

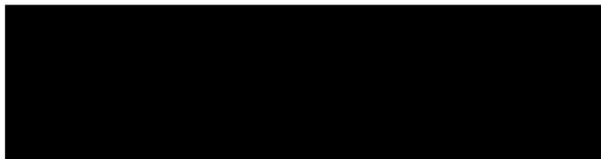
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U.S. Department of Homeland Security
Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
Washington, DC 20529-2090



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FILE:



Office: MEXICO CITY, MEXICO (CIUDAD JUAREZ) Date: **OCT 04 2010**

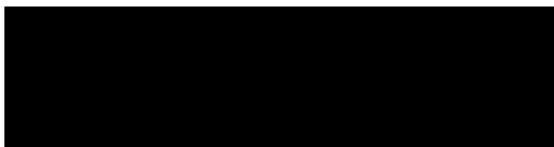
IN RE:

Applicant:



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

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 \$585. 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 District Director, Mexico City, Mexico, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The record reflects that 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 seeking readmission within ten years of her last departure from the United States. The applicant is married to a United States citizen (USC) and is the beneficiary of an approved Petition for Alien Relative (Form I-130). The applicant 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 her USC husband and child.

The district director found that the applicant failed to establish extreme hardship to her spouse, and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) accordingly. *Decision of the District Director*, dated December 31, 2007. On appeal, the applicant through counsel states that her family will suffer extreme hardship if her waiver application is denied. *See Form I-290B, Notice of Appeal*, filed April 14, 2008 and the accompanying brief in support of the appeal.

The record includes, but is not limited to, counsel's brief in support of appeal, an affidavit from the applicant's husband, dated February 13, 2008, an undated statement from the applicant's husband, copies of supportive letters from family and friends, a copy of a laboratory report for the applicant's husband, a statement from [REDACTED] dated February 15, 2008, regarding the applicant's daughter and a copy of "Clinic Progress Record" and other medical notes from Kaiser Permanente Medical Center, Anaheim, California. The entire record was reviewed and considered in rendering this decision on appeal.

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

(B) Aliens Unlawfully Present -

(i) In general

Any alien (other than an alien lawfully admitted for permanent residence) who-

....

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

....

(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 [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.

In the present case, the applicant claims that she entered the United States without being inspected and admitted or paroled in June 2002. On December 3, 2004, the applicant's United States citizen husband filed a Form I-130 on the applicant's behalf. On January 14, 2005, the Form I-130 was approved. In February 2007, the applicant voluntarily departed the United States. On February 22, 2007, the applicant filed a Form I-601. On December 31, 2007, the District Director denied the Form I-601, finding that the applicant failed to establish extreme hardship to her spouse. The applicant accrued unlawful presence from June 2002, when she illegally entered the United States until February 2007, when she voluntarily departed the United States. The applicant's unlawful presence for more than one year and departure from the United States triggered the ten-year bar in section 212(a)(9)(B)(i)(II) of the Act. *See Matter of Rodarte-Roman*, 23 I&N Dec. 905, 909 (BIA 2006). Thus, the applicant is inadmissible to the United States under 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. Hardship to the applicant or her child can be considered only insofar as it results in hardship to a qualifying relative. The applicant's husband 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 [REDACTED]* 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 [REDACTED] 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 record reflects that the applicant's spouse, [REDACTED] is a 60-year-old native of Mexico and citizen of the United States. The applicant and her husband were married in Santa Ana, California, on July 21, 2004, and have one child. The record reflects that the applicant and her child currently live in Mexico. The applicant's spouse asserts that he is suffering extreme emotional and financial hardships as a result of the denial of the waiver.

Regarding the emotional hardship of separation, the applicant's husband states that the applicant is an important part of his life, that she means everything to him, that he needs her companionship and her help in raising their child and that he does not want to live the rest of his life away from the applicant. *See Affidavit of [REDACTED]*, dated February 13, 2008. The applicant's husband states that his daughter, [REDACTED], was born with a heart defect, that she currently lives in Mexico with the applicant, that she needs constant medical care and a cardiologist and that she has been unable to get the necessary medical care she needs in Mexico. *Id.* The applicant's husband states that he is concerned that his daughter's health will further deteriorate if she remains in Mexico and does not receive the medical attention she can obtain in the United States. *Id.* The applicant's husband states that he needs the applicant and her daughter back in the United States, that he does not have family members to help him take care of his daughter in the United States and that because of her medical problems he does not want to leave his daughter with a babysitter. *Id.* The applicant's husband also states that separation from his family has resulted in his own medical problems in the form of high blood pressure, high cholesterol and high glucose. *Id.* The record includes a copy of laboratory results for the applicant's husband, a statement from [REDACTED] dated February 15, 2008, stating that the applicant's daughter, [REDACTED] was seen in their facility on December 17, 2006 and December 20, 2006, and that she was diagnosed with Bronchitis Asthmatic, and a copy of Clinic Progress Record from Kaiser Permanente Medical Center, Anaheim, California, for [REDACTED]

Regarding the financial hardship of separation, the applicant's husband states that he has to work two jobs in order to support the applicant and his daughter in Mexico and also take care of their financial obligations here in the United States. *See Affidavit of [REDACTED]* dated February 13, 2008. The applicant's husband states that he has not been able to travel to Mexico to see his family because he cannot take time off work and if he does, he will not be paid. *Id.* The applicant's husband states that he cannot afford to pay for his family's medical care in Mexico and that he has medical coverage through his employer in the United States, which his family cannot use in Mexico. *Id.*

While the AAO acknowledges that separation from the applicant may have caused emotional hardship to the applicant's husband, the evidence in this record is not sufficient to demonstrate that

the challenges encountered by the applicant's husband, meet the extreme hardship standard. While the emotional hardship of separation is apparent from the affidavit by the applicant's husband, the applicant does not provide medical or psychological records, detailed testimony, or other evidence to show that any emotional or psychological hardships her husband faces are unusual or beyond what would be expected upon family separation due to one member's inadmissibility. The applicant's husband claims that separation from his family has caused him to develop high blood pressure, high cholesterol, and high glucose. The laboratory results from the medical tests administered to the applicant's husband on July 25, 2007 are insufficient to establish that the applicant's husband suffers from the conditions enumerated. The record does not contain information regarding the family's income and expenses, thus, the AAO cannot conclude that family separation has caused extreme financial hardship to the applicant's husband. Finally, hardships faced by the applicant's daughter as a result of family separation are not considered in the extreme hardship analysis, except as it may cause hardship to the applicant's husband. In this case, the applicant has not established such hardship to her husband. Although the applicant's husband claims that his daughter has a serious medical problem (a history of heart murmur, heart palpitation, chest pain and dizziness), the medical documentation submitted has failed to establish that [REDACTED] suffers from these ailments and how her medical condition has severely impacted the applicant's husband. The medical record consists of hand-written notes containing medical terminology and abbreviations that are not easily understood, and laboratory results. 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 daughter. 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. Accordingly, the applicant has failed to establish that the challenges her husband faces rise to the level of extreme hardship.

Regarding relocation, the applicant's husband states that he cannot relocate to Mexico to live with the applicant for the following reasons: he has been residing in the United States since 1993, he has two good paying jobs in the United States and can adequately provide for his family, he will be unable to find a good paying job in Mexico because of his age, he does not have medical insurance in Mexico and he cannot afford to pay for a cardiologist for his daughter and other medical care for his family and he cannot afford to pay for school for his daughter in Mexico. *See Affidavit of [REDACTED]*, dated February 13, 2008.

While the AAO acknowledges the claims made by the applicant's husband, it does not find the evidence in the record to support them. The record fails to contain documentary evidence such as country condition reports on Mexico that demonstrate that the applicant's husband would be unable to obtain employment upon relocation to Mexico. 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)). The AAO notes that the applicant's husband is a native of Mexico, his parents and all but one sibling live in Mexico and he has not addressed any family assistance he may have in Mexico that would help him adjust to life there upon return. Additionally, the AAO notes that other than the statement from the applicant's husband, the record

does not include any evidence of financial, medical, or other types of hardships that the applicant's husband would experience if he relocated to Mexico with the applicant. Accordingly, the AAO does not find the record before it to demonstrate that the applicant's husband would suffer extreme hardship upon relocation to Mexico.

In sum, although the applicant's spouse claims hardships based on family separation, the record 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 family 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. *See id.* The AAO therefore finds that the applicant has failed to establish extreme hardship to her spouse, as required for a waiver of inadmissibility under section 212(a)(9)(B)(v) of the Act.

Section 291 of the Act, 8 U.S.C. § 1361, provides that the burden of proof is on the applicant to establish eligibility for the benefit sought. Here, the applicant has not met that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.