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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]

FILE: [redacted] Office: MEXICO CITY (CIUDAD JUAREZ) Date: MAR 16 2011

IN RE: Applicant: [redacted]

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)

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 Acting District Director, Mexico City. The matter 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 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. The applicant is married to a U.S. citizen and 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 with her husband and children in the United States.

The acting district director found that the applicant failed to establish extreme hardship to a qualifying relative and denied the application accordingly. *Decision of the Acting District Director*, dated September 15, 2008.

The record contains, *inter alia*: two statements from the applicant's husband, Mr. [redacted] a psychological evaluation; a bank statement, receipts, and other financial documents; and an approved Petition for Alien Relative (Form I-130).[1] The entire record was reviewed and considered in rendering this decision on the appeal.

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 -
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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.
>
> . . . .

[1] The record also contains documents that are written in Spanish and have not been translated into English. The regulation at 8 C.F.R. § 103.2(b)(3) requires that any document containing foreign language submitted to United States Citizenship and Immigration Services be accompanied by a full English language translation which the translator has certified as complete and accurate, and by the translator's certification that he or she is competent to translate from the foreign language into English. Consequently, these documents cannot be considered.

> (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, and the applicant does not contest, that she entered the United States in June 2005 without inspection and remained until her departure in August 2007. In his affidavit, the applicant's husband, [redacted] explains the circumstances under which his wife entered the United States without inspection. According to [redacted], his wife had a border crossing card and was attempting to get a permit to travel to Houston, Texas. [redacted] contends that his wife presented copies of her paycheck in order to show that she was working in Mexico, but the immigration officer claimed they were false because they were all printed at the same time. [redacted] contends that his wife explained that they were printed at the same time because she asked for them to be printed as she was paid by direct deposit and did not have paycheck stubs. According to [redacted] the officer told her that if she did not admit the paychecks were false, they would arrest her, so she purportedly signed a form that admitted their falsity. [redacted] maintains that his wife never submitted false documents to the immigration official because the paychecks were authentic. He contends that they wanted to be together as a family, so his wife returned to the United States without inspection. *Affidavit of* [redacted], dated October 12, 2008.

The applicant accrued unlawful presence of more than two years. Accordingly, she is 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 one year or more and seeking admission to the United States within ten years of her last departure. The AAO notes that the acting district director did not find, and the record does not indicate, that the applicant is inadmissible for fraud or willful misrepresentation of a material fact in order to procure an immigration benefit. The purported fraudulent paychecks are not contained in the record and the statement in which the applicant allegedly admitted to presenting false documents is not in the record. Therefore, the applicant is inadmissible only for unlawful presence under section 212(a)(9)(B)(i)(II) of the Act.

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 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 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.

In this case, the applicant's husband, [redacted], states that his life has become very difficult since his wife was not permitted to return to the United States. [redacted] states that he was born in Mexico and has lived in the United States since 1992. He states that he has been married twice before his current marriage to the applicant. According to [redacted], he has an eleven year old daughter from his first marriage and pays $200 per month in child support. He states he used to see his daughter every week, but that her mother moved and now he can only see his daughter during school vacations. According to [redacted], if his wife's waiver application were denied, he would not be able to continue seeing his daughter because he would have to stop working when she visits and he cannot afford to not work. In addition, [redacted] states he has a six year old son from his second marriage and pays $300 per month in child support for his son. He states he does not get to see his son, which hurts him very much. [redacted] further states that his wife has a daughter from a previous relationship with whom he has become very close. He contends that he is the only father his step-daughter, [redacted], has ever known. Furthermore, [redacted] states that he and the applicant have a daughter together, [redacted].

[redacted] states that the same month his wife was not permitted to return to the United States, he had a serious accident at work and was unable to work for six months. He states he was only paid part of his salary. [redacted] states he is a supervisor for oil well drilling rigs and is on call twenty-four hours a day, seven days a week for emergencies. He states he is unable to financially support his family in Mexico while also paying child support for two children and supporting his mother, who is a widow. He states that during the first school year his wife lived in Mexico, he commuted to Mexico to be with his wife and daughters. However, he states that for the next school year, they enrolled [redacted] in school in Texas and she lived with the applicant's sister during the school week, then lived in Mexico with the applicant on the weekends. [redacted] states he works wherever his job sends him and that he is currently working in New Mexico, a ten hour drive from his wife's town in Diaz Ordaz, Mexico. He contends he will soon be sent to Angola, Africa, and will be working overseas for thirty days at a time. Moreover, according to [redacted], he fears for his wife's and daughters' safety in Mexico because he has relatives who have been kidnapped, beaten, and threatened with their lives. He also contends he worries about where to send [redacted] to preschool and states that he cannot separate her from his wife as they did with [redacted]. Finally, [redacted] claims his wife suffers from depression and the record

includes receipts for Lexotan and Prozac for the applicant. *Affidavit of* [redacted] *supra; Letter of Extreme Hardship*, dated August 24, 2007.

A psychological evaluation of [redacted] states that since his wife's immigration problems, he has had employment problems with absenteeism, tardiness, learning, following directions, and taking initiative. The psychologist states that the applicant was not permitted to reenter the United States on August 17 2007, and that [redacted] had an accident at work the injured his back on August 29, 2007. [redacted] supervisor has reportedly advised him to pay more attention as he appears stressed and forgetful and may cause another accident to himself or his coworkers. [redacted] reported having concentration and memory problems, feelings of detachment, anxiety, excessive worry, depression, hopelessness, insomnia, headaches, chest pains, and binge eating. The psychologist diagnoses [redacted] with major depression, adjustment disorder with anxiety, and somatization disorder, and recommends he seek both psychological counseling and consultation with a psychiatrist for chemotherapy. *Psychological Evaluation*, dated October 11, 2008.

The AAO finds that if [redacted] had to move back to Mexico to be with his wife, he would experience extreme hardship. According to [redacted] he has lived in the United States since 1992 when he was eighteen years old. Furthermore, [redacted] contends he has four minor children he financially supports. In addition, as the U.S. Department of State recognizes, crime and violence are serious problems in Mexico, particularly along the border cities, including [redacted], a town in Tamaulipas, where the applicant has been living. *U.S. Department of State, Travel Warning, Mexico*, dated September 10, 2010 ("Recent violent attacks and persistent security concerns have prompted the U.S. Embassy to urge U.S. citizens to defer unnecessary travel to Michoacán and Tamaulipas, . . . and to advise U.S. citizens residing or traveling in those areas to exercise extreme caution."). [redacted] would need to readjust to a life in Mexico, a difficult situation made even more complicated given he has lived in the United States for almost twenty years, his entire adult life. Considering these unique circumstances cumulatively, the AAO finds that the hardship [redacted] would experience if he had to move back to Mexico is extreme, going beyond those hardships ordinarily associated with inadmissibility.

Nonetheless, [redacted] has the option of staying in the United States and the record does not show that he would suffer extreme hardship if he were to remain in the United States without his wife. Regarding the financial hardship claim, there is insufficient evidence showing that [redacted] hardship is extreme. There is no evidence, such as tax documents or a letter from his employer, indicating [redacted] income or wages. Although the AAO does not doubt that supporting his wife in Mexico causes some financial hardship to [redacted] without more detailed information addressing the couple's income or total expenses, there is insufficient evidence in the record to determine the extent of his financial hardship should he remain in the United States.

Regarding the psychological evaluation, although the input of any mental health professional is respected and valuable, the AAO notes that the evaluation in the record is based on three interviews the psychologist conducted with [redacted] during a two-week period between September 26 and October 11, 2008. Although the AAO recognizes that the psychologist conducted "collateral

interviews" in addition to interviews with [redacted] the evaluation nonetheless fails to reflect an ongoing relationship between a mental health professional and the applicant's husband. Therefore, the conclusions reached in the submitted evaluation, being based on interviews conducted within a two-week time period, do not reflect the insight and elaboration commensurate with an established relationship with a psychologist, thereby diminishing the evaluation's value to a determination of extreme hardship.

With respect to [redacted] step-daughter, [redacted] and the couple's daughter, [redacted], as stated above, hardship to the applicant's children can be considered only insofar as it results in hardship to [redacted] the only qualifying relative in this case. There is insufficient evidence in the record to show that any difficulty his children may experience will cause extreme hardship to [redacted] According to [redacted] has been living with her aunt in Texas during the school week. Although [redacted] ntends they cannot separate [redacted] from her mother, *Affidavit of* [redacted] *supra*, he does not elaborate on why [redacted] cannot also live in the United States either with him or another relative, as [redacted] does. There is no allegation that either of Mr. [redacted] daughters suffers from any medical or mental health condition. In sum, the record does not show that Mr. [redacted] hardship would be extreme or that his situation is unique or atypical compared to others in similar circumstances. *See Perez v. INS,* 96 F.3d 390 (9th Cir. 1996) (common results of deportation are insufficient to prove extreme hardship and defining extreme hardship as hardship that was unusual or beyond that which would normally be expected upon deportation).

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.