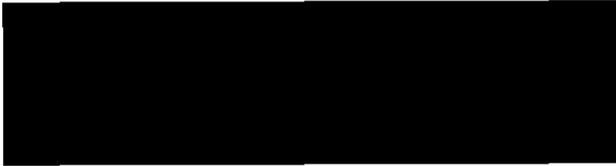




U.S. Citizenship
and Immigration
Services



H6

Date: **OCT 17 2012** Office: **MEXICO CITY, MEXICO** FILE:

IN RE: Applicant:

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

ON BEHALF OF APPLICANT:

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 in accordance with the instructions on Form I-290B, Notice of Appeal or Motion, with a fee of \$630, or a request for a fee waiver. 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
Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the District 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 (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 10 years of her last departure from the United States. The applicant was ordered deported by an immigration judge on August 12, 1996. She is the beneficiary of an approved petition for alien relative and now seeks a waiver of inadmissibility in order to return to the United States.

The District Director concluded that the applicant failed to establish that a denial of her waiver application would result in extreme hardship to her U.S. citizen spouse and denied the application accordingly. *See Decision of Field Office Director* dated March 24, 2010. On appeal, the applicant, through counsel, maintains that denial of her waiver application would result in extreme hardship to her U.S. citizen spouse. *See Appeal Brief* at 4-6.

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

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 record indicates that the applicant resided in the United States without authorization between 1991 and 2007. Thus, she is inadmissible as an alien who was unlawfully present in the United States for a period of one year or more under section 212(a)(9)(B)(i)(II) of the Act. Neither the applicant nor counsel contests her inadmissibility on appeal. The applicant seeks a waiver under section 212(a)(9)(B)(v) of the Act claiming that her inadmissibility will cause extreme hardship to her U.S. citizen spouse, the qualifying relative.

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, 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.

On appeal, counsel explains, citing the applicant's spouse's statements, that the applicant's spouse's life is "miserable" and "extremely difficult" without the applicant. Counsel and the applicant's spouse state that he is nearly 70 years old, suffering the "illnesses typical of old age" and unable to relocate to Mexico at such an advanced age. The applicant's husband states also that he misses his wife's care and assistance. He notes that he is financially responsible for two households now, his in the United States and the applicant's in Mexico. No additional documentary evidence is submitted in support of the appeal.

The record contains the applicant's statement, her spouse's statement, the applicant's spouse's naturalization certificate, the applicant's birth certificate and the couple's marriage certificate. In addition, the applicant submitted letters from her U.S. citizen or lawful permanent resident daughters and grandchildren, and a friend of the family. These letters state generally that the applicant's family and friends have relied on the applicant for support throughout the years.

No financial documents, employment records, or medical evidence was submitted in support of the applicant's spouse's claims of financial, emotional, psychological and medical hardship. The applicant's spouse's statements reflect the difficulties faced by many couples facing similar situations. There is no evidence in the record to show that the hardships faced by the applicant's husband, considered in the aggregate, rise beyond the common results of removal or inadmissibility to the level of extreme hardship.

The applicant has failed to establish extreme hardship to her qualifying relative as required for a waiver of inadmissibility under section 212(a)(9)(B)(v) of the Act. As the applicant has not established extreme hardship to a qualifying relative no purpose would be served in determining whether the applicant 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.

Section 291 of the Act, 8 U.S.C. § 1361. Here, the applicant has not met that burden. Accordingly, the appeal will be dismissed.

The applicant is also inadmissible under section 212(a)(9)(A)(ii) of the Act, 8 U.S.C. § 1182(a)(9)(A)(ii), because she was ordered deported from the United States *in absentia* on August 12, 1996. The applicant departed the United States in 2007 while her deportation order was outstanding and is inadmissible for 10 years until 2017. The statute does not provide for a waiver of this inadmissibility ground, but an applicant may request permission to reapply for admission within the 10 years by filing a Form I-212, Application for Consent to Reapply for Admission into the United States after Deportation or Removal, pursuant to subsection 212(a)(9)(A)(iii) of the Act. In his decision denying the Form I-601 waiver application, the director noted that the applicant had not properly filed a Form I-212, Application for Consent to Reapply for Admission into the United States after Deportation or Removal. On appeal, counsel notes that the applicant "recalls paying the processing fee for Form I-212," but submits no evidence that she ever properly filed a second Form I-212 after her first was denied.

The record in this case contains a Form I-212 filed by the applicant in 2002, and denied by Director, California Service Center in 2004. A more recent Form I-212, dated in 2009, is also in the record, but it does not contain a signature or fee receipt. Accordingly, the applicant continues to be inadmissible to the United States under section 212(a)(9)(A)(ii) of the Act, and is subject to no exception therefrom.

ORDER: The appeal is dismissed.