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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**

ll6

[redacted]

FILE: [redacted] Office: PHOENIX, ARIZONA Date: FEB 25 2011

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 law was inappropriately applied by us in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of $630. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion must 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 Field Office Director, Phoenix, Arizona, 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 United States citizen and the mother of two United States citizen children and a Mexican citizen child. 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 United States citizen spouse and children.

The Field Office 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 Field Office Director*, dated April 10, 2008.[1]

On appeal, the applicant, through counsel, asserts that United States Citizenship and Immigration Services (USCIS) "abused its discretion based on its failure to consider the totality of the evidence." *Form I-290B*, filed May 5, 2008.

The record includes, but is not limited to, counsel's appeal brief, statements from the applicant and her husband, letters of support for the applicant and her husband, a psychological evaluation on the applicant's husband, a lease agreement, utility and household bills, a bank statement, pay stubs for the applicant's husband, tax documents, retirement documents, and mortgage documents. The entire record was reviewed and considered in arriving at a decision on the appeal.

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-
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> . . . .
>
> (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 [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

[1] The AAO notes that the Field Office Director resent the decision to the applicant's new address on April 16, 2008.

> 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.

In the present case, the record indicates that the applicant entered the United States in July 2000 without inspection. In September 2002, the applicant departed the United States. On March 1, 2003, the applicant entered the United States by presenting her border crosser card.

The applicant accrued unlawful presence from July 2000, the date she entered the United States without inspection, until September 2002, the date she departed the United States. The applicant is seeking admission into the United States within ten years of her September 2002 departure. 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.

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 children can be considered only insofar as it results in hardship to a qualifying relative. The applicant's husband 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-Moralez,* 21 I&N Dec. 296, 301 (BIA 1996).

As a qualifying relative is not required to depart the United States as a consequence of an applicant's inadmissibility, two distinct factual scenarios exist should a waiver application be denied: either the qualifying relative will join the applicant to reside abroad or the qualifying relative will remain in the United States. Ascertaining the actual course of action that will be taken is complicated by the fact that an applicant may easily assert a plan for the qualifying relative to relocate abroad or to remain in the United States depending on which scenario presents the greatest prospective hardship, even though no intention exists to carry out the alleged plan in reality. *Cf. Matter of Ige,* 20 I&N Dec. 880, 885 (BIA 1994) (addressing separation of minor child from both parents applying for suspension of deportation). Thus, we interpret the statutory language of the various waiver provisions in section 212 of the Act to require an applicant to establish extreme hardship to his or her qualifying relative(s) under both possible scenarios. To endure the hardship of separation when extreme hardship could be avoided by joining the applicant abroad, or to endure the hardship of relocation when extreme hardship could be avoided by remaining in the United States, is a matter of choice and not the result of removal or inadmissibility. As the Board of Immigration Appeals (Board) stated in *Matter of Ige*:

> [W]e consider the critical issue . . . to be whether a child would suffer extreme hardship if he accompanied his parent abroad. If, as in this case, no hardship would ensue, then the fact that the child might face hardship if left in the United States would be the result of parental choice, not the parent's deportation.

*Id. See also Matter of Pilch,* 21 I&N Dec. 627, 632-33 (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 deportation, 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. at 631-32; *Matter of Ige*, 20 I&N Dec. at 883; *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.*

We observe that 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., In re 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).

Family separation, for instance, has been found to be a common result of inadmissibility or removal in some cases. *See Matter of Shaughnessy*, 12 I&N Dec. at 813. Nevertheless, family ties are to be considered in analyzing hardship. *See Matter of Cervantes-Gonzalez*, 22 I&N Dec. at 565-66. The question of whether family separation is the ordinary result of inadmissibility or removal may depend on the nature of family relationship considered. For example, in *Matter of Shaughnessy*, the Board considered the scenario of parents being separated from their soon-to-be adult son, finding that this separation would not result in extreme hardship to the parents. *Id.* at 811-12; *see also U.S. v. Arrieta*, 224 F.3d 1076, 1082 (9th Cir. 2000) ("Mr. Arrieta was not a spouse, but a son and brother. It was evident from the record that the effect of the deportation order would be separation rather than relocation."). In *Matter of Cervantes-Gonzalez*, the Board considered the scenario of the respondent's spouse accompanying him to Mexico, finding that she would not experience extreme hardship from losing "physical proximity to her family" in the United States. 22 I&N Dec. at 566-67.

The decision in *Cervantes-Gonzalez* reflects the norm that spouses reside with one another and establish a life together such that separating from one another is likely to result in substantial hardship. It is common for both spouses to relocate abroad if one of them is not allowed to stay in the United States, which typically results in separation from other family members living in the United States. Other decisions reflect the expectation that minor children will remain with their parents, upon whom they usually depend for financial and emotional support. *See, e.g., Matter of Ige*, 20 I&N Dec. at 886 ("[I]t is generally preferable for children to be brought up by their parents."). Therefore, the most important single hardship factor may be separation, particularly where spouses and minor children are concerned. *Salcido-Salcido*, 138 F.3d at 1293 (quoting *Contreras-Buenfil v. INS*, 712 F.2d 401, 403 (9th Cir. 1983)); *Cerrillo-Perez*, 809 F.2d at 1422.

Regardless of the type of family relationship involved, the hardship resulting from family separation is determined based on the actual impact of separation on an applicant, and all hardships must be considered in determining whether the combination of hardships takes the case beyond the consequences ordinarily associated with removal or inadmissibility. *Matter of O-J-O-*, 21 I&N Dec. at 383. Nevertheless, though we require an applicant to show that a qualifying relative would experience extreme hardship both in the event of relocation and in the event of separation, in analyzing the latter scenario, we give considerable, if not predominant, weight to the hardship of separation itself, particularly in cases involving the separation of spouses from one another and/or minor children from a parent. *Salcido-Salcido*, 138 F.3d at 1293.

The first prong of the analysis addresses hardship to the applicant's husband if he relocates to Mexico. In a statement dated May 13, 2008, the applicant's husband states "[s]ecurity for [the applicant] and kids is very important to [him] and [he] know[s] Mexico has no security for [his] family as well as medical services." He claims that there is no work in Mexico, he does not speak Spanish very well, he does not have a place to stay in Mexico, and he has no relatives in Mexico. In a statement dated January 5, 2007, the applicant's husband states if he relocated to Mexico, he would lose his health and dental insurance, and his eligibility to participate in his company's retirement plan. In counsel's appeal brief dated May 28, 2008, counsel states the applicant and her husband have resided in the United States for many years. The applicant's husband states "[t]o leave the community [he] [has] known all

[his] life would be devastating." The AAO notes the claims made regarding the difficulties the applicant's husband would face in relocating to Mexico.

The applicant's husband states his stepdaughters do not speak Spanish, they are "accustomed to the American school system," and he wants all of his children educated in the United States. Counsel states the applicant and her husband do not want to "uproot the children, who have been acclimated to living in the United States," and they "seek to avoid increasing the educational and social hardship which will be imposed upon the children." The applicant's husband states his son "may have developed [bronchitis]," he does "not want [his] USC son treated by Mexican doctors," and "the health care in Mexico is nowhere near what it is in the United States." Additionally, the applicant's husband states he must remain in the United States to care for his ill father, who resides with him and the applicant. He states he has a sister in the United States, but she is unable to care for his sick father. The AAO notes the concerns for the applicant's children and father-in-law.

Regarding the applicant's son's medical condition, the AAO notes that no medical documentation was submitted establishing that the applicant's son is suffering from any medical conditions. Going on record without supporting documentation is not sufficient to meet the applicant's burden of proof in this proceeding. *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)). Additionally, the AAO notes that there is no evidence in the record establishing that the applicant's son's alleged medical condition cannot be treated in Mexico or that he has to remain in the United States to receive treatment. The AAO acknowledges that the applicant's children may suffer some hardship in relocating to Mexico. However, the AAO notes that the applicant's children are not qualifying relatives, and their hardship is only considered to the extent that it has an impact on the applicant's husband. The AAO also notes that no medical documentation has been submitted establishing that the applicant's father-in-law suffers from any medical conditions or the severity of his medical conditions. Additionally, the applicant has not shown that her husband would endure additional hardship in Mexico due to lacking the ability to reside with or assist his father.

The AAO acknowledges that the applicant's husband is a native and citizen of the United States and that he may experience some hardship in relocating to Mexico. The AAO notes that other than the applicant's husband's statement, no country conditions materials or documentation has been submitted that demonstrates that the applicant's husband would be unable to obtain employment upon relocation that would allow him to use the skills he has acquired in the United States. Additionally, the AAO notes that no documentary evidence has been submitted to establish that the applicant's husband would experience emotional or financial hardship in Mexico. Therefore, based on the record before it, the AAO finds that the applicant has failed to establish that her husband would suffer extreme hardship if he relocated to Mexico.

In addition, the record does not establish extreme hardship to the applicant's husband if he remains in the United States. Counsel states "[w]ithout her presence in the United States, [a]pplicant's family would also be deprived of emotional support," they would "become a single parent household," and it would be a financial hardship for the applicant's family to travel back and forth to Mexico. The

applicant's husband states he bought a house and he "really count[s] on [the applicant's] income to afford [their] monthly bills." Counsel claims that the applicant "would no longer be able to provide the financial support for her family, and is not likely to find comparably paying employment in her country." Counsel states the "loss of [a]pplicant as a wage earner and parent would place a monumental burden on [a]pplicant's spouse to fill the income and parental gap created upon [a]pplicant's permanent departure." The AAO notes the financial concerns of the applicant's spouse.

Counsel states the "[a]pplicant and her spouse both work and they both take care of the emotional and financial needs of their parents and their children." The applicant's husband states he takes care of his two stepdaughters, he is "the only father they have ever known," and "there would be no way for [him] to care for the children on [his] own. [He] must work to maintain the household and without [the applicant] child care would be impossible." He also states the applicant helps care for his father "who is very ill from cirrhosis, liver, and prostate cancer." In a statement dated May 13, 2008, the applicant asks that she not be separated from her family because it "would be the worse [sic] loss [she] could ever have in [her] life, [she] won't be able to handle it."

In a psychological evaluation dated May 20, 2008, [redacted] states the applicant's husband "meets the criterion for anxiety." [redacted] reports that the applicant's husband has "feelings of apprehension and worry daily," he is "irritable and restless," he is "unable to control his thoughts or his emotions," he "has trouble concentrating at work and home," he has "difficulties sleeping," he "feels fatigue and muscle tension," he "experiences anxiety attacks," he has "uncontrollable episodes of crying twice daily," and he is sad. [redacted] indicates that "[a] separation from [the applicant] would likely result in greater depression, greater anger, and hopelessness." She states the applicant's "departure would be harmful to [the applicant's spouse]. He would have more intense levels of anxiety, [possibly] affecting his ability to work." The AAO notes the applicant's husbands mental health concerns.

The AAO notes that other than the applicant's husband statement, the record does not establish that the applicant's father-in-law is suffering from any medical conditions, how serious those medical conditions are, what treatment he may require, or that he requires his son's assistance because of his medical conditions. Additionally, the AAO notes that the applicant's children may suffer some hardship in being separated from the applicant. However, the applicant has not shown that her children will experience challenges that elevate her husband's difficulty to an extreme hardship. Further, the AAO has carefully considered the psychological report regarding emotional difficulty experienced by the applicant's husband. While it is understood that the separation of spouses and children often results in significant psychological challenges, the applicant has not distinguished her husband's emotional hardship upon separation from that which is typically faced by the spouses of those deemed inadmissible. The AAO also notes that the record does not establish that the applicant's husband would be unable to support himself in the applicant's absence. Additionally, the AAO notes that the applicant has submitted no evidence to establish that she would be unable to obtain employment in Mexico and, thereby, reduce the financial burden on her husband. 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.

A review of the documentation in the record fails to establish the existence of extreme hardship to the applicant's husband caused by the applicant's inadmissibility to the United States. Having found the applicant statutorily ineligible for relief, no purpose would be served in discussing whether she 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. *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.