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

PUBLIC COPY

U.S. Citizenship and Immigration Services

H6

[redacted]

FILE: [redacted] Office: MEXICO CITY, MEXICO (CIUDAD JUAREZ) Date: MAR 01 2011

IN RE: [redacted]

APPLICATION: Immigrant Application for Waiver of Grounds of Inadmissibility pursuant to 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 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,

Ellen C. Gabriel

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Acting 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 under 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 admission within ten years of his last departure. The applicant is married to a U.S. citizen and has a U.S. citizen child. He 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.

The Acting District Director found that the applicant had failed to establish that the bar to his admission would result in extreme hardship to a qualifying relative and denied the Form I-601, Application for Waiver of Ground of Excludability, accordingly. *Decision of the Acting District Director,* dated June 30, 2008.

On appeal, former counsel contends that the Acting District Director erred by failing to properly consider all of the hardship factors in the applicant's case, the totality of the circumstances and the cumulative effect of the hardship. *Form I-290B, Notice of Appeal or Motion*, dated July 28, 2008.[1]

In support of the waiver, the record includes, but is not limited to, former counsel's brief submitted in support of the Form I-601 and his statement attached to the Form I-290B; statements from the applicant, his spouse, his mother-in-law, his sister-in-law and his brother-in-law;[2] country conditions materials on Mexico; educational and training certificates for the applicant's spouse; earning statements for the applicant; and court documents relating to the applicant's criminal history. The entire record was reviewed and all relevant evidence considered in reaching a decision on the appeal.

Section 212(a)(9)(B) states 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

[1] Although an August 26, 2008 letter contained in the record indicates that the attorney retained by the applicant's spouse has withdrawn his representation, the AAO has considered all materials submitted by this individual in reaching our decision.

[2] The AAO notes that the record also contains a Spanish-language statement from the applicant's father-in-law that is unaccompanied by a certified English-language translation, as required by the regulation at 8 C.F.R. § 103.2(b)(3). Accordingly, the AAO has not considered this statement.

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

The record reflects that the applicant entered the United States without inspection on or about July 23, 2001. On June 14, 2007, an immigration judge granted the applicant voluntary departure until July 16, 2007. On July 2, 2007, the applicant complied with the order of voluntary departure and left the United States for Mexico. Based on this history, the applicant accrued unlawful presence from February 21, 2005, the date of his 18th birthday, until June 14, 2007, the date on which he was granted voluntary departure by the immigration judge. As he accrued unlawful presence in excess of one year and is seeking immigrant admission within ten years of his 2006 departure from the United States, the applicant is inadmissible pursuant to section 212(a)(9)(B)(i)(II) of the Act.

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.

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. Accordingly, in this proceeding, hardship to the applicant or his child will be considered only insofar as it results in hardship to the applicant's spouse. If extreme hardship to a qualifying relative is established, the applicant is statutorily eligible for a waiver, and United States Citizenship and Immigration Services (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 (BIA) 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 BIA 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 BIA 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 BIA 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 BIA 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 BIA 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.

We note that the applicant's former counsel asserts that the Acting District Director erred in relying on the various cases referenced in her decision, including *Matter of Shaughnessy*, 12 I&N Dec. 810 (BIA 1968); *Matter of W*, 9 I&N Dec. 1 (BIA 1960); *Marquez-Medina v. INS*, 765 F.2d 673 (7th Cir.

1985); *Bueno-Carillo v. Landon*, 682 F.2d 143 (7th Cir. 1982); *Chokloikaew v. INS*, 601 F.2d 216 (5th Cir. 1979); *Banks v. INS*, 594 F.2d 760 (9th Cir. 1979); and *Matter of Kojoory*, 12 I&N Dec. 215 (BIA 1967). On appeal, he seeks to distinguish the facts in the present case from those in the cases cited by the Acting District Director. The AAO notes, however, that the Acting District Director did not cite these cases for their individual holdings or fact patterns, but for the guidance they provide on what constitutes extreme hardship, the standard necessary to obtain a waiver of inadmissibility under section 212(a)(9)(B)(v) of the Act. It is appropriate to reference suspension of deportation cases for their informative guidance on what constitutes extreme hardship. *Matter of Cervantes-Gonzalez,* 22 I & N Dec. 560, 565 (BIA 1999); See also *Hassan v. INS,* 927 F.2d 465, 467 (9th Cir. 1991) (noting that suspension of deportation cases interpreting extreme hardship are useful for interpreting extreme hardship in section 212(a) cases).

The AAO now turns to the question of whether the applicant in the present case has established that a qualifying relative would experience extreme hardship as a result of his inadmissibility.

In support of the applicant's waiver application, former counsel asserts that relocation to Mexico would force the applicant's spouse to abandon the United States, the country in which she has spent her entire life. Counsel further asserts that the applicant's spouse is very close to her family, almost all of whom reside in the United States and that she would suffer extremely if she had to leave them. Counsel also claims that neither the applicant nor his spouse would be able to find work in Mexico. He notes that the applicant's spouse does not have the ties to Mexico needed to find employment, as well as the high level of unemployment in Mexico and the disparity between income levels in the United States and Mexico. Counsel also points to the applicant's spouse's inability to read or write in Spanish and cites it as a further impediment to her ability to find lucrative employment in Mexico. He contends that in addition to having high unemployment rates, Mexico is beset by significant levels of crime and violence, and has very poor health and education systems. Counsel states that the applicant's spouse wishes to have another child and requires regular preventive care, which she would be unlikely to receive in Mexico.

Counsel also asserts that the applicant's son, who is now five-years-old, would suffer extreme hardship if he relocated to Mexico as he has significant attachments to his mother's family. Counsel further contends that the applicant's son would lose the chance to have a good public education, to live in his country of birth and to receive the benefits of being a U.S. citizen. He states that as a result of moving to Mexico, the applicant's son would return to the United States as an adult without any knowledge of English. He states that although the applicant's son does not suffer from any serious medical conditions that he requires regular preventive care and that it is unlikely that he would be able to obtain this care in Mexico.

In a June 29, 2007 statement, the applicant's spouse asserts that all of her family members live in the United States, with the exception of one uncle, and that they are very close. She states that she is used to life in the United States, does not know anyone in Mexico and would suffer if she had to live there. The applicant's spouse also states that she does not know how her family would survive in Mexico as there are no jobs. She notes that she would not be able to pursue her dreams of becoming a nurse and would be unable to provide a better education for her son. Her son, the applicant's

spouse states, would probably have to drop out of school to work to help support their family. June 28, 2007 statements from the applicant's spouse's mother and siblings echo her claims regarding her strong ties to the United States and her lack thereof in Mexico.

In support of these claims, the record contains the section on Mexico from the Department of State's Country Reports on Human Rights Practices – 2006, released on March 6, 2007 and a 2006 listing of worldwide per capita incomes by country, published by the World Bank. The AAO notes that the human rights report indicates that the minimum wage in Mexico in 2006 did not provide a decent standard of living for a worker and his or her family. However, no evidence in the record demonstrates that the applicant would be limited to minimum wage employment. The AAO also notes that the Department of State report addresses a range of human rights abuses in Mexico, including discrimination against women, but finds no evidence in the record to demonstrate how such conditions would affect the applicant's spouse. We also acknowledge that the World Bank reports that per capita income in the United States is significantly higher than that in Mexico. However, the reporting of general economic or country conditions in an applicant's native country do not establish extreme hardship in the absence of evidence that the conditions would specifically impact the qualifying relative. *Kuciemba v. INS*, 92 F.3d 496 (7th Cir. 1996) (citing *Marquez-Medina v. INS*, 765 F.2d 673, 676 (7th Cir. 1985)).

The AAO also notes counsel's claim regarding the high levels of crime and violence in Mexico and observes that on September 10, 2010 the Department of State issued a travel warning advising U.S. citizens against travel to certain areas of Mexico as a result of increased levels of drug-related violence. Although the record does not indicate the applicant's current address in Mexico, the record reflects that he was born in Morelia, State of Michoacan and that his parents continue to reside there. The AAO notes that the State Department's travel warning specifically advises U.S. citizens against travel to any part of Michoacan, which it reports is home to one of Mexico's most dangerous drug trafficking organizations, based on "recent violent attacks and persistent security concerns." Therefore, the threat of drug violence will be considered in determining extreme hardship to the applicant's spouse upon relocation.

Based on the record before us, the AAO finds the applicant to have demonstrated that his spouse would experience extreme hardship if she relocates to Mexico. We specifically note the applicant's spouse's inability to read or write in Spanish;[3] the impact of this language deficit on her ability to obtain employment in Mexico; the applicant's significant family ties to the United States; the absence of family ties to Mexico, beyond the applicant; and the potential security risks presented by relocating to an area of Mexico experiencing significant drug-related violence. When these specific hardship factors and those normally created by relocation are considered in the aggregate, we find that the applicant has established that his spouse would experience extreme hardship upon relocation to Mexico.

[3] Although the AAO observes that the statements submitted by the applicant's spouse's siblings and parents are all in Spanish, we, nevertheless, will accept prior counsel's claim that the applicant's spouse's reading and writing skills are inadequate for employment purposes in Mexico.

Former counsel also contends that the applicant's spouse would suffer extreme hardship if she continues to live in the United States without the applicant. He asserts that the applicant's spouse needs him emotionally and that living in a different country from a spouse is the "most extreme hardship a woman can endure." Counsel states that the stress created by the applicant's immigration situation has already taken a toll on his spouse and that she is suffering from anxiety and depression. He further states that the applicant's spouse would suffer financial hardship in his absence. He reports that the applicant's spouse does not work as she devotes the majority of her time to caring for their son, but that even if she were to obtain employment, her earnings would not be sufficient to pay her household expenses or to support her son.

Counsel reports that when the applicant was in the United States, he and his spouse paid half of his mother- and father-in-law's mortgage and household expenses, and that in the applicant's absence they would be unable to make their mortgage payments. He also asserts that the applicant's spouse's household bills would be significantly higher in the applicant's absence because she would spend money traveling to Mexico and in telephone calls. Counsel states that the applicant's spouse would probably have to contribute to the applicant's living expenses in Mexico because he would be unable to find employment. He asserts that in 2006, the applicant's spouse earned just $4,520.

Counsel also contends that the applicant's son will suffer extreme hardship if the applicant's waiver request is denied. He states that if the applicant is not allowed to return to the United States, his son will be raised in a single-parent household subject to all of the disadvantages that entails. Counsel claims that the applicant's spouse would suffer watching her son grow up with the applicant.

In her June 29, 2007 statement, given prior to the applicant's departure to Mexico, the applicant's spouse reports that she and the applicant live with her parents and that the applicant covers approximately half of her parents' mortgage and bills. She states that she does not work but cares for their child and the house. The applicant's spouse also states that her life would be difficult without her husband and that she would be very sad without him.

In a separate June 29, 2007 statement, the applicant states that both his spouse and son will suffer in his absence. He asserts that his spouse dedicates all of her time to their son and that, without him, she would have to look for work, leaving no one to care of his son during the day as his mother- and father-in-law both work full-time. The applicant's mother-in-law, in a June 28, 2007 statement, also claims that he helps her and her husband with their house payments and bills, and that without him, they would not be able to pay for everything.

In support of the preceding claims of hardship, the record contains copies of heating, cable, electric and automobile insurance bills addressed to the applicant's father-in-law, and a mortgage loan payment notice and a tax bill in the names of both the applicant's mother- and father-in-law. While the AAO finds this documentation to establish that the applicant's spouse's parents have a number of financial obligations, it does not demonstrate that they are unable to pay their bills without financial assistance. No evidence in the record provides the incomes of the applicant's mother- and father-in-law, both of whom the applicant indicates are employed full-time. Neither is there any documentation that establishes that the applicant previously provided financial assistance to his in-

laws. The AAO also notes that the record indicates that the applicant's spouse has at least two siblings and the record does not establish that they are either unable or unwilling to assist their parents financially if the applicant's waiver application is denied. Moreover, the applicant's mother- and father-in-law are not qualifying relatives for the purposes of this proceeding and the record fails to address how the applicant's spouse would be affected by her parents' loss of the applicant's financial assistance.

The record also fails to establish that the applicant's spouse would experience significant emotional or financial hardship in the applicant's absence. The AAO finds no documentary evidence that demonstrates the extent to which the applicant's spouse is suffering from depression and anxiety or that indicates her emotional/mental health has affected her ability to obtain employment or meet her parental responsibilities. Neither is there sufficient evidence to establish that the applicant's spouse would be unable to support her family financially if the applicant is returned to Mexico. Although her 2006 tax return reports her income as $4,520 for that year, no evidence indicates over what period of time she worked or that she was engaged in full-time employment.

The record includes a certificate issued by Samland Health Care that indicates the applicant's spouse has completed training as a nursing assistant, employment that the Department of Labor's Occupational Outlook Handbook, 2010-11 Edition, states paid a median wage of $11.46/hour (approximately $23,800/year) in 2008. Further, as previously indicated, the record does not contain sufficient proof to establish that the applicant is unable to obtain employment in Mexico. As a result, it does not demonstrate that he would require financial support from his spouse or that he would not be able to provide her with some financial help from outside the United States. Based on the evidence of record, the applicant has not demonstrated that his spouse would experience extreme hardship if she remained in the United States without him.

As the record does not prove that the applicant's spouse would suffer extreme hardship whether she relocates to Mexico or remains in the United States, he has not established eligibility for a waiver under section 212(a)(9)(B)(v) of the Act. Having concluded that the applicant is statutorily ineligible for relief, the AAO finds no purpose would be served in discussing whether he merits a waiver as a matter of discretion.

In proceedings for application for waiver of grounds of inadmissibility under section 212(a)(9)(B)(i)(II) 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.