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



H6.

DATE: **MAY 02 2012** OFFICE: MEXICO CITY FILE: [REDACTED]

IN RE: [REDACTED]

APPLICATION: Application for Waiver of Grounds of Inadmissibility under sections 212(a)(9)(B)(v) and 212(d)(11) of the Immigration and Nationality Act, 8 U.S.C. §§ 1182(a)(9)(B)(v) and 1182(d)(11).

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 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 (INA or 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 readmission within 10 years of departure from the United States and under INA § 212(a)(6)(E), 8 U.S.C. § 1182(a)(6)(E), for knowingly encouraging, inducing, assisting, abetting or aiding her minor son to enter the United States in violation of the law. The applicant is the beneficiary of an approved Petition for Alien Relative (Form I-130) filed on her behalf by her U.S. citizen spouse. She seeks a waiver of inadmissibility (Form I-601) pursuant to section 212(a)(9)(B)(v) of the Act, 8 U.S.C. § 1182(a)(9)(B)(v), and section 212(d)(11) of the Act, 8 U.S.C. § 1182(d)(11), in order to reside with her husband in the United States.

In a decision dated March 23, 2010, the Field Office Director concluded that the required standard of proof of extreme hardship to a qualifying relative was not met and the application for a waiver of inadmissibility was denied accordingly.

On appeal, the applicant does not contest her inadmissibility, but states that her spouse will in fact suffer from extreme hardship.

In support of the waiver application, the record includes, but is not limited to letters from the applicant's spouse, evidence of the applicant's spouse's employment, documentation regarding the applicant's spouse's health, letters of support from the applicant's family and members of the community, documentation regarding the country conditions in Mexico, and documentation of the applicant's immigration history.

The AAO conducts appellate review on a *de novo* basis. See *Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). The entire record was reviewed and considered in rendering a decision on the appeal.

The applicant was found to be inadmissible under INA § 212(a)(6)(E), which states, in relevant part:

(E) Smugglers

(i) In general. Any alien who at any time knowingly has encouraged, induced, assisted, abetted, or aided any other alien to enter or to try to enter the United States in violation of law is inadmissible.

(ii) Special rule in the case of family reunification. Clause (i) shall not apply in the case of alien who is an eligible immigrant (as defined in section 301(b)(1) of the Immigration Act of 1990), was physically present in the United States on May 5, 1988, and is seeking admission as an immediate relative or under section 1153(a)(2) of this title (including under section 112 of the Immigration Act of

1990) or benefits under section 301(a) of the Immigration Act of 1990 if the alien, before May 5, 1988, has encouraged, induced, assisted, abetted, or aided only the alien's spouse, parent, son, or daughter (and no other individual) to enter the United States in violation of law.

(iii) Waiver authorized. For provision authorizing waiver of clause (i), see subsection (d)(11) of this section.

The record reflects that the applicant stated in her consular interview that she unlawfully entered the United States on December 28, 1999 with her 10-year-old son. As a result of the applicant's role in bringing her minor son into the United States unlawfully, she is inadmissible under INA § 212(a)(6)(E). The applicant does not contest her inadmissibility on appeal.

Section 212(d)(11) States, in relevant part:

(11) The Attorney General may, in his discretion for humanitarian purposes, to assure family unity, or when it is otherwise in the public interest, waive application of clause (i) of subsection (a)(6)(E) of this section in the case of any alien lawfully admitted for permanent residence who temporarily proceeded abroad voluntarily and not under an order of removal, and who is otherwise admissible to the United States as a returning resident under section 1181(b) of this title and in the case of an alien seeking admission or adjustment of status as an immediate relative or immigrant under section 1153(a) of this title (other than paragraph (4) thereof), if the alien has encouraged, induced, assisted, abetted, or aided only an individual who at the time of such action was the alien's spouse, parent, son, or daughter (and no other individual) to enter the United States in violation of law.

A waiver under this section may be granted for humanitarian purposes, to assure family unity, or if it is otherwise in the public interest. *Id.* In this case the AAO takes note of the applicant's spouse's long-term residence and employment in the United States. The AAO also notes that the applicant's spouse's first wife and the mother of his adult daughter passed away. The applicant's spouse has submitted evidence of his employment, as well as evidence that he suffers from hypertension and anxiety. Based on these observations the AAO finds sufficient humanitarian and family unity grounds on which to approve the applicant's waiver under INA § 212(d)(11).

The applicant, however, is also inadmissible under INA § 212(a)(9)(B)(i)(II) for having been unlawfully present in the United States for one year or more.

Section 212(a)(9) of the Act provides:

(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.

...

(v) Waiver.-The Attorney General 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. No court shall have jurisdiction to review a decision or action by the Attorney General regarding a waiver under this clause.

The applicant reports that she initially entered the United States without inspection on December 28, 1999, when she was 28 years old, and remained in the United States unlawfully through December 26, 2008, accruing unlawful presence during that entire period. As the period of unlawful presence accrued is one year or more, the applicant is inadmissible to the United States under section 212(a)(9)(B)(i)(II) of the Act for a period of 10 years from her departure from the United States. The applicant does not contest this finding of inadmissibility on appeal.

The applicant is eligible to apply for a waiver of this ground of inadmissibility under INA § 212(a)(9)(B)(v), as the spouse of a U.S. citizen. In order to qualify for this waiver, however, she must prove that the refusal of her admission to the United States would result in extreme hardship to her spouse, a much higher standard than required under INA § 212(d)(11). Hardship to the applicant will not be separately considered, except as it may affect 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 deportation, 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, 885 (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.

On appeal, the applicant’s spouse states that he is experiencing emotional, physical, and financial hardship as a result of the applicant’s inadmissibility. The applicant’s spouse states that his health has not always been good and that his wife proved him with emotional support. In support of this statement, the applicant’s spouse submitted a note from [REDACTED] dated April 2, 2009, stating that he is under the doctor’s care for hypertension, anxiety, and possible prostate cancer. No follow-up documentation was provided to indicate whether the applicant’s spouse was in fact diagnosed with prostate cancer and, if so, what treatment was needed. 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, however, the AAO is not in the position to reach conclusions concerning the severity of a medical condition, the causes of that condition, or the treatment needed. There is no evidence in

the file to indicate that the applicant's spouse's anxiety has affected his ability to carry on his daily activities.

In regards to financial hardship, the applicant's spouse states that he earns \$11 per hour working full-time at [REDACTED]. The record contains a letter from [REDACTED] confirming that the applicant's spouse has been employed by him for 15 years and a W-2 Form from 2008 indicates that the applicant's spouse earned \$21,907 that year. There is, however, no documentation in the file evidencing the applicant's spouse's expenses, or inability to pay those expenses, in the United States. As a result, it is not possible to determine the extent to which the qualifying relative's financial support of the applicant in Mexico is causing him hardship. Although the applicant's assertions are relevant and have been taken into consideration, little weight can be afforded them in the absence of supporting evidence. *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 is not sufficient for purposes of meeting the burden of proof in these proceedings. *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)). As a result, based on the information provided, considered in the aggregate, there is no indication that the hardship suffered in this case is beyond what is normally experienced by families dealing with removal or inadmissibility. *Matter of O-J-O-*, 21 I&N Dec. at 383.

As to whether the applicant's spouse would suffer extreme hardship if he were to relocate to Mexico to reside with the applicant, the applicant states that his life and his work are in the United States. The record indicates that the applicant's spouse, who is originally from Mexico, has had steady employment with the same employer for at least 15 years in the United States. There is no evidence to illustrate, however, that the applicant's spouse would not be able to obtain employment in Mexico. Also, the record does not contain any evidence that the applicant's spouse's hypertension and anxiety would not be treatable in Mexico. The AAO takes note of the U.S. Department of State Travel Warning for Mexico, dated February 8, 2012. In regards to the state of Jalisco, where the applicant resides, the travel warning states that "non-essential travel to areas of the state that border the states of Michoacán and Zacatecas" should be deferred and caution should be exercised "when traveling at night outside of cities in the remaining portions of this state." Although the level of crime in Mexico is cause for concern, there is no indication in the record of the particular risks that the applicant's spouse would face if he were to relocate there to reside with the applicant. Moreover, although the applicant's spouse states that he has significant family ties in the United States, he also lists family ties in Mexico that are equally significant. In fact, the record indicates that the applicant currently resides with the qualifying relative's daughter in Mexico. As such, when the evidence is considered in the aggregate, it is not possible to determine that the hardship that the applicant's spouse would face if he were to relocate to Mexico would be extreme.

Although the applicant's spouse's concern over the applicant's immigration status is neither doubted nor minimized, the fact remains that Congress provided for a waiver of inadmissibility only under limited circumstances. In nearly every qualifying relationship, whether between

husband and wife or parent and child, there is a deep level of affection and a certain amount of emotional and social interdependence. While, in common parlance, the prospect of separation or involuntary relocation nearly always results in considerable hardship to individuals and families, in specifically limiting the availability of a waiver of inadmissibility to cases of “*extreme hardship*,” Congress did not intend that a waiver be granted in every case where a qualifying relationship, and thus the familial and emotional bonds, exist. The point made in this and prior decisions on this matter is that the current state of the law, viewed from a legislative, administrative, or judicial point of view, requires that the hardship, which meets the standard in section 212(a)(9)(B)(v), of the Act, be above and beyond the normal, expected hardship involved in such cases. In this case, when the evidence is considered in the aggregate, the AAO is unable to conclude that the applicant’s spouse would suffer extreme hardship.

In this case, the record does not contain sufficient evidence to show that the hardships faced by the qualifying relative, considered in the aggregate, rise 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 qualifying relative as required under INA § 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 she merits a waiver as a matter of discretion.

In proceedings for an application for waiver of grounds of inadmissibility under section INA § 212(a)(9)(B)(v), 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.