

identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy
PUBLIC COPY

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



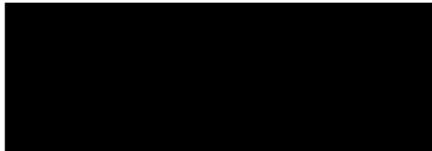
tlc

FILE: [REDACTED] Office: MEXICO CITY, MEXICO Date: DEC 08 2010

IN RE: Applicant: [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)

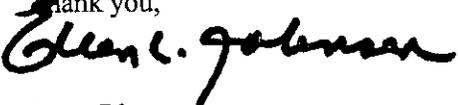
ON BEHALF OF APPLICANT:



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, Mexico. 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 was found to be inadmissible to the United States pursuant to section 212(a)(9)(B)(i)(II) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(9)(B)(i)(II), for having been unlawfully present in the United States for more than one year and again seeking admission within ten years of his last departure from the United States. He was also found to be inadmissible to the United States under section 212(a)(6)(C)(i) of the Act, 8 U.S.C. § 1182(a)(6)(C)(i), for having attempted to procure admission to the United States through fraud or misrepresentation. The applicant is married to a United States citizen. He seeks a waiver of inadmissibility in order to reside in the United States with his spouse and child.

In a decision dated July 8, 2008, the Acting District Director found that the applicant failed to establish that his qualifying relative would experience extreme hardship as a consequence of his inadmissibility. The application was denied accordingly. *See Decision of the Acting District Director* dated July 8, 2008.

On appeal, the applicant's attorney submitted an appeal brief which asserted that the qualifying relative is encountering financial, emotional and medical hardships as a result of her separation from the applicant.

The record contains Biographic Information (Form G-325A) regarding the applicant, an approved Petition for Alien Relative (Form I-130), an Application for Waiver of Grounds of Inadmissibility (Form I-601), a Notice of Appeal (Form I-290B), affidavits and letters from the qualifying spouse, medical documentation regarding the qualifying spouse and her son, financial documentation of the qualifying spouse's expenses, recommendation letters from friends and the birth certificate of the applicant's child.

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.

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.

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.

A waiver of inadmissibility under sections 212(i) and 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 child 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-Morales*, 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.

The applicant’s qualifying relative in this case is his spouse, who is a United States citizen.

The record indicates that the applicant entered the United States without inspection in January of 2000, and remained until December of 2005 when he voluntarily departed. The applicant thus accrued unlawful presence from when he entered the United States in January 2000 until December

of 2005, a period in excess of one year. In applying for an immigrant visa, the applicant is seeking admission within ten years of his departure from the United States. In addition, USCIS records reflect that the applicant, in his immigrant visa interview, claimed that he never left the United States, despite his departure pursuant to a grant of voluntary return on May 10, 2000. The applicant has not disputed his inadmissibility. Therefore, as a result of the applicant's unlawful presence and prior misrepresentation, he is inadmissible to the United States under sections 212(a)(9)(B)(i)(II) and 212(a)(6)(C)(i) of the Act.

A waiver of the bar to admission under sections 212(a)(9)(B)(v) and 212(i) of the Act is dependent first upon a showing that the bar imposes extreme hardship on a qualifying relative of the applicant. The AAO notes that extreme hardship to the applicant's spouse must be established in the event that she relocates to Mexico and in the event that she remains in the United States, as she is not required to reside outside the United States based on the denial of the applicant's waiver request. The AAO will consider the relevant factors in adjudication of this case.

The evidence submitted relating to the potential hardships facing the applicant's spouse was Form I-601, Form I-290B, affidavits and letters from the qualifying spouse, medical documentation regarding the qualifying spouse, financial documentation of the qualifying spouse's expenses and recommendation letters from friends. The record also includes documents relating to the extreme hardship that the applicant's son would face, based mainly upon his health issues. However, such evidence is only relevant to the extent that the child's health problems cause the applicant's spouse to suffer a hardship.

As previously stated, the applicant's attorney asserted in the appeal brief that the qualifying spouse is experiencing financial, emotional and medical hardships as a result of her separation from the applicant.

The applicant must first establish that his United States citizen spouse would suffer extreme hardship were she to remain in the United States while the applicant resides in Mexico due to his inadmissibility. With respect to this criterion, the applicant's attorney contends that she will suffer financial hardships should the applicant not be granted a waiver. The applicant's attorney provided documentation of the qualifying spouse's expenses, such as childcare and other bills, and the qualifying spouse also asserted in her affidavit that she was forced to move in with a cousin because she could not afford to live alone. However, the record failed to provide any documentation of the qualifying spouse's income, such as tax returns, an earnings statement or a letter from her employer, to demonstrate that her expenses are greater than her income. Further, no evidence regarding prior financial contributions by the applicant was provided. Nonetheless, a letter indicating that the applicant's child qualified for Medicaid, along with the qualifying spouse's affidavit, assists us in making the determination that the applicant's spouse is struggling financially and would not suffer such hardships if the applicant lived and worked in the United States. As such, the applicant has demonstrated that his spouse would suffer financially if she were to remain in the United States without him because she needs the applicant's financial assistance and she has financial responsibilities that require his financial contributions.

Moreover, the applicant's attorney indicated that the qualifying spouse is suffering from emotional issues, such as depression and anxiety disorder. To support these contentions, a copy of her anti-depressant prescriptions and a handwritten doctor's letter, indicating that she has "problems with depression" due to separation, was provided. In addition, the qualifying spouse, in her affidavit, demonstrates the severe stress and sadness that she is experiencing as a result of her separation from the applicant. The applicant's attorney also claims that the applicant is encountering medical hardships such as a heart condition, recurring hematoma, pain in the pelvis and endometriosis, which she has been experiencing due to the applicant's absence. To support such contentions, the record contains copies of medical records, including hand-written progress notes, which contain medical terminology and abbreviations that are not easily understood, and print outs from office visits. The documents submitted were prepared for review by medical professionals or are otherwise illegible or indiscernible and do not contain a clear explanation of the current medical condition of the applicant's wife. Absent an explanation in plain language from the treating physician of the exact nature and severity of any condition and a description of any treatment or family assistance needed, the AAO is not in the position to reach conclusions concerning the severity of a medical condition or the treatment needed, and whether such condition poses an extreme hardship to the applicant's spouse due to her separation from the applicant. Nonetheless, the record reflects that the cumulative effect of the emotional and financial hardships the applicant's spouse is experiencing and could potentially encounter living in the United States without the applicant rises to the level of extreme.

However, extreme hardship to a qualifying relative must also be established in the event that she accompanies the applicant abroad based on the denial of the applicant's waiver request. The AAO finds that the applicant has not met his burden in showing that his spouse would suffer extreme hardship if she relocated to Mexico. The record is silent regarding whether relocation to Mexico could cause challenges for the applicant's spouse. If the applicant's spouse relocated to Mexico, she would no longer experience the emotional hardships associated with separation.

Should she relocate to Mexico, the qualifying spouse may lose her employment. However, the applicant has failed to submit detailed evidence concerning the nature of the qualifying spouse's current employment or her potential available employment opportunities in Mexico in her field. Moreover, this is a common result of inadmissibility.

Further, the record is silent regarding the nature and extent of the qualifying spouse's ties to the United States and whether she has any family or friends in Mexico. There is also no evidence that the applicant's spouse has any significant health conditions that would be harmed by relocation to Mexico. Even if we were to assume that the applicant's spouse has a significant heart condition, the letter from her doctor indicated that her condition is "worsened by extra stress of having to care for the family alone" and that "the separation also causes problems with depression and her heart murmur." As such, it appears that any heart issues she has would be improved by her relocation to Mexico and her reunification with the applicant. Lastly, the record also contains no documentation regarding unsafe country conditions in Mexico, particularly in the location where the applicant resides or other locations where he and his spouse would likely reside. Even were the AAO to take notice of general conditions in Mexico, the record lacks evidence demonstrating how the applicant's spouse would be affected specifically by any adverse conditions there. Accordingly, the record does

not show that relocation to Mexico would cause extreme hardship to the applicant's spouse. *See Matter of Cervantes-Gonzalez*, 22 I&N Dec. at 565-66.

Moreover, the qualifying spouse and the applicant in their affidavits assert that their son cannot relocate to Mexico due to his asthma and other health problems and the lack of comparable medical care. The applicant also states that he does not have air conditioning where he lives in Mexico and that his son is unable to breathe at night. The letter from the qualifying spouse's doctor indicated that the applicant's son has "severe asthma that also requires frequent treatments" and that he "could not receive the same treatments outside the USA." However, there is no documentation to support that the applicant's son would be unable to receive appropriate medical care in Mexico or that his condition requires air conditioning. As such, we do not find that sufficient evidence was provided to demonstrate that the applicant's spouse would experience extreme hardship upon relocation to Mexico.

In sum, although the record indicates that the applicant's spouse may be encountering hardships based on separation, it does not support a finding that the difficulties, considered in the aggregate, would rise beyond the common results of removal or inadmissibility to the level of extreme hardship. *See Perez*, 96 F.3d at 392; *Matter of Pilch*, 21 I&N Dec. at 631. Although the distress caused by separation from one's spouse is not in question, a waiver of inadmissibility is only available where the resulting hardship would be unusual or beyond that which would normally be expected upon removal. The AAO therefore finds that the applicant has failed to establish extreme hardship to her spouse, as required for a waiver of inadmissibility under sections 212(a)(9)(B)(v) and 212(i) 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(a)(9)(B) and 212(i) 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.