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

U.S. Citizenship and Immigration Services

DATE: JUN 13 2014 Office: MEXICO CITY 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), and Application for Permission to Reapply for Admission into the United States after Deportation or Removal under Section 212(a)(9)(A) of the Immigration and Nationality Act, 8 U.S.C. § 1182(a)(9)(A)

ON BEHALF OF APPLICANT:

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office (AAO) in your case.

This is a non-precedent decision. The AAO does not announce new constructions of law nor establish agency policy through non-precedent decisions. If you believe the AAO incorrectly applied current law or policy to your case or if you seek to present new facts for consideration, you may file a motion to reconsider or a motion to reopen, respectively. Any motion must be filed on a Notice of Appeal or Motion (Form I-290B) within 33 days of the date of this decision. **Please review the Form I-290B instructions at http://www.uscis.gov/forms for the latest information on fee, filing location, and other requirements.** *See also* 8 C.F.R. § 103.5. **Do not file a motion directly with the AAO.**

Thank you,

Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The Field Office Director, Mexico City, denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) and the Application for Permission to Reapply for Admission into the United States after Deportation or Removal (Form I-212). 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 Act for having been unlawfully present in the United States for more than one year, and section 212(a)(9)(A)(i) of the Act as an alien previously removed. The applicant is married to a U.S. citizen and seeks a waiver of inadmissibility and permission to reenter the country in order to reside with his wife in the United States.

When considering the applications, the field office director determined that the applicant was also inadmissible to the United States pursuant to section 212(a)(6)(B) of the Act for failing to attend removal proceedings. The field office director found that there is no waiver available for this ground of inadmissibility and denied the applications accordingly.

On appeal, counsel contends, among other things, that the applicant did not receive notice of his hearing. Counsel also contends that the applicant's wife has suffered emotional, medical, and financial hardships as a result of being separated from her husband.

The record includes, but is not limited to, the following documents: a copy of the marriage certificate of the applicant and his wife indicating they were married on August 19, 2010; declarations from the applicant; a sworn statement and letters from the applicant's wife; a letter from a therapist; copies of pay stubs, bank account statements, and other financial documents; a letter from the applicant's wife's employer; a letter from the applicant's former employer; letters of support; copies of college transcripts; a copy of the U.S. Department of State's Travel Warning for Mexico and other background materials; copies of conviction documents; copies of photographs of the applicant and his wife; and an approved Petition for Alien Relative (Form I-130). The entire record was reviewed and considered in rendering this decision.

Section 212(a)(6)(B) of the Act states:

> *Failure to attend removal proceeding.* Any alien who without reasonable cause fails or refuses to attend or remain in attendance at a proceeding to determine the alien's inadmissibility or deportability and who seeks admission to the United States within 5 years of such alien's subsequent departure or removal is inadmissible.

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

> (A) *Certain aliens previously removed.*
>
> (i) *Arriving aliens.* Any alien who has been ordered removed under section [235(b)(1) of the Act] or at the end of proceedings under

section [240 of the Act] initiated upon the alien's arrival in the United States and who again seeks admission within 5 years of the date of such removal (or within 20 years in the case of a second or subsequent removal or at any time in the case of an alien convicted of an aggravated felony) is inadmissible.

(ii) *Other aliens.* Any alien not described in clause (i) who-

(I) has been ordered removed under section 240 or any other provision of law, or

(II) departed the United States while an order of removal was outstanding, and who seeks admission within 10 years of the date of such alien's departure or removal (or within 20 years of such date in the case of a second or subsequent removal or at any time in the case of an alien convicted of an aggravated felony) is inadmissible.

(iii) *Exception.* Clauses (i) and (ii) shall not apply to an alien seeking admission within a period if, prior to the date of the alien's reembarkation at a place outside the United States or attempt to be admitted from foreign contiguous territory, the Attorney General has consented to the alien's reapplying for admission.

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

(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.

. . . .

(iii) *Exceptions.*

. . . .

(I) *Minors.* No period of time in which an alien is under 18 years of age shall be taken into account in determining the period of unlawful presence in the United States under clause (i).

. . . .

> (v) *Waiver.* – The Attorney General [now the Secretary of Homeland Security (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 Attorney General [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.

In this case, the record shows that the applicant entered the United States in June 2000, when he was sixteen years old, as a non-immigrant visitor with authorization to remain in the United States until December 2000. In August 2000, the applicant's father married a U.S. citizen who filed a Form I-130 visa petition on the applicant's behalf in conjunction with a Form I-485 application to adjust status. The applicant's father and step-mother divorced in April 2005 and, as a result, the Form I-130 and Form I-485 were denied on May 15, 2008. A Notice To Appear was issued, the applicant failed to appear before the immigration judge on October 15, 2008, and was ordered removed. The applicant was removed from the United States on July 28, 2009.

The record shows the applicant is inadmissible pursuant to section 212(a)(6)(B) of the Act for failing to attend his removal proceeding, section 212(a)(9)(B)(i)(II) of the Act for having been unlawfully present in the United States for more than one year, and section 212(a)(9)(A) of the Act as an alien previously removed. As the field office director correctly found, there is no waiver of inadmissibility available under section 212(a)(6)(B) of the Act. Although counsel contends the applicant did not receive notice of his hearing, the AAO lacks jurisdiction to review the issue of whether or not the applicant had reasonable cause for failing to attend his removal proceeding.[1] Nonetheless, because the applicant was removed almost five years ago, he will no longer be inadmissible pursuant to section 212(a)(6)(B) of the Act in the very near future, as of July 28, 2014. Therefore, we will review his waiver application under section 212(a)(9)(B)(v) of the Act.

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

[1] The authority to adjudicate appeals is delegated to the AAO by the Secretary of the Department of Homeland Security (DHS) pursuant to the authority vested in him through the Homeland Security Act of 2002, Pub. L. 107-296. *See* DHS Delegation Number 0150.1 (effective March 1, 2003); *see also* 8 C.F.R. § 2.1 (2003). The AAO exercises appellate jurisdiction over the matters described at 8 C.F.R. § 103.1(f)(3)(iii) (as in effect on February 28, 2003).

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.

In this case, the applicant's wife states that she did not trust men until she met her husband. According to the applicant's wife, she was six years old when her father left their family for

another woman, and she was seventeen years old when her mother and stepfather divorced because of her stepfather's infidelity. She states she started dating her husband when she was fifteen years old, he was deported when she was twenty-one years old, and they have now been together for nine years. She states that she was in college and working at the time, that her grades took a turn for the worse, and that she worked less in order to see her then-boyfriend once a month. The applicant's wife states that after a year of being apart and seeing each other only once a month, they decided to get married. She states she drives an old car to visit her husband, which is not safe due to the high crime rate, but that she cannot afford to fly to Mexico. In addition, the applicant's wife states that her mother passed away in November 2012 and she needs her husband to help her get through this difficult time. She states she is seeing a Psychologist through a program offered at work and is suffering from deep depression and guilt. According to the applicant's wife, she has had anxiety attacks and hyperventilates. She contends she has only visited her husband once since her mother's death because she is too unstable and she is unable to afford it now that she has to pay rent. The applicant's wife claims she cannot relocate to Mexico to be with her husband because she promised her mother she would stay close to her brothers. Furthermore, the applicant's wife states that she was born and raised in California. She claims that although she has Hispanic roots, her Spanish language skills are minimal and she would face language barriers in Mexico. She also contends that she has graduated with an Associate's degree and hopes to complete her coursework to receive a Bachelor's degree. She states she would be unable to find a professional job or have a career in Mexico and that she would have to leave her current full-time job which offers stability, benefits, and room for growth.

After a careful review of all of the evidence, the record establishes that if the applicant's wife relocated to Mexico to avoid the hardship of separation, she would experience extreme hardship. The record shows that the applicant's wife was born in the United States and has lived in the United States her entire life. The record contains numerous letters of support establishing that her work, friends, family, school, and community are all in the United States and we recognize her contention that she is not fluent in Spanish which would make finding employment in Mexico particularly difficult. A letter from the applicant's wife's supervisor contends she "open[s] doors for herself" through her willingness to assist and volunteer, and describes the opportunities for her growth in the company as endless. Relocating to Mexico would entail leaving her job and all of the benefits and opportunities it offers. In addition, the record contains documentation corroborating her claim that she has taken numerous college courses and we recognize her desire to complete her college education. Furthermore, the U.S. Department of State has issued a Travel Warning for parts of Mexico, including parts of Baja California, where the applicant was born and is currently living. *U.S. Department of State, Travel Warning, Mexico*, dated January 9, 2014. Considering the unique factors of this case cumulatively, the record establishes that the hardship the applicant's wife would experience if she relocated to Mexico to be with her husband is extreme, going well beyond those hardships ordinarily associated with inadmissibility or exclusion.

Nonetheless, the applicant's wife has the option of staying in the United States and the record does not show that she has suffered or will suffer extreme hardship if she continues to remain in the United States without her husband. Although the AAO is sympathetic to the couple's situation, if the applicant's wife decides to stay in the United States, their situation is typical of individuals separated

as a result of inadmissibility or exclusion and does not rise to the level of extreme hardship based on the record. Significantly, the applicant and his wife have never resided together and the applicant's wife married the applicant after he had already been removed from the United States with the knowledge that he may never been permitted to reside in the United States again. As the Court of Appeals for the Ninth Circuit, under which this matter arises, has recognized, an equity occurring after a deportation order has been issued is not entitled to great weight. *Carnalla-Munoz v. INS,* 627 F.2d 1004, 1007 (9th Cir. 1980); *see also Ghassan v. INS,* 972 F.2d 631, 635 (5th Cir. 1992); *Garcia-Lopes v. INS*, 923 F.2d 72, 76 (7th Cir. 1991); *Matter of Tijam*, 22 I&N Dec. 408, 417 (BIA 1998). In addition, although the record contains a letter from a therapist describing the applicant's wife's depressed and anxious mood related to her mother's death and her husband's absence, and diagnoses her with Major Depressive Disorder, nonetheless, there is nothing in the record to establish that any emotional issues she may be experiencing are beyond that normally experienced by others in similar circumstances. Regarding financial hardship, according to the applicant's wife herself, as specified on her Income and Expense Report for October 2013, she is earning sufficient income to meet her expenses, including expenses related to visiting her husband in Mexico. Moreover, according to the applicant's Biographic Information form (Form G-325A), he is employed in Mexico; however, there is no evidence in the record addressing his income or wages. Even considering all of the factors in the case cumulatively, there is insufficient evidence showing that if the applicant's wife remains in the United States, the hardship she has experienced, or will experience, amounts to extreme hardship.

Extreme hardship warranting a waiver of inadmissibility can be found 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 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.*; *cf. Matter of Pilch*, 21 I&N Dec. 627, 632-33 (BIA 1996). As the applicant has not demonstrated extreme hardship from separation, the record does not establish that refusal of admission would result in extreme hardship to the applicant's wife, the only qualifying relative in this case.

A review of the documentation in the record fails to establish the existence of extreme hardship to the applicant's wife caused by the applicant's inadmissibility to the United States. Because the applicant is statutorily ineligible for relief, no purpose would be served in discussing whether he merits a waiver as a matter of discretion or the merits of his application to reapply for admission.

In application proceedings, it is the applicant's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361. Here, that burden has not been met.

ORDER: The appeal is dismissed.