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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: CIUDAD JUAREZ Date: OCT 06 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:

SELF-REPRESENTED

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 Field Office Director, Ciudad Juarez. 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.

The field office director found that the applicant failed to establish extreme hardship to his wife and denied the Form I-601 application for a waiver accordingly. *Decision of the Field Office Director*, dated April 23, 2008.

On appeal, the applicant asserts that his wife will endure extreme hardship if the present waiver application is denied. *Statement on Form I-290B*, dated May 22, 2008.

The record contains statements from the applicant's wife, the applicant's mother- and father-in-law, two sisters-in-law of the applicant's wife, a cousin of the applicant's wife, and a friend; copies of photographs of the applicant's daughter; copies of documents associated with the applicant's wife's receipt of State health insurance and food subsidies; a copy of the applicant's marriage license; copies of birth records for the applicant, the applicant's wife, and the applicant's daughter; documentation in connection with the applicant's wife's academic activities, and; documentation of the applicant's wife's expenses. The applicant further provided a document in a foreign language. Because the applicant failed to submit a 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.

It is noted that Form I-290B indicates that the applicant is represented by an attorney, and that he would send a brief and/or evidence to the AAO within 30 days of filing the appeal. Yet, the applicant has not submitted a properly executed Form G-28, Notice of Entry of Appearance as Attorney or Representative, to show that the attorney named on Form I-290B has been authorized by the applicant to serve as counsel in the present proceeding. The appeal was filed on or about May 28, 2008. As of September 9, 2010, the AAO had received no further documentation or correspondence from the applicant or his alleged counsel. On September 9, 2010, the AAO sent a facsimile to the attorney identified on Form I-290B with notice that a brief or additional evidence had not been received, and that the record lacked a Form G-28. The AAO afforded five days for the attorney to provide a properly Form G-28 and a copy of any missing filing. As of the date of this decision, the AAO has not received a response to the facsimile, and the record is deemed complete. The AAO attributes the short statement on Form I-290B to the applicant.

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 shows that the applicant entered the United States without inspection in or about February 2004 and remained until approximately August 2006. Accordingly, he accrued over two 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 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 [REDACTED] and [REDACTED]* 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.

In the present matter, the applicant states that his wife is suffering health problems that will create significant hardship for her if he is not permitted to reside in the United States. *Statement from the Applicant on Form I-290B*, dated May 22, 2008. The applicant indicates that his wife is a full-time university student and a single parent, and that she is enduring serious economic hardship. *Id.* at 2.

The applicant's wife stated that she and their daughter are suffering hardship without the applicant. *Statement from the Applicant's Wife*, dated September 25, 2007. She explained that their daughter has exhibited difficulty trusting men since she became separated from the applicant. *Id.* at 1. She expressed that she misses the applicant and that she is enduring significant psychological difficulty due to being apart from him. *Id.*

The applicant's wife previously stated that she and their daughter reside in El Paso, Texas, and that they would go to Mexico to visit the applicant every two weeks. *Previous Statement from the Applicant's Wife*, dated August 23, 2007. She explained that the applicant is suffering emotional hardship due to being separated from their daughter. *Id.* at 1.

The applicant's wife stated that the applicant began working with a prior employer upon his arrival in Mexico. *Id.* She indicated that the applicant is only able to assist her with her rent due to the fact that he earns little income in Mexico. *Id.* She listed her expenses including a car payment, rent, baby needs, substantial phone bills, insurance, gas, and food, totaling over \$800 per month. *Id.* She added that she has approximately \$8000 in credit card debt. *Id.* She explained that she works approximately 25 hours per week in her family restaurant for \$150 per week. *Id.* She provided that her parents have had to assist her with most of her expenses. *Id.*

The applicant's wife stated that their daughter stays with the applicant's mother-in-law. *Id.* at 2.

The applicant's wife provided that she has endured physical health problems since she became separated from the applicant, including hair loss, migraines, and weight gain. *Id.* She explained that her parental and employment responsibilities have negatively affected her academic performance. *Id.*

The applicant's mother-in-law described the circumstances in which the applicant's wife and daughter currently live. *Statement from the Applicant's Mother-in-law*, dated September 25, 2007. She explained that she, other family members, and friends have been caring for the applicant's daughter due to the fact that the applicant's wife works and attends school full-time. *Id.* at 1. She added that she has been assisting the applicant's wife and daughter by providing a home for them.

Id. She stated that she has witnessed the applicant's wife suffering emotional hardship, and that her difficulty will be greatly alleviated should the applicant return to the United States. *Id.* at 1-2.

The applicant provided statements from other individuals, including two sisters-in-law, his wife's cousin, and a friend, who all attest to the applicant's wife's and daughter's emotional and financial difficulty due to being separated from the applicant.

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 established that his wife will endure extreme hardship should she remain in the United States for the duration of his inadmissibility under section 212(a)(9)(B)(i)(II) of the Act. The applicant and his wife assert that the applicant's wife is experiencing health problems due to separation from the applicant. However, the applicant has not provided any medical documentation for his wife to support that she is suffering from physical health problems. Thus, the AAO is unable to conclude that she is enduring unusual health problems that elevate her hardship to an extreme level.

The applicant's wife stated that she is encountering economic difficulty in the applicant's absence. However, the applicant has not submitted any financial documentation for his wife, such as documentation of her income or expenses. It is noted that the applicant's mother in law stated that she is providing housing for the applicant's wife, and the applicant's wife indicated that the applicant earns sufficient income in Mexico to assist her with rent in the United States. Additionally, the record shows that the applicant's wife receives child care assistance from her mother. It is evident that acting as a single parent for a young child while working and attending school presents significant financial challenges. Yet, the record shows of the applicant's wife presently receives assistance from the applicant, her family members, and the State of Texas, and the applicant has not provided sufficient financial documentation to show that she is enduring significant financial difficulty in his absence.

The applicant's wife expressed that she is close with the applicant and that she is suffering emotional hardship due to separation from him. The AAO acknowledges that the separation of spouses often creates substantial psychological difficulty, and the applicant's wife is suffering emotional consequences due to residing apart from the applicant. Yet, the applicant has not distinguished his wife's emotional hardship from that which is often experienced when family members reside apart due to inadmissibility.

The applicant's wife explained that their daughter is also enduring hardship due to the applicant's absence. The AAO has carefully examine the statements regarding the applicant's daughter's difficulty, yet the applicant has not established that her circumstances are more severe than those commonly encountered by children whose parent lives abroad due to inadmissibility. The applicant has not shown that his daughters difficulty is elevating his wife's suffering to an extreme level.

All 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 she reside in the United States for the duration of his inadmissibility under section 212(a)(9)(B)(i)(II) of the Act.

The applicant has not asserted that his wife will suffer hardship should she join him in Mexico for the duration of his inadmissibility under section 212(a)(9)(B)(i)(II) of the Act. In the absence of clear assertions from the applicant, the AAO may not speculate as to the hardship the applicant's wife may endure. In proceedings regarding a waiver of grounds of inadmissibility under section 212(a)(9)(B) of the Act, the burden of proving eligibility remains entirely with the applicant. See section 291 of the Act, 8 U.S.C. § 1361. Thus, as the applicant has not stated that his wife will face challenges should she relocate to Mexico, he has not shown that such relocation will result in extreme hardship.

Based on the foregoing, the applicant has not shown that 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 the present matter, the applicant has not met his burden to prove that he is eligible for a waiver under section 212(a)(9)(B) of the Act. See Section 291 of the Act, 8 U.S.C. § 1361. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.