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

H4

DATE: **MAY 30 2012**

OFFICE: MONTERREY, MX

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)

[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 with the field office or service center that originally decided your case by filing a 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

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The Form I-601, Application for Waiver of Grounds of Inadmissibility was denied by the Field Office Director, Monterrey, Mexico, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The record reflects the applicant is a native and citizen of Mexico who entered the United States without admission in March 2001. She remained unlawfully in the United States until December 2008, at which time she departed the country. The applicant was found to be inadmissible to the United States under 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 for more than one year and seeking readmission within ten years of her departure from the United States. The applicant has a U.S. citizen spouse, and she is the beneficiary of an approved Form I-130, Petition for Alien Relative. She 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 live in the United States with her husband.

In a decision dated April 9, 2010, the director concluded the applicant had failed to establish that a qualifying relative would experience extreme hardship if she were denied admission into the United States. The director also found the applicant did not establish that she merited a favorable exercise of discretion. The waiver application was denied accordingly.

Through counsel, the applicant indicates on appeal that her U.S. citizen husband will experience extreme physical, emotional and financial hardship if she is denied admission into the United States. In support of the assertions, the applicant submits letters from her husband and family members, and medical evidence. The record also contains Spanish-language documentation.

8 C.F.R. § 103.2(b)(3) provides that:

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.

Because the Spanish-language evidence is not accompanied by certified English translations, it cannot be considered in the applicant's case. The entire remaining record was reviewed and considered in rendering a decision on the appeal.

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

(i) [A]ny 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 the applicant was unlawfully present in the United States between March 2001 and December 2008. Inadmissibility under section 212(a)(9)(B)(i)(II) of the Act, which is triggered upon departure, remains in force until the alien has been absent from the United States for ten years. The applicant was unlawfully present for over one year and she has remained outside of the United States for less than ten years. She is therefore inadmissible under section 212(a)(9)(B)(i)(II) of the Act. Counsel does not contest the applicant's inadmissibility under section 212(a)(9)(B)(i)(II) of the Act.

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

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.

Section 212(a)(9)(B)(v) of the Act provides that a waiver of the bar to admission is dependent first upon a showing that the bar imposes an extreme hardship on a qualifying family member. Once extreme hardship is established, it is but one favorable factor to be considered in the determination of whether the Secretary should exercise discretion. *Matter of Mendez*, 21 I&N Dec. 296 (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*, 22 I&N Dec. 560, 565 (BIA 1999), 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. 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).

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 U.S. citizen husband is her qualifying relative under section 212(a)(9)(B)(v) of the Act.

The applicant's husband states in letters that he and the applicant have been married for over forty years, they have adult children and grandchildren in the United States, and that the applicant no longer has close family in Mexico. He states also that he has many health concerns, he has required three surgeries within a six-month period, he is unable to work, and the applicant cares for him and helps him maintain a healthy lifestyle. The applicant's husband spends part of his time living in the United States and part of his time with the applicant in Mexico. He states it is

expensive to travel between the two countries; he is too old to travel; and he wishes to live near his family.

Medical evidence reflects the applicant's husband suffers from diabetes mellitus, hypertension, anxiety, proteinuria and back pain, and that he receives treatment for diabetes. The record contains his medication prescriptions and general articles about his medical conditions. Evidence also reflects the applicant's husband was under a doctor's care in the United States for a large mass, that he underwent surgery in Mexico for his symptoms, and that he required care from the applicant during recovery.

Letters from the applicant's grandchildren reflect they miss the applicant, and that their grandfather needs the applicant to care for him in the United States.

Upon review, the AAO finds that the evidence in the record, when considered in the aggregate, fails to establish the applicant's husband would experience hardship that rises beyond the common results of removal or inadmissibility if the applicant is denied admission into the country, and he remains in the United States. The record lacks evidence establishing the applicant's husband's income, expenses, or financial circumstances, or corroborating assertions that he would experience financial hardship if he remained in the United States. The record also lacks documentary evidence establishing that the applicant's husband would experience emotional hardship beyond that normally experienced upon inadmissibility or removal of a family member if he remained in the United States. In addition, the medical evidence fails to establish that the applicant's husband continues to require post-surgical convalescent care, or that the applicant is the only family member able to help her husband during his recovery. The medical evidence also fails to demonstrate that the applicant's husband relies on the applicant to maintain a healthy lifestyle and to obtain his medications.

The cumulative evidence in the record also fails to establish that the applicant's husband would experience extreme hardship if he moved to Mexico. The applicant's husband has obtained the medical care he requires in Mexico. Moreover, no documentary evidence was submitted to corroborate the applicant's husband's claims regarding financial hardship. The evidence submitted also fails to establish their children and family members would be unable to visit him in Mexico, or that the applicant's husband would experience emotional hardship beyond that normally experienced upon inadmissibility or removal due to his separation from family members in the United States. The applicant's husband is originally from Mexico, and he is thus familiar with the language and culture of the country. Furthermore, it is noted that Department of State country-conditions information contains no travel advisories for the state of Hidalgo, where the applicant is from, relating to safety or other concerns.

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 an 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.