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

U.S. Citizenship and Immigration Services

[redacted]

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FILE: [redacted] Office: SEATTLE, WASHINGTON Date: NOV 29 2010

IN RE: [redacted]

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

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 $585. The fee for a Form I-290B is currently $585, but will increase to $630 on November 23, 2010. Any appeal or motion filed on or after November 23, 2010 must be filed with the $630 fee. 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. Goleman

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Acting Field Office Director, Seattle, Washington. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native and citizen of Mexico who failed to disclose that he was unlawfully present from 2003 through 2006 during an H2B nonimmigrant visa interview. He was found to be inadmissible to the United States under section 212(a)(6)(C)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(6)(C)(i), for attempting to procure an immigration benefit through fraud or misrepresentation. The applicant also is inadmissible 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 a period of one year or more. The applicant is the beneficiary of an approved Petition for Alien Relative (Form I-130), and his wife, a United States citizen, is his petitioner. The applicant seeks a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i) and 212(a)(9)(B)(i)(II) of the Act, 8 U.S.C. § 1182(a)(9)(B)(i)(II), in order to remain in the United States with his wife.

The Acting Field Office Director concluded that the applicant failed to establish that a bar to his admission to the United States would result in an "extreme hardship" to the qualifying relative and denied the application accordingly. *See Decision of the Acting Field Office Director* dated August 31, 2009.

On appeal, the applicant's representative provided a brief in support of the applicant's appeal. In the brief, the representative contends that the qualifying spouse would encounter an extreme hardship, if she relocated to Mexico, because her entire immediate family lives in the United States and only her grandmother lives in Mexico. The representative also asserts that the qualifying spouse helps her mother care for her disabled father, so it would be difficult for her to choose between her husband and father. Further, the representative asserts that she would face educational and career hardships, as well as difficulties with the language, if she moved to Mexico. According to the representative, if the qualifying spouse stayed in the United States, she would be unable to frequently travel to Mexico due to financial constraints.

The record contains the following evidence; the original Application for Waiver of Grounds of Inadmissibility (Form I-601), the Notice of Appeal (Form I-290B), an affidavit from the qualifying spouse, an affidavit from the applicant, letters of support from the applicant's mother-in-law, father-in-law and brother-in-law, the Biographic Information form (G-325A) for the applicant and his spouse and the Application to Adjust Status (Form I-485), as well as the accompanying materials submitted in conjunction with the application. The entire record was reviewed and considered in rendering a decision on the appeal.

The applicant is inadmissible to the United States pursuant to sections 212(a)(6)(C)(i) and 212(a)(9)(B)(i)(II) of the Act. Section 212(a)(6)(C) of the Act provides, in pertinent part:

> (i) Any alien who, by fraud or willfully misrepresenting a material fact, seeks to procure (or has sought to procure or has procured) a visa, other documentation, or

admission into the United States or other benefit provided under this Act is inadmissible.

Section 212(i) of the Act provides:

> **(1)** The [Secretary] may, in the discretion of the [Secretary], waive the application of clause (i) of subsection (a)(6)(C) in the case of an alien who is the spouse, 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 [Secretary] that the refusal of admission to the United States of such immigrant alien would result in extreme hardship to the citizen or lawfully resident spouse or parent of such an alien.

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-
> >
> > . . . .
> >
> > > (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 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.

Sections 212(i) and 212(a)(9)(B)(v) of the Act provide that a waiver of the bar to admission is dependent first upon a showing that the bar imposes an extreme hardship on a qualifying family member. Once extreme hardship is established, it is but one favorable factor to be considered in the determination of whether the Secretary should exercise discretion. *See Matter of Mendez,* 21 I&N Dec. 296 (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 the Phillipines, 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 applicant's qualifying relative is his wife, and as aforementioned, the Form I-130 has already been approved.

The evidence provided which specifically relates to the qualifying spouse's hardship includes Form I-601, Form I-290B, an affidavit from the qualifying spouse and an affidavit from the applicant. The entire record was reviewed and considered in rendering a decision on the appeal.

In the appeal brief, the representative contends that the qualifying spouse would encounter hardships upon relocating Mexico including educational and career hardships, difficulty with the language and her family ties to the United States. The representative also asserts that the qualifying spouse helps her mother care for her disabled father so that it would be difficult for her to choose between her husband and father. The representative also contends that the qualifying spouse would be unable to frequently travel to Mexico due to financial constraints.

The AAO finds that the applicant's spouse will not suffer extreme hardship as a consequence of being separated from the applicant. The applicant's attorney claims that the qualifying relative would be unable to frequently travel to Mexico due to financial constraints, should she remain in the United States. However, there was no evidence to support such assertions submitted. Although the adjustment application contains some financial information regarding the qualifying spouse's income such as a letter from her employer and tax documents, the record contains no documentation regarding the qualifying spouse's expenses to determine whether it would be difficult for her to travel to Mexico. Furthermore, the AAO does not find that the qualifying spouse's inability to travel to visit her spouse in Mexico with frequency would constitute an extreme hardship. Moreover, the applicant's spouse, in her affidavit, asserts that it would be an emotional hardship for her to live in the United States without the applicant. She explains that she is "a person who gets really anxious and stressed out easily" and that she needs his emotional support while she is in school and in general. The AAO also finds that the emotional hardship described by the qualifying spouse fails to rise to the level of extreme. While the qualifying spouse may suffer due to the separation from the applicant emotionally and from her inability to visit him often, these hardships are not outside the usual difficulties encountered when someone close to you is removed. Further, the applicant failed to properly document the potential emotional hardships that might face his qualifying spouse. While the qualifying spouse and the applicant provided affidavits, there was no evidence such as doctor's letters or letters from friends or family, to demonstrate that the emotional hardships that the qualifying spouse may face are beyond the usual consequences of removal.

The record is also silent with regard to whether the applicant's inadmissibility would cause a financial hardship to the qualifying spouse. No financial documentation of the qualifying spouse's expenses, such as mortgage payments and/or rent, car payments, credit card obligations or other expenses, was provided to demonstrate that the separation may pose a financial burden upon the qualifying spouse consistent with a finding of an extreme hardship.

Likewise, the applicant failed to demonstrate that her qualifying relative would suffer an extreme hardship in the event that she relocates to Mexico. The record contains no documentation regarding unsafe country conditions in Mexico, particularly in the location where the applicant would reside or other locations where he and his wife would likely reside. If the applicant's wife relocated to Mexico, she would no longer experience the emotional hardships associated with separation. Should the qualifying spouse relocate to Mexico, she indicates that she would forego educational, career and job opportunities. However, the applicant has failed to submit detailed documentary evidence concerning her current academic pursuits such as a letter from her school, her current employment opportunities or her potential (or lack thereof) for available employment opportunities in Mexico. Moreover, the applicant's representative and the qualifying spouse assert that the qualifying spouse's father is disabled and that she helps her mother care for him. However, there was no evidence, such as letters from doctors confirming the father's disability or indicating that he requires more assistance than the qualifying spouse's mother can provide, to support such statements.

The representative for the applicant indicates that the qualifying relative would have to leave behind her immediate family, including her parents and her siblings, if she relocated to Mexico. However, the record fails to indicate the actual impact that such a separation would cause and that it would rise to the level of extreme, as she is an adult, her grandmother lives in Mexico and that presumably her family visits Mexico as she has visited Mexico. Moreover, although the qualifying spouse indicates that she does not know spoken Spanish at an academic level or how to write in Spanish, she is unlikely to experience the hardships associated with adjusting to a foreign culture as both of her parents were born in Mexico, she understands Spanish and has visited Mexico.

Further, the only evidence offered for this entire application consists of the applicant's brief and assertions made by the applicant, his spouse and his spouse's family. While the assertions made by the applicant's attorney, the applicant and family are evidence and have been considered, going on record without supporting documentary evidence generally is not sufficient for purposes of meeting the burden of proof in these proceedings. *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)). As such, the current record does not establish that the applicant's spouse would experience extreme hardship upon relocating to Mexico.

In this case, the record does not contain sufficient evidence to show that the hardships faced by the qualifying relative, considered in the aggregate, rise beyond the common results of removal or inadmissibility to the level of extreme hardship. The AAO therefore finds that the applicant has failed to establish extreme hardship to his U.S. Citizen spouse as required under sections 212(i)

and 212(a)(9)(B) of the Act. As the applicant has not established extreme hardship to a qualifying family member, no purpose would be served in determining whether the applicant merits a waiver as a matter of discretion.

In proceedings for application for waiver of grounds of inadmissibility under sections 212(i) and 212(a)(9)(B) of the Act, the burden of proving eligibility remains entirely with the applicant. 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.