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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services

[Redacted]

Date: **JAN 07 2013** Office: **MEXICO CITY (ANAHEIM)** FILE: [Redacted]

IN RE: Applicant: [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)

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 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. 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,

Ron Rosenberg
Acting 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 record reflects that 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 ten years of her last departure from the United States. The applicant is married to a lawful permanent resident of the United States, and the mother of a lawful permanent resident adult daughter and three Mexican citizen adult sons. She is the beneficiary of an approved Petition for Alien Relative (Form I-130). The applicant 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 reside in the United States with her spouse and daughter.

The District Director found that the applicant had failed to establish that extreme hardship would be imposed on the applicant's qualifying relative and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) accordingly. *Decision of the District Director*, dated November 9, 2011.

On appeal, the applicant, through counsel, claims that United States Citizenship and Immigration Services (USCIS) erred in finding that the applicant's husband would not suffer extreme hardship should her waiver application be denied. *Form I-290B, Notice of Appeal or Motion*, filed December 9, 2011.

The record includes, but is not limited to, counsel's appeal brief, statements from the applicant and her husband, letters of support, medical and psychological documents for the applicant's husband, a medical document for the applicant in Spanish¹, employment documents for the applicant's husband, financial documents, and household and utility bills. The entire record was reviewed and considered, with the exception of the Spanish-language document, in arriving at 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

¹ Pursuant to the regulation at 8 C.F.R. § 103.2(b)(3), an applicant who submits a document in a foreign language must provide a certified English-language translation of that document. As a medical document is in Spanish and is not accompanied by an English-language translation, the AAO will not consider it in this proceeding.

within 10 years of the date of such alien's departure or removal from the United States, is inadmissible.

....

- (v) Waiver.-The [Secretary] 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 [Secretary] 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 her daughter can be considered only insofar as it results in hardship to a qualifying relative. The applicant's spouse is the only qualifying relative in this case. 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).

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 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. 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 v. INS*, 138 F.3d 1292, 1293 (9th Cir. 1998) (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 record indicates that in December 2004², the applicant entered the United States without inspection. In February 2007, the applicant departed the United States. The applicant accrued over one year of unlawful presence between December 2004 and February 2007. The applicant is, therefore, inadmissible to the United States under section 212(a)(9)(B)(i)(II) of the Act for being unlawfully present in the United States for a period of more than one year, and she seeks admission within 10 years of her departure from the United States. Counsel does not contest the applicant’s inadmissibility.

The record contains references to hardship the applicant’s daughter would experience if the waiver application were denied. It is noted that Congress did not include hardship to an alien’s child as a factor to be considered in assessing extreme hardship. In the present case, the applicant’s spouse is the only qualifying relative for the waiver under section 212(a)(9)(B)(v) of the Act, and hardship to the applicant’s daughter will not be separately considered, except as it may affect the applicant’s spouse.

Describing his hardship should he join the applicant in Mexico, in his statement dated March 29, 2011, the applicant’s husband states he has been a legal resident for many years and is “established” in the United States. He also notes he has been making monthly payments on his home. In his statement dated June 21, 2011, the applicant’s husband states if he joins the applicant in Mexico, he will “lose everything,” including his medical insurance and legal resident status. In her statement dated June 21, 2011, the applicant states her husband would not have medical insurance and would not be able to support their

² The AAO notes that the applicant’s Form I-601 indicates that she entered the United States in December 2005; however, the discrepancy in the date of entry does not affect her inadmissibility.

family in Mexico. The applicant's husband states he cannot join the applicant in Mexico because of his financial responsibilities, and his employment in the United States. In her mental health evaluation dated March 11, 2011, therapist [REDACTED] reports that the applicant's husband believes it would be difficult to find work in Mexico, because the applicant has not been able to obtain employment in Mexico. Additionally, counsel states the "conditions in Mexico are currently very volatile."

The AAO notes that on November 20, 2012, the Department of State issued a travel warning to U.S. citizens about the security situation in Mexico. The warning states that "the Mexican government has been engaged in an extensive effort to counter [Transnational Criminal Organizations (TCO's)] which engage in narcotics trafficking and other unlawful activities throughout Mexico.... As a result, crime and violence are serious problems throughout the country and can occur anywhere." The warning also states U.S. citizens have been the victims of "homicide, gun battles, kidnapping, carjacking and highway robbery," and the number of "kidnappings and disappearances throughout Mexico is of particular concern." The record establishes that the applicant resides in Durango where, according to the Department of State, homicides increased by 122 percent between 2010 and 2011. The Department of State recommends that non-essential travel should be deferred to Durango, as "[s]everal areas in the state continue to experience high rates of violence and remained volatile and unpredictable." Based on the record as a whole, including the applicant's husband's age, the loss of his lawful permanent resident status, his many years of residence in the United States, his employment issues, lack of health insurance, and his security concerns in Mexico, the AAO finds that the applicant's husband would suffer extreme hardship if he were to join the applicant in Mexico.

Concerning the applicant's husband's hardship in the United States, the applicant states her husband is "alone" and sometimes "feels very bad." The applicant's husband states he is suffering from stress and depression, and he claims his physical and emotional health are deteriorating. The applicant's husband also states that he is constantly worried about the applicant because of the violence in Mexico. The applicant's daughter states her father worries about the applicant picking up the money he sends her because the city is one of the most dangerous in Mexico. In her mental-health evaluation dated March 11, 2011, therapist [REDACTED] diagnoses the applicant's husband with anxiety disorder, adjustment disorder, and major depression.

Additionally, medical documentation establishes that the applicant's husband has a history of diverticulitis of the colon; however, he is presently medically stable and not taking any medications. The applicant's husband states he needs the applicant's presence in the United States to prepare his meals and maintain their home. The applicant states when her husband is sick, there is no one to take him to the doctor's office.

The applicant's husband states he sends money to the applicant in Mexico and maintains their home in the United States. Documentation shows that the applicant's husband regularly transfers money to the applicant in Mexico. The applicant claims that if she returns to the United States, she could get a job and help her husband with their debts. The applicant's daughter states she helps her father financially. Ms. [REDACTED] reports that the applicant's husband is concerned about his job performance, where he works with dangerous machinery, because he is sleep-deprived.

The applicant states their children are being affected by her inadmissibility. The applicant's daughter states that since the applicant returned to Mexico, she has taken her "mother's place at home." She resides with her father, prepares his meals, makes sure he pays the bills, and takes care of the house and her father. She claims that it is difficult to take care of the home with her work schedule. Moreover, she would like to attend college but cannot while helping her father.

The AAO acknowledges that the applicant's husband is suffering emotional difficulties in being separated from the applicant. While it is understood that the separation of spouses often results in significant psychological challenges, the applicant has not distinguished her husband's emotional or medical hardship upon separation from that which is typically faced by the spouses of those deemed inadmissible. Moreover, though the applicant's husband refers to financial difficulties, the record does not contain sufficient objective evidence corroborating his claim. The applicant, therefore, has not distinguished her husband's financial challenges from those commonly experienced when a family member remains in the United States. The AAO also notes that the applicant's daughter may be suffering some hardship in being separated from the applicant; however, the applicant has not shown that their daughter's hardship has elevated her husband's challenges to an extreme level. Based on the record before it, the AAO finds that the applicant has failed to establish that her husband would suffer extreme hardship if her waiver application is denied and he remains in the United States.

Although the applicant has demonstrated that her husband would experience extreme hardship if he relocated abroad to reside with the applicant, we can find extreme hardship warranting a waiver of inadmissibility only where an applicant has demonstrated extreme hardship to a qualifying relative in the scenario of separation *and* the scenario of relocation. A claim that a qualifying relative will relocate and thereby suffer extreme hardship can easily be made for purposes of the waiver even where there is no actual intention to relocate. *Cf. Matter of Ige*, 20 I&N Dec. 880, 886 (BIA 1994). Furthermore, to relocate and suffer extreme hardship, where remaining in the United States and being separated from the applicant would not result in extreme hardship, is a matter of choice and not the result of inadmissibility. *Id.*, also *cf. Matter of Pilch*, 21 I&N Dec. 627, 632-33 (BIA 1996). As the applicant has not demonstrated extreme hardship from separation, we cannot find that refusal of admission would result in extreme hardship to the qualifying relative in this case.

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. *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.