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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



H6

FILE:



Office: MEXICO CITY, MEXICO
(CIUDAD JUAREZ)

Date: **DEC 10 2010**

IN RE:



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

ON BEHALF OF APPLICANT:



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, Mexico and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

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

The District Director found that the applicant had failed to establish that the bar to his admission would result in extreme hardship to a qualifying relative. He denied the Application for Waiver of Ground of Excludability (Form I-601) accordingly. *Decision of the District Director*, dated April 12, 2007.

On appeal, the applicant's spouse states that she and the applicant's son are suffering as a result of the applicant's inadmissibility. *Applicant's Spouse's Statement*, dated May 2, 2007.

In support of the waiver, the record includes, but is not limited to, counsel's letter accompanying the Form I-601; hardship statements from the applicant¹ and his spouse; letters of support from friends of the applicant, his employer and members of his spouse's family; a psychological evaluation of the applicant's spouse; bank statements for the applicant and his spouse; tax returns, earnings statements and W-2 forms for the applicant; and a letter from the applicant's former employer. The entire record was reviewed and all relevant evidence considered in reaching a decision on the appeal.

Section 212(a)(9)(B) states in pertinent part:

(B) Aliens Unlawfully Present.-

(i) In general. - Any alien (other than an alien lawfully admitted for permanent residence) who-

....

(II) has been unlawfully present in the United States for one year or more, and who again seeks admission within 10 years of the date of such alien's departure or removal from the United States, is inadmissible.

¹ The record contains a Spanish-language statement from the applicant that is unaccompanied by a certified English-language translation, as required by the regulation at 8 C.F.R. § 103.2(b)(3). Accordingly, the AAO will not consider the applicant's statement.

The record reflects that the applicant entered the United States without inspection in June 1996. On January 13, 2005, an immigration judge granted the applicant voluntary departure until March 14, 2005, with an alternate order of removal. On February 10, 2005, the applicant appealed the immigration judge's decision to the Board of Immigration Appeals (BIA). The BIA dismissed the applicant's appeal on February 24, 2006, giving him 60 days to voluntarily depart the United States. The applicant, however, had already left the United States for a January 10, 2006 immigrant visa interview at the U.S. consulate in Ciudad Juarez. Based on this history, the applicant accrued unlawful presence from April 1, 1997, the effective date of the unlawful presence provisions under the Act, until January 13, 2005, when he was granted voluntary departure by the immigration judge. As he accrued unlawful presence in excess of one year and is seeking immigrant admission within ten years of 2006 departure from the United States, the applicant is inadmissible pursuant to section 212(a)(9)(B)(i)(II) of the Act.

Section 212(a)(9)(B)(v) of the Act provides for a waiver of section 212(a)(9)(B)(i) inadmissibility as follows:

The Attorney General [now Secretary of Homeland Security] has sole discretion to waive clause (i) in the case of an immigrant who is the spouse or son or daughter of a United States citizen or of an alien lawfully admitted for permanent residence, if it is established . . . that the refusal of admission to such immigrant alien would result in extreme hardship to the citizen or lawfully resident spouse or parent of such alien.

A waiver of inadmissibility under section 212(a)(9)(B)(v) of the Act is dependent on a showing that the bar to admission imposes extreme hardship on a qualifying relative, which includes the U.S. citizen or lawfully resident spouse or parent of the applicant. Accordingly, in this proceeding, hardship to the applicant or his child will be considered only insofar as it results in hardship to the applicant's spouse. If extreme hardship to a qualifying relative is established, the applicant is statutorily eligible for a waiver, and United States Citizenship and Immigration Services (USCIS) then assesses whether a favorable exercise of discretion is warranted. *See Matter of Mendez-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 AAO now turns to the question of whether the applicant in the present case has established that a qualifying relative would experience extreme hardship as a result of his inadmissibility.

On appeal, the applicant's spouse states that prior to visiting the applicant, she considered moving to Mexico, but that the conditions in which he lives are shocking. She asserts that the house in which the applicant resides should be condemned as it is not safe and that she cannot have her son live in danger.

In a December 28, 2005 letter submitted with the Form I-601, counsel states that the applicant's spouse was born in the United States and has never lived anywhere else. He also asserts that relocation to Mexico would result in emotional hardship for the applicant's spouse as she would be separated from her family, all of whom live in the United States. Counsel contends that the applicant's spouse feels a responsibility to give her son the best possible future and that she cannot foresee that future for him in any country but the United States. Further, the financial opportunities in Mexico, counsel states, will not provide the applicant and his family with a comfortable lifestyle as two-thirds of the population live in poverty. He asserts that most of the available jobs in Mexico are found in agriculture, that salaries remain very low for unskilled workers and that unemployment is high.

In support of the hardship that would result from relocation, the record contains the section on Mexico from the Department of State's Country Reports on Human Rights Practices – 2004, issued on February 28, 2005. The AAO notes that the report indicates that the minimum wage in Mexico does not provide a decent standard of living for a worker and his or her family, but also observes that the report finds that most Mexican workers earn multiples of the minimum wage and that industrial workers average three to four times the minimum wage, earning more in larger, more advanced and prosperous businesses. Further, the record establishes that both the applicant and his spouse have employment experience in the United States and there is no evidence that suggests they, as experienced workers, would be limited to agricultural or unskilled employment. The AAO also notes that the Department of State report addresses a range of human rights abuses in Mexico, including discrimination against women and child abuse, but finds no evidence in the record to demonstrate how such conditions would affect the applicant's spouse. The reporting of general economic or country conditions in an applicant's native country do not establish extreme hardship in the absence of evidence that the conditions would specifically impact the qualifying relative. *Kuciemba v. INS*, 92 F.3d 496 (7th Cir. 1996) (citing *Marquez-Medina v. INS*, 765 F.2d 673, 676 (7th Cir. 1985)).

The record also contains a psychological evaluation of the applicant's spouse that finds she would develop Adjustment Disorder with Depressed Mood if she relocated to Mexico. The December 17, 2005 report, prepared by licensed psychologist [REDACTED] states that if the applicant's spouse relocates to Mexico, she would "find herself a foreigner torn away from all of her family . . . in a country she does not know, with a culture that is not her own; the stress and anxiety she would experience would be significant." [REDACTED] indicates that her evaluation is based on a December 7, 2005 clinical interview with the applicant's spouse and her review of the results of the applicant's spouse's responses on the Beck Depression Inventory II (BDI-II), the Beck Anxiety Inventory (BAI) and the Achenbach System of Empirically Based Assessment (ASEBA) Adult Self-

Report (ASR). In her summary, [REDACTED] concludes that the applicant's spouse's scores on these psychological tests indicate that she is already experiencing symptoms of a Major Depressive Disorder of moderate severity and that a move to Mexico would result in the exacerbation of her emotional state and her development of Adjustment Disorder with Depressed Mood.

While the AAO acknowledges the widespread use of the BDI-II, BAI and ARS in psychological evaluations, it is also our understanding that these instruments are generally administered in support of a mental health diagnosis and are not the tools used to reach such a diagnosis since the symptoms they report may result from unrelated conditions or causes, e.g., undiagnosed medical conditions. In this matter, however, [REDACTED] evaluation of the applicant's spouse's mental/emotional status appears to rely almost entirely on BDI-II, BAI and ARS test results. Her report on the clinical interview she conducted with the applicant's spouse does not indicate that, as part of her interview, she explored the specific impacts of the applicant's inadmissibility on his spouse's mental/emotional health.

[REDACTED] summary of her clinical interview with the applicant's spouse reports the concerns expressed by the applicant and her assertions that she lives in "constant fear, pain, worry and [under] stress." It further indicates that, during their interview, [REDACTED] observed that the applicant's spouse had a generally flat affect, experienced "several episodes of emotional reactivity, which included crying," was "apathetic and dysphoric," and demonstrated "poor ability to concentrate and pay attention." Having made these observations, however, [REDACTED] does not report that she sought information from the applicant's spouse that would have allowed her to reach a determination as to whether the symptoms and/or behavior noted during the interview were also affecting the applicant's spouse's daily life, including her ability to function at home and at work. There is also no indication in the evaluation that [REDACTED] sought detail from the applicant's spouse regarding her reactions to the stress under which she indicated she was living. As a result, the submitted evaluation lacks the detailed psychological analysis that the AAO routinely finds to be generated when a mental health professional conducts a clinical interview. Without this analysis, the AAO finds no underlying support for the results of the BDI-II, BAI and ARS, which as previously noted may report symptoms unrelated to mental health conditions.

We further observe that [REDACTED] evaluation appears to indicate that she did not personally administer the BDI-II, BAI and ARS tests to the applicant's spouse. [REDACTED] states only that she reviewed the results of these tests and finds the applicant's spouse's scores to "suggest" the symptoms that were reported at the time the tests were administered. In that the results of BDI-II, BAI and ARS assessments, like those in all tests, may be affected by the way the tests are administered, the AAO finds the uncertainty about the circumstances under which the BDI-II, BAI and ARS were conducted to further reduce their evidentiary value in this proceeding. Accordingly, the submitted evaluation does not establish how the applicant's mental health would be affected if she joins the applicant in Mexico.

The AAO notes that the applicant's waiver appeal was submitted prior to the surge in drug-related violence that has spread across Mexico in the last several years. Accordingly, we have also considered whether the applicant's spouse would be at risk from such violence if she joined her

husband in Mexico. The record reflects that the applicant was born in the Mexican state of Jalisco, resided in the city of El Grullo, Jalisco prior to coming to the United States in 1996 and that his mother lived in Jalisco as of 2004. The most recent Department of State travel warning for Mexico, issued on September 10, 2010, indicates that the number of violent incidents involving drug trafficking organization has increased in recent months throughout Jalisco. The record, however, contains no evidence to indicate where the applicant has resided since his return to Mexico in 2006. Therefore, the AAO is unable to assess whether the applicant's spouse would be at risk from drug-related violence if she moves to Mexico.

Based on the record before us, the AAO does not find the applicant to have demonstrated that his spouse would experience extreme hardship if she relocates to Mexico.

On appeal, the applicant's spouse also contends that she has been suffering as a result of her separation from the applicant. In her May 2, 2007 letter, she states that she has been struggling since January 2006 to meet her responsibilities as a single parent, and to support herself and her son. The applicant's spouse also contends that the hardship suffered by her son as a result of the applicant's inadmissibility should have been weighed more heavily by the District Director. Her son, the applicant's spouse asserts, does not understand why his father does not live with them, has suffered too many traumatic experiences for his age and now fears that she, like the applicant, will also leave him. She states that she is afraid that her son will have this fear for the rest of his life. The applicant's spouse also reports that she has been using her credit cards to pay her mortgage and bills, and has no idea how she will be able to repay the debt she has accumulated in the applicant's absence.

In his December 28, 2005 letter submitted with the Form I-601, counsel contends that economic hardship will result if the applicant's waiver application is denied, as it will be difficult for him to obtain employment that will allow him to contribute to his family's welfare from Mexico.² Counsel also states that because of political conditions and human rights violations in Mexico, the applicant's spouse will experience emotional hardship worrying about the safety and welfare of the applicant in Mexico.

The AAO notes the above claims made by the applicant's spouse and counsel but does not find the record to support them. Although the applicant's spouse states that her son is suffering emotionally in the applicant's absence, the record does not document the emotional impact that separation from his father has had on the applicant's son. Moreover, the record does not include evidence as to how any hardship experienced by the applicant's son has affected his mother, the only qualifying relative in this proceeding. The record further fails to document that the applicant's spouse is experiencing financial hardship. As it contains no documentary evidence that establishes the applicant's spouse's income or her financial obligations at the time of the appeal, the AAO is unable to determine her

² The AAO notes that in her psychological evaluation of the applicant's spouse, [REDACTED] indicates that the applicant's spouse will suffer financial hardship if the applicant is removed since she will have to support two households. This assertion, however, does not appear to be based on a claim made by the applicant's spouse, but to be reflective of [REDACTED] views.

current financial status. Going on record without supporting documentation is not sufficient to meet the applicant's burden of proof in this proceeding. *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)). Moreover, the record does not demonstrate that the applicant would be unable to obtain employment in Mexico and financially assist his spouse. As previously discussed, the section on Mexico from the Department of State's Country Reports on Human Rights Conditions – 2004 does not prove that the applicant would be limited to unskilled, agricultural employment.

The record also fails to establish that the applicant's spouse would experience emotional hardship as a result of her concerns for the applicant's safety in Mexico. No evidence demonstrates that the human rights violations highlighted by the Department of State's report would affect the applicant. As previously noted, the reporting of country conditions in an applicant's native country must be supplemented by evidence that these conditions would specifically impact the qualifying relative. *See Kuciemba v. INS*, 92 F.3d 496 (7th Cir. 1996) (citing *Marquez-Medina v. INS*, 765 F.2d 673, 676 (7th Cir. 1985)). The AAO also observes that neither the applicant's spouse's statements nor the submitted psychological evaluation indicate that she is concerned for the applicant's safety in Mexico as a result of political conditions or human rights violations.

The psychological evaluation in the record prepared by [REDACTED] concludes that the applicant's spouse would develop Adjustment Disorder with Depressed Mood as a result of being separated from the applicant. The AAO, however, for the reasons already discussed, does not find the report to offer sufficient proof of the impact that separation from the applicant would have on his spouse's emotional/mental health. Accordingly, the record fails to establish that the applicant's spouse would suffer extreme hardship if his waiver application is denied and she remains in the United States.

As the record does not establish that the applicant's spouse would suffer extreme hardship as a result of his inadmissibility, he is not eligible for a waiver under section 212(a)(9)(B)(v) of the Act. Having concluded that the applicant is statutorily ineligible for relief, the AAO finds no purpose would be served in discussing whether he merits a waiver as a matter of discretion.

In proceedings for application for waiver of grounds of inadmissibility under section 212(a)(9)(B)(i)(II) of the Act, the burden of proving eligibility remains entirely with the applicant. *See* section 291 of the Act, 8 U.S.C. § 1361. Here, the applicant has not met that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.