

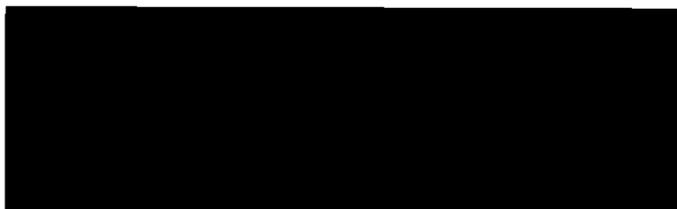
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U.S. Department of Homeland Security
Citizenship and Immigration Services
Administrative Appeals Office MS 2090
Washington, DC 20529-2090



**U.S. Citizenship
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Services**

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FILE: [REDACTED] Office: MEXICO CITY (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
for

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Acting District Director (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 her last departure. The applicant seeks a waiver of inadmissibility in order to reside in the United States with her U.S. citizen husband and children.

The district director found that the applicant failed to establish extreme hardship to her husband and denied the Form I-601 application for a waiver accordingly. *Decision of the Acting District Director*, dated April 15, 2008.

On appeal, the applicant's husband asserts that he and his children will endure extreme hardship should the present waiver application be denied. *Statement from the Applicant's Husband on Form I-290B*, dated May 6, 2008.

The record contains statements from the applicant, as well as from the applicant's husband, son, mother-in-law, brothers-in-law, niece, and friends; copies of birth records for the applicant's husband and children; documentation regarding the applicant's husband's employment; financial documentation for the applicant and her husband; medical documentation for the applicant's husband, and; copies of documents in connection with the applicant's son's educational activities. The applicant further provided documents in a foreign language. Because the applicant failed to submit translations of the documents, 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 documents, 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 1995, and she remained until approximately August 2007. Thus, she accrued unlawful presence from April 1, 1997, the date the unlawful presence provisions in the Act took effect, until she departed August 2007. This period totals over 10 years. She now seeks admission as an immigrant pursuant to an approved Form I-130 relative petition filed by her husband on her behalf. She 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 her last departure. The applicant does not contest her 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 her children 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 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’s husband states that he and his children will suffer extreme hardship should the applicant reside outside the United States. *Statement from the Applicant’s Husband on Form I-290B* at 2. He states that he is being treated for depression due to his family crisis. *Id.* He indicates that the applicant and his children are now stranded in Mexico, and that he

must support two households which is creating hardship for him. *Id.* He asserts that hardship to his children should be considered due to the fact that it impacts him. *Id.*

The applicant's husband explains that he and their two children are U.S. citizens, and that they have a right to reside in the United States. *Statement from the Applicant's Husband*, dated May 5, 2008. The applicant's husband indicates that he is enduring financial hardship due to the applicant's and their sons' residence in Mexico. *Id.* at 1. He explains that he must travel far for work, yet he does not intend to change jobs because he earns sufficient pay that allows him to meet their expenses including rent, utilities, clothing, food, transportation, and medical care. *Id.* He adds that he has medical insurance for the applicant and their children in the United States. *Id.* He provides that the applicant could work and help with the family's expenses should she reside in the United States. *Id.*

The applicant's husband expresses that he is enduring emotional hardship due to separation from the applicant, and that he has been hospitalized on two occasions for depression. *Id.* at 1-2. He indicates that his job performance has been negatively affected, and that his employer notified him that his job is at risk. *Id.* at 2. He states his concern for securing alternate employment should he lose his present position. *Id.*

The applicant's husband explains that his sons are losing access to educational opportunities in the United States. *Id.*

The applicant's husband provides that he does not intend to relocate to Mexico, because he believes his family will have a better future in the United States. *Id.* at 3. Applicant's husband previously stated that his youngest son, [REDACTED], who was 11 months old at the time of the prior statement, became ill in Mexico. *Prior Statement from the Applicant's Husband*, dated September 9, 2007. The applicant's husband explains that [REDACTED] missed a medical appointment and vaccinations with his pediatrician in the United States due to his presence in Mexico. *Id.* at 1. The applicant's husband added that their older son, [REDACTED], is unable to write or read Spanish which creates academic difficulty for him. *Id.* The applicant's husband explained that [REDACTED] emotional state has impacted his educational activities. *Id.* He stated that when [REDACTED] was still residing with him in the United States he would leave Adan with a neighbor during periods of travel for his construction work for up to three weeks at a time. *Id.* The applicant's husband expressed concern for his ability to offer sufficient supervision of his son while meeting his professional responsibilities. *Id.* He indicated that it is impossible for him to perform all of the tasks that the applicant performed to maintain their household and care for their children in the United States. *Id.*

The applicant's husband noted that the applicant and their children are residing in [REDACTED] and that it is a long drive for him. *Id.*

The applicant submitted a statement from her older son, issued at a time when he was residing separately from her in the United States, in which he expressed that he was enduring emotional difficulty due to being separated from her and his younger brother. *Statement from the Applicant's Older Son*, undated. He explains his circumstances when he was residing in the United States without the applicant, including that he had to stay with neighbors when the applicant's husband had

to travel for work. *Id.* at 1. He added that he was having difficulty with school due to his sadness. *Id.*

The applicant provides a brief note from her husband's physician who states that her husband was a patient in November 2007 in February 2008 due to depression, and that he is currently still under her care. *Medical Record for the Applicant's Husband*, dated April 23, 2008.

The applicant submits numerous statements from friends and relatives of her husband who attest that her husband is enduring significant emotional difficulty due to separation from the applicant and his children. Two friends of the applicant and her husband stated that they visited the applicant and her children in [REDACTED] and they reported that the applicant's children have had difficulty adapting to a new country and life. *Letters from [REDACTED]* dated April 25, 2008.

Upon review, the applicant has not shown that her husband will endure extreme hardship should the present waiver application be denied. The applicant has not established that her husband will endure extreme hardship should he remain in the United States for the duration of her inadmissibility under section 212(a)(9)(B)(i)(II) of the Act. The applicant's husband states that he is enduring significant emotional hardship due to being separated from the applicant and his children. The AAO has carefully examined the medical document provided for the applicant's husband. However, the single document is brief and does not identify any of the applicant's husband's symptoms or required treatment. Nor does the document indicate the severity of his condition, or discuss his future mental health needs. The AAO has further reviewed the statements in the record from the applicant's and her husband's friends and relatives regarding her husband's emotional challenges, and acknowledges that he is facing psychological hardship due to separation from his family. Yet, the applicant has not distinguished her husband's emotional difficulty from that which is commonly experienced by individuals who live separately from their spouse or children due to inadmissibility.

The applicant's husband provided that his children are enduring hardship due to residing in Mexico. As noted above, the AAO examines hardship to the applicant's children to determine the impact that it has on the applicant's husband. The record shows that the applicant's older son, currently age 15, previously attended school in the United States. It is understood that he faces a substantial adjustment in adapting to the educational system in Mexico. It is noted that the applicant submits an [REDACTED] assessment for her older son, and this document suggests that English was not his first language. While the record supports that he had not previously attended school in Spanish, the ELL assessment suggests that he has at least some proficiency with Spanish. The applicant's husband expressed concern for his younger son's continuity of medical treatment due to his having missed an appointment and vaccinations with his pediatrician in the United States. However, the applicant has not shown that her younger son has unusual medical needs that cannot be met in Mexico. The AAO acknowledges that children often face significant emotional difficulty when adapting to a new country or culture and residing separately from a parent. Yet, the applicant has not distinguished her children's hardships from those often faced when children relocate to another country due to the inadmissibility of a parent. The applicant has not

shown that her children are enduring difficulty that elevates her husband's challenges to an extreme level.

The applicant's husband stated that he is facing financial difficulty due to maintaining two separate households, his in the United States and the applicant's in Mexico. The AAO has examined the financial documentation in the record. However, the applicant has not shown that her husband faces unusual expenses, or that he lacks sufficient income to meet his needs in the United States while supporting her and their children at the current documented level.

All stated elements of hardship to the applicant's husband, should he remain in the United States, have been considered in aggregate. Based on the foregoing, the applicant has not shown by a preponderance of the evidence that her husband will suffer extreme hardship should he reside in the United States for the duration of her inadmissibility under section 212(a)(9)(B)(i)(II) of the Act.

The applicant has not shown that her husband will suffer extreme hardship should he relocate to Mexico to maintain family unity. The applicant has not submitted any explanation or documentation to show the circumstances her husband would face should he reside in Mexico. The applicant's husband expressed generally that he believes his family will have a better future in the United States, yet he did not articulate specific concerns for the quality of his experience should he reside in Mexico for the duration of the applicant's inadmissibility under section 212(a)(9)(B)(i)(II) of the Act.

It is evident that the applicant's husband will face challenges should he relocate to Mexico, including the loss of his current employment and separation from his community and family members in the United States. While the AAO understands that these factors create economic and emotional hardship for the applicant's husband, they are common circumstances faced by family members who relocate abroad due to inadmissibility. As discussed above, the applicant's children will face challenges should they continue to reside in Mexico, yet the applicant has not shown that their difficulty will raise her husband's hardship to an extreme level.

The AAO takes notice that the United States Department of State issued a Travel Warning for Mexico, warning that crime and drug-related violence have escalated throughout the country in all cities, yet particularly along the northern border with the United States where the applicant presently resides. *United States Department of State Travel Warning: Mexico*, dated September, 2010. However, the applicant has not asserted that she or her husband would be affected by the rise in crime and violence. The AAO is limited to the assertions and evidence provided by the applicant when assessing hardship to her husband. The AAO may not speculate regarding the circumstances the applicant's husband will face in Mexico. 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. Based on the foregoing, the applicant has not shown by a preponderance of the evidence that her husband will endure extreme hardship should he join her in Mexico for the duration of her inadmissibility under section 212(a)(9)(B)(i)(II) of the Act.

Accordingly, the applicant has not established that denial of the present waiver application “would result in extreme hardship” to her husband, 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 she merits a waiver as a matter of discretion.

In the present matter, the applicant has not met her burden to prove that she 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.