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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

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

NOV 10 2010

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:



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. 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.

Thank you,

Perry Rhew
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 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 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 and children.

The district director found that the applicant failed to establish extreme hardship to his U.S. citizen wife and denied the Form I-601 application for a waiver accordingly. *Decision of the District Director*, dated December 31, 2007.

On appeal, counsel for the applicant asserts that the applicant's wife will experience extreme hardship if the present waiver application is denied. *Brief from Counsel*, submitted February 1, 2008.

The record contains a brief from counsel; documentation in connection with the applicant's wife's income and expenses; copies of the applicant's children's passports and birth certificates; a copy of the applicant's wife's naturalization certificate; a copy of the applicant's brother's lawful permanent resident card; a copy of the applicant's mother-in-law's lawful permanent resident card; a copy of the applicant's father-in-law's naturalization certificate; reports on the applicant's family members conducted by a licensed social worker, and; information on stress and depression. The applicant further provided a document in a foreign language. Because the applicant failed to submit a certified translation of the document, the AAO cannot determine whether the evidence supports the applicant's claims. *See* 8 C.F.R. § 103.2(b)(3). Accordingly, the evidence is not probative and will not be accorded any weight in this proceeding. With the exception of the untranslated document, the entire record was reviewed and considered in rendering this decision.

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 reflects that the applicant entered the United States without inspection in or about April 1999. He remained until approximately February 2007. Accordingly, the applicant accrued over seven 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-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.

On appeal, counsel for the applicant asserts that the applicant’s wife will experience extreme hardship if the present waiver application is denied. *Brief from Counsel* at 4. Counsel states that the applicant’s wife is close with her family and she depends on them for emotional support. *Id.* Counsel explains that the applicant’s mother-in-law cares for his and his wife’s children while his wife works. *Id.* Counsel contends that travel between the United States and Mexico is costly and

time-consuming, rendering it difficult for the applicant's wife to visit with her family members. *Id.* Counsel states that, should the applicant's wife choose to reside in Mexico, she would lose meaningful contact with her family, and she and the applicant would endure emotional hardship due to raising their two children away from their home and family in the United States. *Id.*

Counsel provides that the applicant's wife has no relatives and a few friends in Mexico, and that she has few emotional, familial, cultural, or religious ties to Mexico. *Id.* Counsel asserts that the cultural differences and geographic remoteness of Mexico would make residing there difficult for the applicant's wife. *Id.*

Counsel asserts that Mexico has poor social, economic, and political conditions which have resulted in a high crime rate, growing drug trafficking problem, and burgeoning presence of organized crime. *Id.* at 4-5.

Counsel explains that the applicant's wife is employed as a woodworker, and that she has maintained employment in her present position for approximately seven years. *Id.* at 5. He provides that she earns approximately \$26,930.79 per year, and that she will lose her life insurance, pension plan, and health insurance should she leave her position. *Id.* Counsel indicates that the applicant's wife would be unlikely to find a comparable position in Mexico, and that her earnings would have little buying power in the United States. *Id.* Counsel adds that the applicant's wife would suffer a professional setback should she return to the United States after residence in Mexico. *Id.*

Counsel states that, should the applicant's wife reside in Mexico, they will have to send their children to inferior schools in a country where opportunities for higher education are rare. *Id.*

The applicant submits a report from a licensed social worker, [REDACTED] describes the applicant's background and relationship with his wife. *Report from Licensed Social Worker*, dated January 23, 2008. Mr. Wade reports that the applicant was born and raised in Zacatecas, Mexico, and that he has numerous relatives who reside in the country, including three sisters and their children, his parents, and a brother and his children. *Id.* at 1-2. [REDACTED] indicates that the applicant has one brother in the United States who resides in Northern Virginia with his family. *Id.* at 2. [REDACTED] notes that the applicant's brother in Mexico works in the construction trade. *Id.* [REDACTED] states that the applicant's wife was born in Mexico and immigrated to the United States at the age of 11. *Id.* He provides that the applicant's wife met the applicant while she was on holiday in Mexico in 1998, and they married on April 24, 2004. *Id.*

[REDACTED] provides that the applicant's wife has extensive family ties to the United States, and that her parents and siblings reside in Virginia. *Id.* at 3. He explains that the applicant's wife's father and many of her adult brothers and sisters are employed with the same company for whom she works. *Id.* He states that the applicant and his wife have two children, born on November 29, 2005 and October 26, 2006. *Id.*

[REDACTED] states that the applicant's children will be affected by the applicant's wife's stress, and that they may encounter developmental problems. *Id.* at 3-4. He speculates that the applicant's wife may

experience difficulty raising her children for the first time away from her relatives should she relocate to Mexico. *Id.* at 4. He contends that the applicant and his wife will take their children to Mexico should the present waiver application be denied. *Id.* at 5.

Upon review, the applicant has not shown that his wife will endure extreme hardship should the present waiver application be denied. The applicant has not shown that his wife will endure extreme hardship should he depart the United States and she remain. It is first noted that the record does not contain a statement from the applicant, the applicant's wife, or any friends or relatives with direct and ongoing knowledge of their circumstances. Counsel references a statement from the applicant's wife. Yet, her statement is not in the English language and lacks a translation, thus it may not be considered in the present proceeding. Counsel makes reference to elements of hardship faced by the applicant's wife. However, without documentary evidence to support the claim, the assertions of counsel will not satisfy the applicant's burden of proof. The unsupported assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980). The AAO has carefully examined the report from [REDACTED], yet [REDACTED] indicated that he interviewed the applicant and his wife in a two-hour session for the purpose of this proceeding, and the record does not show that he has knowledge of the applicant's and the applicant's wife's situation beyond representations they made during this brief interview.

The applicant has presented documentation to show that his wife works 40 hours per week and that she has been employed with the same company since September 10, 2001. While she and the applicant have two children, presently both age four, it is evident that the applicant's wife has sufficient childcare assistance to allow her to work full-time. The applicant has not asserted that his wife would face childcare expenses or that her employment would be impacted should he depart the United States and she remain with their children. The applicant has not provided documentation that establishes that his wife faces unusual expenses that cannot be met with her present income. Counsel indicated that the applicant's wife has life insurance, a pension, and health insurance through her employment. The record supports that she is not dependent on the applicant's presence in the United States to continue these benefits. Accordingly, the applicant has not shown that his wife will face financial difficulty in his absence.

The AAO acknowledges that the separation of spouses often creates significant emotional hardship. However, as noted above the applicant has not provided a statement from his wife in the English language in which she discusses the consequences of family separation. [REDACTED] addresses the difficulty the applicant's wife and children would endure should the applicant's wife relocate to Mexico and become separated from her family in the United States. Yet, he does not establish that the applicant's wife would endure unusual psychological difficulty should she remain in the United States. It is noted that the applicant's wife has extensive family connections to the United States, including her parents and many siblings. It is evident that she will continue to benefit from significant family support should she remain in United States without the applicant. Thus, the applicant has not distinguished his wife's emotional difficulties from those which are commonly expected when spouses reside apart due to inadmissibility.

All presented elements of hardship to the applicant's wife, should she remain in the United States, have been considered in aggregate. Based on the foregoing, the applicant has not shown that his wife will suffer extreme hardship should he depart the United States and she remain.

The applicant has not shown that his wife will experience extreme hardship should she relocate to Mexico for the duration of his inadmissibility under section 212(a)(9)(B)(i)(II) of the Act. The AAO recognizes that the applicant's wife has stable employment and extensive family contacts in the United States. It is understood that she will experience emotional difficulty should she become separated from her family, and that she will face financial challenges should she relinquished her employment and benefits. However, these facts constitute common consequences when an individual relocates abroad due to the inadmissibility of a spouse. Although the applicant's wife immigrated to the United States at age 11, the record shows that she is a native of Mexico and that she has since traveled in the country. As she issued a statement in support of the present waiver application in the Spanish language, it is evident that she would not face the challenge of learning a new language should she reside in Mexico.

The record shows that the applicant has extensive family ties in Mexico, including his parents, three sisters, and a brother. [REDACTED] indicated that the applicant's parents and at least one sister reside in Zacatecas, Mexico where the applicant was born and raised. It is noted that the applicant resided in Zacatecas, Mexico immediately before his arrival in the United States. Thus, the record supports that the applicant and his wife will benefit from significant family support should they reside in Mexico.

The applicant's father is self-employed and his brother in Mexico works in construction, a field in which the applicant has experience. The applicant's wife works as a woodworker in United States for a company that makes trusses for housing, which suggests she has skill that is employable in Mexico. These facts support that the applicant and his wife have employment opportunities in Mexico and that they would be able to meet their financial needs. The applicant has resided in Mexico since approximately February 2007, and he has not described his experience there or otherwise indicated that he is enduring challenging financial circumstances. The applicant has not provided any reports or other evidence to show the present state of the economy in the region in which he lives that may shed light on the experience his wife would likely encounter. Thus, the applicant has not established that his wife would endure significant economic hardship should she join him in Mexico.

The AAO acknowledges that the applicant and his wife would be compelled to enroll their children in a school in Mexico while they reside there, thus forgoing the benefits of education in the United States. However, the applicant has not provided any reports or other evidence to show that his children would lack adequate academic opportunities. Nor has the applicant asserted or shown that his children lack Spanish language skills that would allow them to adapt to the Mexican educational system. The applicant has not asserted that his children would face other elements of hardship in Mexico. Accordingly, the record does not show that his children would face difficulties that elevate his wife's emotional hardship to an extreme level.

Counsel asserts that conditions in Mexico are poor. However, counsel has not cited or provided any reports on conditions in Mexico that support his contentions. Nor has he established a basis for his knowledge of the facts he states. The AAO takes notice that the United States Department of State issued a Travel Warning for Mexico, warning that crime and violence has escalated throughout the country. *United States Department of State Travel Warning: Mexico*, dated September, 2010. However, it is noted that country conditions reports place emphasis on the border regions of Mexico as experiencing increased narcotics-related violence and crime. The applicant's family resides in Zacatecas, Mexico, which is located in central Mexico away from the border regions. The applicant has not shown that his wife would face a risk of harm in Zacatecas that would elevate her difficulty in Mexico to an extreme level.

All elements of hardship to the applicant's wife, should she reside in Mexico, have been considered in aggregate. Based on the foregoing, the applicant has not shown that his wife will endure extreme hardship should she join him in Mexico for the duration of his inadmissibility under section 212(a)(9)(B)(i)(II) of the Act. Accordingly, the applicant has not established that the 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.