 October 5, 2009.

On appeal, the applicant's spouse has submitted additional evidence and stated that the new evidence should be considered. *See Form I-290B, Notice of Appeal or Motion*, dated October 22, 2009.

The evidence of record includes, but is not limited to: statements from the applicant's spouse; articles on country conditions for Mexico; and documents in Spanish. The entire record was reviewed and all relevant evidence, with the exception of the Spanish-language documents, was considered in reaching a decision on the appeal. *See* 8 C.F.R. § 103.2(b)(3).

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 September 2000 and did not depart until August 2008. 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. The applicant does not contest her 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-Moralez,* 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 U.S. citizen children. The applicant's husband meets the definition of a qualifying relative. The applicant's children are not qualifying relatives for purposes of the waiver sought and, therefore, any hardship they 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.

On appeal, the applicant's spouse submitted new evidence and requested that this evidence be considered. In his October 2009 statement, the applicant's spouse states having financial difficulties due to reduced work hours. He also states that he has considered relocating to Mexico to be with the applicant; however, he believes that finding a job in Mexico would be difficult for him due to his age. He further states that it would be difficult for his wife to find a job in Mexico as well due to gender discrimination. In support of these assertions, the applicant

has submitted various articles. The articles describe how blatant age discrimination is tolerated in Mexico; how employers list criteria related to age, gender, and physical appearance in classified job ads; and how the Mexican government is trying to overcome these practices, despite lax enforcement of the laws against such discrimination in the past.

In his statement, the applicant's spouse also states that their son gets sick often and he takes leave from work to be with him. He states that such absences from work cause him to work less than 40 hours a week, thereby reducing his income. He further contends that toxic environmental conditions may be contributing to their children's medical conditions, and has submitted articles about agricultural practices and air pollution in Mexico to support his assertions.

In his first statement, the applicant's spouse also raises safety concerns for the applicant and their children who are currently living in the state of Michoacan. The applicant and their children live within 25 miles of [redacted], where there are many violent crimes and kidnappings.

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. We note that evidence submitted fail to establish that the applicant's spouse is unable to obtain employment in Mexico. The submitted information on discriminatory hiring practices in Mexico fails to support a determination of extreme hardship. The record contains no evidence to indicate whether the applicant or her spouse has attempted to obtain employment in Mexico and was denied based on age or gender discrimination. Similarly, the information about agricultural practices and air pollution in Mexico does not support the claim raised by the applicant's spouse that his son's medical condition, which is not described in the record, is caused or aggravated by such environmental factors. 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's spouse, the AAO notes that the U.S. Department of State has issued a travel warning for Mexico, updated on February 8, 2012, that indicates increased incidents of roadblocks by transnational criminal organizations (TCO) in various parts of Mexico in which armed gunmen carjack and rob unsuspecting drivers. The rising number of kidnappings and disappearances throughout Mexico is also of particular concern. 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 non-essential travel to Michoacán should be deferred except to the cities of Morelia and [redacted] where one should exercise caution. The report further indicates that attacks on Mexican government officials, law enforcement and military personnel, and other incidents of TCO-

related violence, have occurred throughout Michoacán. Although this 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 children face danger where they live. The AAO concludes that the applicant has failed to establish that her spouse would experience extreme hardship upon relocation.

The AAO finds that the applicant also has failed to demonstrate that her spouse would experience extreme hardship upon separation. In his 2009 letter, the applicant's spouse states that their son who lives in Mexico with the applicant gets sick often and his frequent travels to be with him cause him to work less than 40 hours a week, reducing his income. He also states that his expenses have increased due to their son's medical condition. The record lacks supporting evidence to substantiate the applicant's spouse's claims about their son's medical condition and his medical expenses. The applicant also failed to substantiate her spouse's assertion that their son's medical condition is causing him to work reduced hours. The applicant's spouse does not indicate how often he travels to Mexico and the cost of these trips. The record lacks evidence demonstrating the applicant's spouse's income and his financial obligations in the United States and in Mexico. The applicant failed to submit evidence demonstrating her spouse's household expenses and how her absence negatively impacts the family's financial status. In the absence of supporting evidence, the AAO is unable to conclude that the applicant's spouse is experiencing financial 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.