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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: JUL 2 2 2013 Office: ANAHEIM FILE: [redacted]

IN RE: Applicant: [redacted]

APPLICATION: Application for Waiver of Grounds of Inadmissibility under section 212(a)(9)(B) of the Immigration and Nationality Act, 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 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 International Adjudications Support Branch on behalf of the Field Office Director, Ciudad Juarez, Mexico. The matter 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 again seeking admission within 10 years of his last departure from the United States. The record reflects that the applicant entered the United States without inspection after April 2005 and remained more than one year until departing. The applicant is the beneficiary of an approved Petition for Alien Relative (Form I-130). He seeks a waiver of inadmissibility in order to reside in the United States with his lawful permanent resident parents.

The field office director found that the applicant failed to establish that his qualifying relatives would experience extreme hardship as a consequence of his inadmissibility. The application was denied accordingly. *See Decision of the Field Office Director* dated November 15, 2012.

On appeal the applicant states that his family is close and that he and his brother in Mexico feel alone with other family members living in the United States. With the appeal the applicant submits an affidavit. The record also contains a statement from the applicant's father. The entire record was reviewed and considered in rendering this decision.

Section 212(a)(9)(B) 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.

Section 212(a)(9)(B)(v) of the Act provides for a waiver of section 212(a)(9)(B)(i) inadmissibility as follows:

> 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 . . . 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.

On appeal the applicant asserts that he has never been in the United States and only attempted to enter one time, but was refused entry and returned to Mexico. In his statement the applicant's father also contends the applicant has never entered the United States illegally, but was sent back to Mexico by a border patrol officer in his only attempt to enter the United States. However, the applicant has submitted no information or evidence to overcome the finding that he resided in the United States from 2005 until a 2011 visa interview with the U.S. consulate.

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. The applicant's parents are the only qualifying relatives 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-Moralez,* 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 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. *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 applicant states that his family is very close and emotionally dependent on each other. He states that as his parents are legal residents of the United States they cannot move permanently to Mexico. He states there is a lack of jobs in Mexico and he cannot get adequate education or afford other than substandard housing, but would like to be able to provide for his parents. The applicant states that his parents are old and he worries about their health, but cannot care for them from Mexico, and although they need money they often send money to him. He states that Mexico is violent, unsafe, and economically depressed, has poor health care, and cannot provide employment to maintain a standard of living.

The applicant's father states he has strong family ties in the United States that he would lose if he relocated to Mexico. He states that medical facilities in Mexico are below U.S. standards and that as he and his wife are getting older they are vulnerable to illness. The father states that there is a lack of money due to a lack of jobs in Mexico. He states that in the United States he is employed full time so he can comfortably support his family, but in Mexico he would not be able to support the family. He further states that Mexico has many negatives, like crime and kidnapping. The father states that as he has been a lawful permanent resident since 1990, he feels the United States is his country now and he wants to continue his right to be a legal resident.

The AAO finds that the applicant has failed to establish that his qualifying relative parents suffer extreme hardship as a consequence of being separated from the applicant. The applicant and his father state the family is very close, but provided no statement, detail, or supporting evidence explaining the exact nature of any emotional hardships the applicant's parents experience due to separation from the applicant or how such emotional hardships are outside the ordinary consequences of separation. 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)). It has also not been established that the applicant's parents would be unable to travel to Mexico on a regular basis to visit him.

The applicant states that his parents send money to him when they need it for their own expenses. No documentation has been submitted establishing the parent's current income, expenses, assets, liabilities, or overall financial situation, or that they send money to the applicant, to establish that without the applicant's physical presence in the United States the applicant's parents experience financial hardship. The applicant states there is a lack of jobs in Mexico, but submitted no documentation to establish that he is unable to support himself while in Mexico, thereby ameliorating any hardship to his parents. Further, courts considering the impact of financial detriment on a finding of extreme hardship have repeatedly held that, while it must be considered in the overall determination, "[e]conomic disadvantage alone does not constitute "extreme hardship." *Ramirez-Durazo v. INS*, 794 F.2d 491, 497 (9th Cir. 1986) (holding that "lower standard of living in Mexico and the difficulties of readjustment to that culture and environment . . . simply are not sufficient.").

The AAO recognizes that the applicant's parents will endure hardship as a result of separation from the applicant. However, their situation if they remain in the United States is typical to individuals separated as a result of removal or refusal of admission and does not rise to the level of extreme hardship based on the record.

The AAO also finds the record fails to establish that the applicant's parents would experience extreme hardship if they were to relocate to Mexico. The applicant and his father state the parents are getting older and more vulnerable to illness while health care in Mexico is below U.S. standards. Significant conditions of health, particularly when tied to an unavailability of suitable medical care in the country to which the qualifying relative would relocate, are relevant factors in establishing extreme hardship. No evidence has been submitted on the record establish, however, that the applicant's parents suffer from such a condition.

The applicant and his father state that Mexico lacks jobs and is dangerous. The applicant refers to U.S. Department of State travel warnings and his father to news reports. These references are to general country conditions, but no country information has been submitted to the record to indicate how these conditions would specifically affect the applicant's parents, the qualifying relatives. The record fails to establish that the applicant's parents would be at risk as a result of relocating to Mexico.

The applicant's father states that he is a lawful permanent resident, considers the United States his home, and wants to keep his right to being a legal resident. No evidence has been submitted to show that, if relocating to Mexico, the applicant's parents would be unable to return to the United States with the regularly necessary to retain their lawful residence status, particularly given the proximity of their home in the United States to Mexico.

The record, reviewed in its entirety and in light of the *Cervantes-Gonzalez* factors, cited above, does not support a finding that the applicant's lawful permanent resident parents would face extreme hardship if the applicant is unable to reside in the United States. Rather, the record demonstrates that they will face no greater hardship than the unfortunate, but expected disruptions, inconveniences, and difficulties arising whenever a family member is removed from the United States and/or refused admission. Although the AAO is not insensitive to the parents' situation, the record does not establish that the hardship they face rises to the level of "extreme" as contemplated by statute and case law.

In proceedings for application for waiver of grounds of inadmissibility, 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.