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

U.S. Citizenship and Immigration Services

H6

[redacted]

DEC 02 2010

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

IN RE: Applicant: [redacted]

APPLICATION: Application for Waiver of Grounds of Inadmissibility under section 212(a)(9)(B) of the Immigration and Nationality Act, 8 U.S.C. § 1182(a)(9)(B)

ON BEHALF OF APPLICANT:

[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,

for
Perry Rhew
Chief, Administrative Appeals Office

**DISCUSSION**: The waiver application was denied by the District Director, Mexico City. 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 [redacted] 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 for more than one year and seeking readmission within 10 years of his last departure. The applicant seeks a waiver of inadmissibility in order to reside in the United States with his U.S. citizen wife.

The district director found that the applicant failed to establish extreme hardship to his wife and denied the Form I-601 application for a waiver accordingly. *Decision of the District Director,* dated December 28, 2007.

On appeal, counsel for the applicant asserts that the applicant's wife will endure extreme hardship should the present waiver application be denied. *Statement from Counsel on Form I-290B*, dated January 29, 2008.

The record contains a brief from counsel; a letter from the applicant's church; statements from the applicant's wife; a psychological evaluation of the applicant's wife; a letter from a physician regarding the applicant's father-in-law; a record of criminal proceedings against the applicant's sister-in-law; a record of the applicant's wife's enrollment in a technical college, and; a copy of a lease for the applicant and his wife. The entire record was reviewed and considered in rendering a decision on the appeal.

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

> (B) Aliens Unlawfully Present.-
>
> > (i) In general. - Any alien (other than an alien lawfully admitted for permanent residence) who-
> >
> > . . . .
> >
> > (II) has been unlawfully present in the United States for one year or more, and who again seeks admission within 10 years of the date of such alien's departure or removal from the United States, is inadmissible.

The record shows that the applicant entered the United States without inspection in or about March 2002, and remained until February 2007. Thus, he accrued approximately 5 years of unlawful presence in the United States. He now seeks admission as an immigrant pursuant to an approved Form I-130 relative petition filed by his wife on his behalf. He was deemed inadmissible to the

United States under section 212(a)(9)(B)(i)(II) of the Act for having been unlawfully present for more than one year and seeking readmission within 10 years of his last departure. The applicant does not contest his inadmissibility on appeal.

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. Hardship to the applicant or his children can be considered only insofar as it results in hardship to a qualifying relative. The applicant's wife 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.

On appeal, counsel asserts that the applicant's wife will endure extreme hardship should the present waiver application be denied. *Brief from Counsel*, dated February 27, 2008. Counsel provides that the applicant's wife was born in the United States and her family resides in [redacted] *Id.* at 3. Counsel states that the applicant's wife has had to deal with difficult family issues in the applicant's absence, and that her stress and anxiety prompted her to spend time with a psychiatrist. *Id.* at 4. Counsel explains that the applicant's wife's siblings are incarcerated or facing legal problems, and that she currently takes care of her father and three-year-old niece. *Id.* Counsel indicates that the applicant's father-in-law has diabetes and other health concerns, and that the applicant's wife helps ensure that he attends his doctor's appointments and receives proper medications. *Id.* Counsel adds that the applicant's father-in-law only speaks [redacted] and that the applicant's wife translates for him.

*Id.* Counsel asserts that it is likely that the applicant's wife will obtain custody of her niece after her sister's criminal proceedings are complete. *Id.*

Counsel asserts that the applicant's wife will endure financial hardship should the applicant reside outside the United States. *Id.* Counsel explains that the applicant's wife obtains work through a temporary employment agency, but that she does not always have reliable employment. *Id.* at 4-5. Counsel adds that the applicant's father-in-law works when he can, but due to his health problems he often is unable. *Id.* at 5. Counsel provides that the applicant was working prior to his departure from the United States, and that losing his income has created additional economic burden for his wife. *Id.* Counsel asserts that it is reasonable to assume that the applicant will have a difficult time finding employment in [redacted] that permits him to support his family in the United States. *Id.* Counsel adds that the applicant has no advanced education, and that [redacted] does not have plentiful employment opportunities. *Id.*

Counsel indicates that the applicant's wife was attending a technical college prior to the applicant's departure, but that she withdrew due to financial concerns and other reasons. *Id.*

The applicant's wife provides that they were married on February 23, 2005, and that they take their promise to remain together very seriously. *Statement from the Applicant's Wife*, dated February 26, 2008. She states that she needs the applicant's presence in the United States to help her through difficult times with her family. *Id.* at 1. She explains that she initially went to [redacted] with the applicant because she did not believe she would be able to take care of everything on her own, and as a result they lost their apartment, appliances, and car. *Id.* She adds that she had to withdraw from her technical college. *Id.* She explains that she had to leave her 58-year-old father who requires help due to his diabetes and other health problems. *Id.* She notes that she was always the one who took care of her father, including taking him to the doctor and picking up his prescriptions. *Id.* She provides that she also helped take care of her three-year-old niece when necessary. *Id.*

The applicant's wife states that she could not return to [redacted] because her family requires her help in the United States. *Id.* She asserts that her father's health fluctuates, and that he has been in and out of the hospital. *Id.* She provides that her father attempts to go to work, but that he often cannot make it or is sent home early due to his health. *Id.* She adds that her niece resides with her father, and that they both rely on her income and care. *Id.* She explains that her brother is incarcerated and her sister is having legal problems, thus they cannot help her take care of her family. *Id.*

The applicant's wife states that the applicant supports her emotionally, and that she cannot resume her academic study without his economic contribution. *Id.*

The applicant provides an evaluation of his wife conducted by a licensed clinical psychologist/neuropsychologist, [redacted] provides that the applicant's wife grew up in an immigrant household speaking [redacted] *Report from* [redacted] dated February 5, 2008. [redacted] notes that the applicant's father-in-law is originally from [redacted] and that he has been "trying to fix his citizenship issues for almost 20 years." *Id.* at 2. [redacted] adds that the applicant's mother-in-law is a U.S. citizen. *Id.* She explains that the applicant's mother- and father-in-law are legally married but separated. *Id.* She reports that the

applicant's wife has experienced difficult family circumstances, including substance addiction as well as emotional and physical abuse. *Id.* at 2-3.

[redacted] explains that the applicant's wife attempted to relocate to [redacted] with the applicant while they waited for his immigrant visa application to be approved, but that she was unable to secure employment. *Id.* at 3. [redacted] adds that the applicant's wife returned to the United States so that she could work with an attorney to file the present appeal. *Id.* [redacted] reported that the applicant's wife struggled with school and did not complete a high school education, and that she currently works as a temporary employee for a packaging plant. *Id.* at 2-3. She states that the applicant's wife has experienced several miscarriages, yet she lacks adequate funds to visit a doctor to determine the cause of her difficulty carrying a pregnancy. *Id.* at 3.

[redacted] provides that the applicant's wife is suffering from significant emotional difficulty due to separation from the applicant and her economic difficulty. *Id.* at 3-4. [redacted] recounts the applicant's wife's report of being raped as a teenager, and she provides that studies support that an experience of childhood sexual violence often results in significant problems in adulthood. *Id.* at 4. [redacted] cites studies to support that children raised by alcoholic or drug-addicted parents often experience difficulty. *Id.* at 6. [redacted] adds that the applicant's wife became abstinent from alcohol and drugs when she met the applicant, and studies support that the loss of social support presents a risk of relapse for her. *Id.* at 6-7. [redacted] summarizes that the applicant's wife has major depressive disorder - single episode, a learning disability, alcohol abuse which is in remission, infertility issues, separation from her husband and primary social support, financial strain, and the hardship of residing with her drug-abusing family. *Id.* at 9.

The applicant provides a letter from a physician for his father-in-law, [redacted] who states that the applicant's his father-in-law "is a [redacted]-speaking man who has multiple medical problems." *Letter from* [redacted] dated February 7, 2008. [redacted] said the applicant's wife translates for her father and looks after him due to the fact that he lives alone and requires transportation to and from the medical offices. *Id.* at 1. He indicates that the applicant's father-in-law relies on the applicant's wife "to get things done." *Id.*

Upon review, of the applicant has not shown that his wife will suffer extreme hardship should the present waiver application be denied. The applicant has not shown that his wife will endure extreme hardship should she remain in the United States for the duration of his inadmissibility under section 212(a)(9)(B)(i)(II) of the Act. The AAO has carefully examined the evidence presented by the applicant, yet many significant issues raised are not supported by documentation, as discussed below.

The report from [redacted] provides much detail regarding the applicant's wife's family history, as well as her financial and emotional challenges. Yet, it is noted that [redacted] does not indicate that the applicant's wife is an ongoing patient of his, or that she receives treatment for mental health issues. [redacted] does not cite any documentation from the applicant, such as medical or financial records, that support his statements. The report suggests that [redacted] knowledge of the facts he recounts is based on what he learned from discussion with the applicant's wife. While the report is valuable to portray the applicant's wife's emotional state and challenges, it

is not sufficient, without supporting documentation, to show by a preponderance of the evidence each fact that he references.

The applicant's wife asserts that she is facing financial challenges in the applicant's absence. However, the applicant has not presented any documentation or indication of his wife's income. The applicant has not provided an account of his wife's expenses in the United States. The single expense shown by evidence in the record consists of a [redacted] per month rental fee for a residence. Yet, the applicant has not established that his wife lacks sufficient income to meet her needs without his assistance. Related to this observation, the applicant has not shown that his wife requires his financial support in order to continue her academic study.

The applicant's wife asserts that she has at least partial responsibility for her niece. However, the applicant has not provided sufficient documentation to show that his wife cares for her niece, such as a birth record for her niece, documentation of expenditures on behalf of her niece, or statements from other individuals to support her involvement. The applicant's wife indicated that her niece resides with her father, which reflects that her niece does not live with her.

The applicant's wife claims that her father has diabetes and other health problems, and that she provides required care for him. However, the brief letter from [redacted] does not state any specific conditions from which the applicant's father-in-law suffers. [redacted] does not describe the applicant's father-in-law's symptoms, or otherwise explain the impact his health issues have on his ability to perform common daily tasks. The record shows that the applicant's father-in-law works and resides with only his granddaughter, which suggests that he is capable of living independently. While the AAO acknowledges that the applicant's wife wishes to assist her father, and that his needs create emotional consequences for her, the applicant has not provided adequate evidence to support that his father-in-law is creating emotional difficulty for his wife that rises to an extreme level.

[redacted] commented that the applicant's wife has had two miscarriages, yet the applicant has not provided any medical documentation to show that his wife was pregnant or experienced related difficulty. Applicant's wife indicated that her brother is incarcerated, but the record contains no documentation to support this assertion.

The AAO acknowledges that the separation of spouses often creates significant emotional hardship, and it is evident that the applicant's wife is enduring difficulty in the applicant's absence. However, as discussed above, the record lacks clear documentation to support many of the assertions made. The report from [redacted] contains many significant descriptions of the applicant's wife's prior challenges that would reasonably impact her ability to cope with separation from the applicant. Yet, as the applicant has not provided sufficient supporting documentation, the AAO is unable to conclude that [redacted] report shows by a preponderance of the evidence that the applicant's wife will experience psychological hardship that rises to an extreme level.

All stated elements of hardship to the applicant's wife, should she remain in the United States, have been considered an aggregate. Based on the foregoing, the applicant has not established that his wife will suffer extreme hardship should she remain in the United States for the duration of his inadmissibility under section 212(a)(9)(B)(i)(II) of the Act.

The applicant has not shown that his wife will suffer extreme hardship should she join him in [redacted] until he is permitted to return to the United States. The AAO recognizes that the applicant's wife wishes to continue to assist her father and niece in the United States. Yet, as discussed above, the applicant has not provided sufficient documentation to show that his wife has primary responsibility for her niece, or that her father has health problems that necessitate her assistance. [redacted] noted that the applicant's father-in-law is originally from [redacted] and that he has been "trying to fix his citizenship issues for almost 20 years," suggesting that the applicant's father-in-law is not a permanent resident or citizen of the United States. The applicant has not asserted or shown that his father-in-law is unable to accompany his wife back to Mexico should she reside there.

The applicant has not provided any explanation of the conditions in which he lives in [redacted] He has not indicated whether he is employed, or whether he faces economic difficulty there. The record indicates that the applicant's wife experienced challenges finding employment during her stay in [redacted] yet she has not asserted that she faced other hardships there.

Based on the foregoing, the applicant has not shown that his wife will suffer extreme hardship should she join him in [redacted]. Accordingly, the applicant has not established that denial of the present waiver application "would result in extreme hardship" to his wife, as required for a waiver under section 212(a)(9)(B)(v) of the Act. Having found the applicant statutorily ineligible for relief, no purpose would be served in discussing whether he merits a waiver as a matter of discretion.

In proceedings regarding a 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.